



March 25, 2022

Lisa Anderson  
Assistant Deputy Minister  
BC Corrections  
Ministry of Public Safety and Solicitor General  
1001 Douglas Street, 7<sup>th</sup> Floor  
Victoria, BC

By email: Tracey.Ooms@gov.bc.ca

***Re: Review of the arrangement between Canada Border Services Agency and the BC Ministry of Public Safety and Solicitor General, BC Corrections, Adult Custody Division, respecting the management of individuals subject to lawful detention under the Immigration and Refugee Protection Act.***

Dear Assistant Deputy Minister Lisa Anderson:

The BCCLA's mandate is to preserve, defend, maintain and extend civil liberties and human rights in Canada. As Canada's oldest active civil liberties association, the BCCLA has a long history of work in the areas of Canada Border Services Agency ("CBSA") accountability and oversight, prisoners' rights, mental health, and has long advocated for migrant rights.

The BCCLA has significant expertise in the law and policy governing the CBSA, as well as correctional facilities in Canada. The work that BCCLA has done regarding CBSA oversight and accountability, prisoners' rights and mental health, and migrant rights includes:

- Recommending models of effective civilian oversight and accountability for the CBSA.<sup>1</sup>
- Challenging the expansion of powers for US customs and border agents and the CBSA at preclearance sites in Canada and at the border.<sup>2</sup>

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<sup>1</sup> Oversight at the Border: A Model for Independent Accountability at the Canada Border Services Agency (2017), <https://bccla.org/wp-content/uploads/2017/06/FINAL-for-web-BCCLA-CBSA-Oversight.pdf>

<sup>2</sup> Written Submission to the Standing Committee on Public Safety and National Security Regarding Bill C-23, the Preclearance Act (2016), <https://bccla.org/wp-content/uploads/2017/05/BCCLA-submission-Bill-C23-precleanance-May-9.pdf>

- Opposing the closure of the Canada-US land border to asylum-seekers during the COVID-19 pandemic.<sup>3</sup>
- Successfully suing Canada, alongside the John Howard Society of Canada, for laws governing administrative segregation that violated the Charter because they were inhumane and permitted prolonged, indefinite solitary confinement.<sup>4</sup>
- Filing a lawsuit against Canada to stop the wardens at federal prisons from unlawfully placing people in long-term solitary confinement through lockdowns and “restrictive movement routines.”<sup>5</sup>
- Advocating against the arbitrary imprisonment and cruel treatment of migrants with mental health issues.<sup>6</sup>

It is in the context of this continuing work that BCCLA calls on the province to cancel their agreement with CBSA allowing immigrants and refugees to be held in provincial jails.

In reviewing the agreement, the province of BC has the opportunity to stand up for human rights and to stand out as a role model for the rest of the country. We urge the province to take advantage of this review to send a clear message to the federal government that the current immigration detention regime is inhumane, ineffective, and contravenes international law and protocols. The provincial government has enabled this cruel and deliberately opaque system for too long.

The BCCLA’s position, explained in further detail below, is that the agreement should come to an end because of Canada’s international law obligations, the extensive evidence of harm caused by CBSA policies and practices, and the lack of independent oversight of the CBSA.

## **1) Canada’s International Law Obligations**

Canada is a party to several international human rights conventions and has a legal obligation to implement provisions that protect the rights of migrants, including their right to liberty to be free from arbitrary detention. Article 9 of the International Covenant on Civil and Political Rights (ICCPR) states:

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<sup>3</sup> Letter to Prime Minister Trudeau regarding: Shutting the Canada-US Border to Refugees (2020), <https://bccla.org/wp-content/uploads/2020/04/BCCLA-Opposes-Border-Closure-March-2020.pdf>

<sup>4</sup> *British Columbia Civil Liberties Association v. Canada (Attorney General)*, 2019 BCCA 228 (CanLII), <https://canlii.ca/t/j14gg>

<sup>5</sup> Rights Group Sues to Stop Wardens from Placing Prisoners in Long-term Solitary Confinement (2021), <https://bccla.org/news/2021/10/press-release-rights-group-sues-to-stop-wardens-from-placing-prisoners-in-long-term-solitary-confinement/>

<sup>6</sup> “We Have No Rights”: Arbitrary Imprisonment and Cruel Treatment of Migrants with Mental Health Issues in Canada (2016), [https://bccla.org/our\\_work/we-have-no-rights-arbitrary-imprisonment-and-cruel-treatment-of-migrants-with-mental-health-issues-in-canada/](https://bccla.org/our_work/we-have-no-rights-arbitrary-imprisonment-and-cruel-treatment-of-migrants-with-mental-health-issues-in-canada/)

Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.<sup>7</sup>

International human rights law establishes that immigration detention should be used only in exceptional circumstances and as a measure of last resort. The UN special rapporteur on torture concluded that detention based solely on migration status is outside of the legitimate interests of the state and should be considered arbitrary.<sup>8</sup> In 2015, the United Nations Human Rights Committee expressed grave concerns about Canada’s immigration detention regime, as well as prison conditions, and recommended that Canada should refrain from indefinitely detaining migrants and observe a reasonable time limit and should ensure that detention is used as a measure of last resort, with non-custodial measures and alternatives to detention being used.<sup>9</sup>

## **2) Extensive Evidence of Harm Embedded in CBSA Policies and Practices (including use of prolonged segregation)**

Evidence of harm enacted by Canada’s immigration detention regime has been detailed extensively through tribunal and court decisions—including an inquest into the death of immigration detainee Lucía Vega Jiménez —as well as audits and reports stemming from exhaustive research and submissions. All of these reports and decisions have condemned the policies, practices, and culture of CBSA and advocated for reform.

### **2018 Audit Report Exposed Cruelty of Detention System**

In 2018, an external audit commissioned by the chair of the Immigration and Refugee Board (“IRB”) condemned the culture and practices of CBSA and the Immigration Division and recommended that authorities “address the enormous problem of affording fair and humane treatment to persons in detention who are living with mental illness.”<sup>10</sup>

The audit found that cases involving persons with substance use issues and psychosocial disabilities faced persistent lack of treatment and counselling services in provincial correctional institutions, and that lack of access to these services not only impacted their health, but their ability to demonstrate certain factors supporting their release. Canadian courts have found that

<sup>7</sup> ICCPR, <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf> (accessed March 7, 2022)

<sup>8</sup> UN Human Rights Council, “Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment,” (2018), UN Doc. A/HRC/37/50, para. 24.

<sup>9</sup> United Nations Human Rights Committee, “Concluding observations on the sixth periodic report of Canada”, (2015), UN Doc.

CCPR/C/CAN/CO/6, <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhskswUHe1nBHTSwwEsgdxQHJBoKwgsS0jmHCTV%2FFsa7OKzz9yna94OOqLeAavwpMzCD5oTanJ2C2rbU%2F0kxdos%2BXCyn4OFm3xDYg3CouE4uXS> (accessed March 7, 2022).

<sup>10</sup> Immigration and Refugee Board of Canada, *Report of the 2017 / 2018 External Audit for Detention Reviews*, July 20, 2018. <https://irb-cisr.gc.ca/en/transparency/reviews-audit-evaluations/Pages/ID-external-audit-1718.aspx> (accessed March 7, 2022).

continued detention without treatment could constitute cruel and unusual punishment contrary to s. 12 of the Charter<sup>11</sup> or would violate ss. 7 and 9 Charter rights due to the unavailability of treatment.<sup>12</sup>

The audit also found that detention decision-making had strayed from CBSA's mandate of ensuring public safety and the presence of persons for deportation purposes and called for greater transparency in decisions and rigorous detention reviews in alignment with the principle that release is the default position.

The audit further concluded that the Immigration Division tended to rely, uncritically, on the submissions of CBSA Hearings Officers. These submissions often misstated facts and other critical details in the file and can play a significant role in a decision to continue detention, especially when the bar to continue detention was dangerously low. People were often continually detained on the basis that *any* risk of failure to appear was enough risk to justify continued detention. The audit recommended that detention based on mere risk that the person will miss an appointment or commit a minor offence was not enough—the evidence must establish that the risk is greater than 50%. The audit also noted that in many cases, the reason for continued detention is unclear—and that is in cases where there were any reasons at all. In many detainee files, reasons and decisions recommending continued detention were often missing.

### **2014 BC Coroners Inquest Revealed Fatal Flaws in BC Corrections and CBSA Relationship**

In 2014, a BC Coroners Inquest into the death of Lucía Vega Jiménez, who committed suicide while in immigration detention in December 2013, exposed the fatal flaws in the relationship between BC Corrections and CBSA, and demonstrated the myriad ways immigration detainees are mistreated and subject to inhumane treatment.

Lucía worked as a cleaner in Vancouver, sending most of her earnings back home to Mexico to support her family. She was detained on the Skytrain for failing to pay the fare, and transit officials contacted CBSA. She was not afforded the opportunity to speak to counsel before being questioned by a CBSA officer that purported to be a liaison. The information Lucía provided was subsequently used against her in a detention hearing. She then spent 3 days at the Vancouver Immigration Holding Center (“IHC”) at the airport before being transferred to Alouette Correctional Centre for Women in Maple Ridge.

While at Alouette Correctional Centre for Women, Lucía made several visits to mental health services due to her distress about returning to Mexico, and eventually met with a nurse complaining of chest pain. The nurse, concluding that the pain was related to stress and emotional trauma, made an appointment for Lucía to meet with the mental health coordinator at Alouette. However, due to the presence of inmates needing to be seen on an urgent basis, Lucía was taken back to the IHC in Vancouver and her appointment was not rescheduled. About

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<sup>11</sup> *Ebrahim Toure v. Minister of Public Safety*, 2017 ONSC 5878

<sup>12</sup> *Ali v. Canada (Attorney General)*, 2017 ONSC 2660

one week later, she made an urgent request to see a doctor for neck and face pain, but again was transferred back to the Vancouver IHC before she could be seen.

Throughout her time in immigration detention, there was no communication between Alouette and CBSA about Lucía's condition, despite the fact that one of her detention hearings was ended early due to her uncontrollably sobbing. The verdict following Lucía's inquest detailed a number of recommendations, including the creation of a civilian oversight body to investigate critical incidents and the elimination of the use of jails to detain migrants.

Lucía Vega Jiménez is not alone—at least 16 people have died in immigration detention since 2000, and most of them were in provincial jails.<sup>13</sup>

BCCLA opposes the use of prolonged, indefinite lockdowns and restrictive movement routines in all carceral contexts, including immigration detention. They are devastating to the physical, psychological, social, and spiritual health of incarcerated people. Those who are subjected to extended usage of these procedures suffer from a wide variety of adverse effects, including: anxiety; hallucinations; panic; paranoia; ruminations and intrusive obsessional thoughts; self-harm; social withdrawal; suicidal thoughts and behaviours; and mental illness.

Not only is the presence of psychosocial disabilities and suicidality in immigration detainees often used by CBSA to justify continued detention and placement in provincial jails, it is also often the basis for using prolonged segregation. BCCLA condemns this practice and calls on the provincial government to cease enabling it.

### **3) Lack of independent oversight of CBSA**

BCCLA has consistently called for an independent, civilian-led oversight commission with a mandate to provide real-time oversight for the CBSA. There is no justification for the continued unfettered discretion and latitude afforded to the CBSA, and any steps to limit that discretion should be taken immediately.

In addition to cruel treatment of those with psychosocial disabilities and substance use issues, the 2018 IRB audit found an inconsistent, regionally-specific approach to detention demonstrated by the CBSA where it may be more likely to recommend release from detention in certain parts of the country rather than others, where they were more biased towards continuing detention. The report also discussed the culture of delay at CBSA that can unnecessarily extend detention *by years*, in certain cases. These inconsistencies and delays have resulted in egregious infringements of human rights, and warrant extensive oversight.

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<sup>13</sup> Human Rights Watch, *Death of Immigration Detainee an Urgent Wake-Up Call for Canada*, February 4, 2022, <https://www.hrw.org/news/2022/02/04/death-immigration-detainee-urgent-wake-call-canada#:~:text=What%20we%20do%20know%20is,detention%2C%20most%20in%20provincial%20jails> (accessed March 10, 2022)

The federal government has previously stated its support for the creation of an accountability mechanism for CBSA, and the Senate Standing Committee on National Security and Defence also made this recommendation in its report *Vigilance, Accountability and Security*, stating that the agency should ensure appropriate compliance with legislation and policy. So far, national initiatives including the National Immigration Detention Framework (NIDF), the Alternatives to Detention Program, and the Ministerial Direction to CBSA on Minors in Immigration Detention indicated the possibility of structural and institutional change but ultimately failed to deliver.

Since the NIDF was implemented, the number of immigration detainees has steadily increased each year and more than one fifth of immigration detainees have been held in provincial jails across the country, with the vast majority being detained on the basis of being a flight risk. Since the onset of the COVID-19 pandemic, the CBSA has relied even more heavily on provincial jails, incarcerating 40% of immigration detainees there in the 2020-21 fiscal year and more than doubling the average length of detention. If the immigration detainees are to be treated fairly, humanely, and provided with the requisite support, there must be extensive, independent, and external oversight of CBSA.

### **Summary and Recommendations**

The agreement between the provincial government and CBSA ensures British Columbia's complicity in breaching international law, perpetuating harm, and violating human rights. Permitting the agreement to stand protects a critical piece of Canada's inhumane immigration regime and endorses the CBSA's cruel status quo that costs people their lives. We are calling on the provincial government to choose progress and to prioritize the health, safety, and well-being of immigrants and refugees.

Finally, BCCLA wants to be clear that in recommending a dissolution of the agreement between the province and the CBSA, we are not advocating for more IHCs, increased detention in the IHCs already built, or increasing reliance on alternatives to detention. Detention in the immigration regime remains an option of last resort and enforcement measures should not be used against people who should otherwise be released. If detention is required, the least intrusive method of doing so is to be employed.

The BCCLA endorses all the recommendations set out in *I Didn't Feel Like a Human in There*,<sup>14</sup> the report on immigration detention published by Human Rights Watch and Amnesty International, and for the purposes of the BC review recommends the following be adopted immediately:

- 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.

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<sup>14</sup> Human Rights Watch and Amnesty International, *I Didn't Feel Like a Human in There* (2021), [https://www.hrw.org/sites/default/files/media\\_2021/06/canada0621\\_web.pdf](https://www.hrw.org/sites/default/files/media_2021/06/canada0621_web.pdf) (accessed March 7, 2022)

Regardless of the outcome of the review by the BC government, the BCCLA will continue to advocate for the following changes outlined in *I Didn't Feel Like a Human in There*<sup>15</sup> to be adopted by the relevant government bodies without delay:

- Transform IHCs into open and safe reception facilities. In particular, immigration detainees should be allowed access to their personal cellphones and electronic devices; immigration detainees should not be restricted to mandatory mealtimes and wake-up times: and visitations should be in-person and with privacy.
- Replace detention with community-based case management for those with pending immigration proceedings. Expand localized programs of community-based alternatives to detention that provide support rather than surveillance, and that are operated by local non-profit organizations independently from CBSA.
- End the use of solitary confinement in immigration detention.
- End the use of handcuffs and shackles for immigration detainees.
- Maintain effective, supportive, voluntary, and culturally-appropriate mental health services in the community that are available and accessible to citizens and non-citizens alike. Consider reallocating funding from the CBSA budget to Support community-based health services and alternatives to detention.
- Acknowledge the existence of systemic racism within the CBSA and the immigration detention system, develop in close and transparent collaboration with communities of color a meaningful plan to address systemic racism within CBSA and the immigration detention system, including the collection and publication of de-identified race- and ethnicity-based data about immigration detainees with their free and informed consent.
- Publish CBSA's annual budgets with a breakdown of all significant expenditures. Publish all other expenditures related to immigration detention, including all fees paid to the provinces in exchange for hosting immigration detainees in provincial facilities.
- In line with the guidance of the UN Working Group on Arbitrary Detention, stop holding persons with physical or psychosocial disabilities in immigration detention. Persons' disabilities should also be taken into account when determining the legality, necessity, and proportionality of any non-custodial migration enforcement measure.

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<sup>15</sup> Human Rights Watch and Amnesty International, *I Didn't Feel Like a Human in There* (2021), [https://www.hrw.org/sites/default/files/media\\_2021/06/canada0621\\_web.pdf](https://www.hrw.org/sites/default/files/media_2021/06/canada0621_web.pdf) (accessed March 7, 2022)

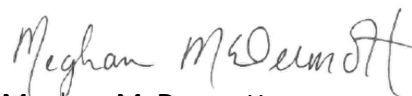
- Ensure that all CBSA officers, immigration holding center personnel, and provincial jail authorities receive regular and effective training on how to interact with people with different disabilities, in particular on engaging with and responding to the requirements of people with psychosocial, intellectual, or developmental disabilities. These officers should receive training not only during their initial formation but also on an ongoing basis. Trainings should be developed in consultation with people with disabilities.
- Improve mental health services in IHCs and provincial jails by ensuring that services are available to anyone, regardless of whether they have a medical diagnosis of a disability, there are sufficient numbers of qualified mental health professionals, treatment is based on free and informed consent, that there are adequate resources, and that levels of care meet standards of community health care.
- Ensure that full facility inspections and full and complete investigations of deaths in custody or with links to in-custody treatment are available to the public within three months of being finalized. Provide public reporting on suicide attempts, hunger strikes, work program stoppages, use of solitary confinement, use of force, and other significant events involving immigration detainees in provincial jails and immigration holding centers.
- Require that all facilities where immigration detainees are held—including provincial jails and IHCs —grant non-profit organizations access to immigration detainees to provide legal education, programming, and monitoring of conditions.

Thank you for inviting the BCCLA to participate in this important consultation. We would be pleased to provide further clarification, context and/or commentary as needed.

Sincerely,



Mara Selanders  
Staff Counsel



Meghan McDermott  
Policy Director