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Advocates, politicians urge feds to lead on ending 'appalling practice' of immigrant detention in provincial jails

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Human rights advocates are hopeful last month's announcement that British Columbia is ending its contract with the Canada Border Services Agency to detain immigrants and asylum seekers in provincial jails will spur other provinces to follow suit. However, they are still calling on the federal government to take the lead.

On July 21, B.C.'s Public Safety Minister Mike Farnworth announced the decision to end its deal with the CBSA, saying that the arrangement didn't align with the province's stance on human rights.

Last October, Human Rights Watch and Amnesty International launched their #WelcomeToCanada campaign, calling on the federal and provincial governments to take concrete measures to abolish immigration detention.

The campaign focused first on B.C., but Samer Muscati, associate disability rights director at Human Rights Watch, said he hopes the decision will create a

"domino effect" for the other provinces with CBSA detention contracts.

According to documents obtained by HRW and Amnesty International through access to information requests, six other provinces have memorandums of understanding with the federal government: New Brunswick, Nova Scotia, Ontario, Quebec, Manitoba, and Saskatchewan.

Since B.C.'s announcement, the campaign has broadened to Quebec and Nova Scotia. According to The Saskatoon StarPhoenix, Saskatchewan announced on Aug. 12 it was reviewing its agreement with CBSA.

In May, several lawyers and academics in migration law, refugee protection, and human rights sent a letter to government officials to add their voices to the calls to end the incarceration.

The letter, addressed to the 10 provincial premiers, Public Safety Minister Marco Mendicino (Eglinton-Lawrence, Ont.), Immigration, Refugees, and Citizenship Minister Sean Fraser (Central Nova,

N.S.), and Prime Minister Justin Trudeau (Papineau, Que.), was signed by more than 200 lawyers, academics, and advocacy organizations, including former Liberal cabinet minister and University of Ottawa president Allan Rock.

Rock, who previously served as Canada's ambassador to the United Nations and as a Liberal health and justice minister under former prime minister Jean Chrétien, told The Hill Times that he had been very critical of other countries, including the example of immigration detention at the United States' southern border, and was shocked to read about the "widespread practice" of incarcerating asylum seekers in provincial jails in Canada in Human Rights Watch's June 2021 report.

The report details that, according to the CBSA, between April 2019 and March 2020, 8,825 people between the ages of 15 and 83 were detained, including 1,932 in provincial jails. In the same period, another 136 children were detained to avoid separating them from their parents, including 73 under the age of six. Human Rights Watch and Amnesty In-

ternational also found that, since 2016, Canada has held more than 300 immigration detainees for more than a year.

Rock said he became involved in the issue through his work with the World Refugee Council, chaired by Lloyd Axworthy, who served as foreign minister under Chrétien and is also a signatory of the May letter.

Rock said that, as evidenced in the report, he saw no reason to believe that public safety or national security would be compromised by not holding those individuals in provincial prisons instead of CBSA's dedicated immigration detention facilities.

Canada has three dedicated immigration detention centres that are not provincial jails: in Laval, Que., Toronto, and Surrey, B.C. Rock said that there are sufficient alternatives to jailing in the provinces where there are no CBSA facilities, noting that CBSA's most common reason for detaining immigrants or asylum seekers is concern about a "flight risk."

"There are technologies available to allow people to be released and still monitored," Rock said. "The CBSA already has a phone program where people have to check in regularly."

Rock said he is also troubled by the arbitrary nature of the detention and lack of oversight on the CBSA, noting that unlike most countries in the "global North," Canada is one of the few without a legal limit on how long a person can be held in immigration detention and sometimes even held in solitary confinement.

"We were shocked and troubled by the fact that merely by turning up on our

border and asking to enter our country legally, either seeking asylum or as an immigrant, you are liable to be confined in the provincial jail," Rock said. "They haven't been accused or convicted of any criminal charges, but they're being held in very restrictive confinement, often with other detainees convicted of criminal offences."

Rock emphasized that he believes the ministers and premiers who received the letter are determined to change the practice, but the question is "a matter of time."

"We're just here to say it should happen as soon as possible and to keep the focus on this very serious issue," Rock said, adding that he and Axworthy have already spoken to Manitoba's attorney general and that he believes more provinces will be making similar announcements to B.C.'s. "We'd like to see the federal government stepping forward and say they are going to get out of this business," Rock said. "I believe the government is sensitive to the concern and sympathetic to the case we've made. I believe the practice will end, but we hope it will be sooner rather than later."

If the government doesn't move quickly enough, Rock warned, there would also be damage to Canada's international reputation as well if CBSA's practice of detaining immigrants and asylum seekers in private jails became publicly known.

"It's unacceptable," Rock said, adding that the practice is inconsistent with the objectives of creating a better, more fair and humane detention system that "supports the humane and dignified treatment of individuals while protecting

public safety," as stated in CBSA's National Immigration Detention Framework.

"The changes we propose are entirely consistent with that framework," Rock said, noting that Mendicino has already taken a step in the right direction with Bill C-20, which would create the independent Public Complaints and Review Commission for the CBSA and RCMP.

"The oversight that the minister is proposing will narrow the discretion on the part of CBSA officers and gives them more guidance, hopefully restricting the circumstances in which people will be detained," Rock said. "Right now, the CBSA doesn't have any legal standard guiding its decisions about where people are detained, so they have a pretty free hand."

In an emailed response, the CBSA said it is "committed to decreasing" its use of provincial correctional facilities, and that it's reduced its reliance on them in recent years through investments in new and upgraded immigration holding centres, including new ones opened in B.C. in 2020 and Montreal in 2022.

The agency said it uses provincial correctional facilities as "a measure of last resort for the very highest risk detainees," which "allows both the provinces and CBSA to manage the fair treatment of detainees, while ensuring the safety of Canadians when risks cannot be mitigated through other means such as alternatives to detention." It noted that under its alternatives to detention (ATD) program policy, individuals "can only be detained when grounds for detention exist, and after all ATDs have been considered."

According to the CBSA, as of Aug. 18, a

total of 161 individuals are in detention in immigration holding centres, 65 are in provincial correctional facilities, and 10,619 are under alternatives to detention. The agency also pointed to its annual numbers since 2018 as proof of its declining use of provincial correctional facilities. In 2018, 1,603 individuals in CBSA's care were detained in provincial facilities across the country; that number jumped to 1,878 in 2019, but dropped to 1,037 in 2020, 788 in 2021, and so far in this year (as of Aug. 18) has reached 573 individuals.

The CBSA noted that all agreements with provinces related to housing immigration detainees in provincial correctional facilities includes a condition authorizing the Canadian red Cross to visit to monitor and report on conditions and treatment.

CBSA oversight step in the right direction, but agency practices lack transparency and accountability:NDP critic NDP MP Jenny Kwan (Vancouver East, B.C.), her party's immigration critic, told The Hill Times that it is "absolutely appalling" that the government continues to hold immigrants and asylum seekers indefinitely, affording more due process to violent offenders, and that she was "delighted" to see the B.C. government end the practice in the province.

Kwan also said that the pandemic had further shown that the government was detaining many of them needlessly, pointing to the fact that CBSA released detainees in their centres to prevent the spread of COVID-19.

"It shows that it's absolutely unnecessary," Kwan said.

While creating added oversight for CBSA was a "step in the right direction"

for Kwan, she said the government still needs to "get its house in order" to ensure complete transparency and accountability for the agency.

"[The NDP] has had a bill calling for independent oversight of CBSA forever now, and the Liberals just do not have the wherewithal to see that bill to fruition," Kwan said. "But every time they call an unnecessary election, the bill dies on the Order Paper; lather, rinse, repeat."

In May, Mendicino tabled Bill C-20, which would establish the Public Complaints and Review Commission to oversee the RCMP and CBSA.

Kwan said she was also disappointed in the Liberal's walk back of their promise to track all cases of children separated from their parents.

The initial promise was made after Radio-Canada reported on a father who had been separated from his two children upon arriving at the border in 2020. That same report revealed at least 182 children had been separated from parents detained at the Laval Immigration Holding Centre in 2019 alone.

CBSA had said it would begin collecting national statistics on minors being separated from at least one parent but later walked that back to only keeping a record of children separated from parents or legal guardians.

"That means the government has no way of knowing if they are compliant with international commitments to protect children," Kwan said, pointing to Canada's signatory status on the United Nations' Convention on the Rights of the Child.

Kwan said the biggest issue with CBSA is the opacity of many of its practices.

"Their practices are opaque and lack transparency and frankly accountability," Kwan said. "There is no reason they need to detain people, especially for people with no historical record of violent offences or charges laid against them."

Kwan also agreed that the federal government should take the lead in ending the practice, making it a national policy.

"We absolutely have the means to do that," Kwan said, noting that the government can engage with various ground-level NGOs to provide housing and expedite not only their immigration applications but also their work visas as well.

"Then these people would be able to work and be self-sufficient," Kwan said, adding that many of the immigrants and asylum seekers she has spoken to have shown a willingness to do just that, but would be in violation of the law if they did so.

"Another thing the government can do is treat these people as human beings," Kwan said. "They want to be self-sufficient, and that's why they're here: to flee persecution and seek better life opportunities."

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