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Considering Alternatives to Immigration Detention

Implementing Community-Based Case Management Through Newcomer Support Services and Organizations in Ontario

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EXECUTIVE SUMMARY

In Canada, Immigration detention has been identified as one of the fastest growing forms of incarceration in the country, with a record of 8,825 persons detained in the year 2019-2020.[1] Although immigration detention is a common practice used for attempting to address and deter illegal migration, there is no empirical evidence to suggest that this practice is effective at deterrence.[2] The immigration detention process socially isolates individuals by subjecting them to detention environments that operate like medium-security prisons which sever their ability to contact outside family or counsel services.[3] The Alternatives to Detention (ATDs) provided by the government of Canada and run by the Canada Border Services Agency (CBSA) continue to isolate individuals by basing programs on a criminal justice model which continues to surveil and restrict an individual's liberty and rights.

In this report, I illustrate the need to replace current government-created Alternatives to Detention (ATD)s with community-based case management programs. I identify case management through the definition illustrated by the Immigration Detention Coalition: "a comprehensive and systematic service delivery approach designed to ensure support for, and coordinated response to, the health and wellbeing of people with complex needs."[4] I use examples such as Sweden's reception house and community programming as an effective ATD that provides community-based case management programs.[5] Through this analysis, I begin to look at the pre-existing community-based support services in provinces such as Ontario and consider transforming them into humane, compassionate and rights-based ATDs.

This report looks at thirty organizations and support services in Ontario, and found that all of them provide housing services, thirty-seven percent provide services in relation to food, eighty percent assist in medical services, sixty-three percent provide assistance in the legal field and language sector, and seventy percent assist in the orientation and placement of newcomers. This report dives deeper into these support services by interviewing one of the founding directors of these organizations, Matthew House. In

[1] Canada Border Services Agency Government of Canada, "Government of Canada," Annual detention, fiscal year 2020 to 2021 (/ Gouvernement du Canada, December 9, 2021), https://www.cbsa-asfc.gc.ca/security-securite/detent/stat-2020-2021-eng.html.

[2] Robyn Sampson et al., "There Are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention (Revised Edition) - World," ReliefWeb, February 2, 2016, https://reliefweb.int/report/world/there-are-alternatives-handbook-preventing-unnecessary-immigration-detention-revised.

[3] Hanna Gros, "I Didn't Feel like a Human in There," Human Rights Watch, July 14, 2021, https://www.hrw.org/report/2021/06/17/i-didnt-feel-human-there/immigration-detention-canada-and-its-impact-mental.

[4] Robyn Sampson et al., "There Are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention (Revised Edition) - World," ReliefWeb, February 2, 2016, 48. https://reliefweb.int/report/world/there-are-alternatives-handbook-preventing-unnecessary-immigration-detention-revised.

[5] David Secor, Heidi Altman, and Tara Tidwell Cullen, "Report: A Better Way: Community-Based Programming as an Alternative to Immigrant Incarceration," National Immigrant Justice Center, April 2019, https://immigrantjustice.org/ research-items/report-better-way-community-based-programming-alternative-immigrant-incarceration.

this interview, Anne Woogler highlights her organization's mandate of belonging and its long history of welcoming refugee claimants as enabling them to become a community-based case management ATD program. The main objective of this report and research on ATD programs is to find real alternatives to detention, not alternative forms of detention, which I believe is what is being illustrated by the CBSAs programs.

INTRODUCTION

On June 17th, 2021, Human Rights Watch released a joint report with Amnesty International discussing immigration detention in Canada and its negative effects on the mental health and well-being of detainees.[6] This joint report highlights the systemic failures of immigration detention and has inspired and become the basis of my research on finding alternatives to immigration detention that are compassionate, humane and tailored to the individual. In my report, I attempt to address: why immigration detention is a harmful practice, why the current framework of ATDs is not effective and why community-based case management programs should replace these existing programs.

This report examines the various key actors involved in both the immigration detention process and community organizations creating alternatives to detention across Ontario. This includes understanding the role of the Canadian Border Service Agency (CBSA), the legal documents supporting imprisoning asylum seekers, Canada's history of racist immigration policy and how an individual can be released from detention.

The Immigration detention process is a harmful practice that socially isolates individuals leading to the worsening, or even creation of, mental health issues such as

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[6] Hanna Gros, "'I Didn't Feel like a Human in There,'" Human Rights Watch, July 14, 2021, https://www.hrw.org/report/2021/06/17/i-didnt-feel-human-there/immigration-detention-canada-and-its-impact-mental.
https://www.hrw.org/report/2021/06/17/i-didnt-feel-human-there/immigration-detention-canada-and-its-impact-mental.

Post-Traumatic Stress Disorder (PTSD), depression and anxiety. [7] This practice has led to deaths in detention and detainees developing suicidal thoughts. Although this practice has been called out by international human rights groups, the institution overlooking this process, the CBSA, has limited oversight and does not publish or collect enough information on the severity of experiences and treatment of those detained.

These systemic failures should result in the gradual abolition of this practice altogether. For example, there is no legal limit to the duration of time that a detainee can be held in detention. Immigration detainees are housed in provincial jail facilities and immigration holding centers (IHC) with limited access to proper medical care and legal counsel. Currently, in Canada, there are three Immigration Holding Centers (IHC) run by the CBSA, which are located in Toronto, Ontario, Laval, Quebec, and Surrey, British Columbia.[8] Refugees who arrive in a province other than these three may find themselves detained at a provincial correctional facility.[9] These failures and mistreatment of individuals do not end at immigration detention, as the ATD programs illustrated by the CBSA are only an alternative form of detention rather than a true alternative.

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[7] Hanna Gros, "I Didn't Feel like a Human in There," Human Rights Watch, July 14, 2021, https://www.hrw.org/report/2021/06/17/i-didnt-feel-human-there/immigration-detention-canada-and-its-impact-mental.

[8] Government of Canada, Canada Border Services Agency. "Arrests, Detentions and Removals - Detentions." Arrests, detentions and removals - Detentions, March 9, 2022. https://www.cbsa-asfc.gc.ca/security-securite/detent/menu-eng.html.

[9] Government of Canada, Canada Border Services Agency. "Arrests, Detentions and Removals - Detentions." Arrests, detentions and removals - Detentions, March 9, 2022. https://www.cbsa-asfc.gc.ca/security-securite/detent/menu-eng.html.

Alternative to detention programs currently in place by the CBSA are designed along a "criminal justice model".[10] However, for most asylum seekers, roughly 81 to 86 percent are detained on the grounds of a flight risk, whereas only five to seven percent are detained on the grounds of posing a threat to public safety.[11] These ATD programs such as the Community Programs and Electronic Supervision Tools are intrusive and rely on heavy surveillance of individuals even when placed back into the community. I believe that these programs are counteractive to the release objective and that community-based case management programming should replace them. In this report, I discuss how these recommended community-based programs can be found within our existing community-based support services.

With the growing detention rates across Canada, nearly 60 percent of the total number of detainees for the 2019-2020 year are from Ontario, with 5,265 persons detained.[12] This inspired me to focus on Ontario as the first province to analyze the feasibility of creating community-based case management programs. The creation of a map of thirty community-based support services for newcomers in Ontario analyzes newcomer services in six different areas: food, housing, language, employment, language and orientation. From these organizations, this report will discuss the case study with founding director, Anne Woogler from Matthew House as she agreed to become a community-based case management ATD program. This report will also look

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[10] "Alternatives to Detention: CCR Comments Regarding the Toronto Bail Program." Canadian Council for Refugees, January 2015. https://ccrweb.ca/en/alternatives-detention-comments-toronto-bail-program.
[11] Hanna Gros, "I Didn't Feel like a Human in There," Human Rights Watch, July 14, 2021: 17. https://www.hrw.org/report/2021/06/17/i-didnt-feel-human-there/immigration-detention-canada-and-its-impact-mental.
[12] Government of Canada, Canada Border Services Agency. "Government of Canada." Annual detention, fiscal year 2020 to 2021. / Gouvernement du Canada, December 9, 2021. https://www.cbsa-asfc.gc.ca/security-securite/detent/stat-2020-2021-eng.html.

at how these organizations and community-based case management programs help advance or achieve social connectedness.

Overall, this report will focus on the need to gradually abolish immigration detention, create alternatives to detention that are rights-based, and provide tailored and compassionate support for refugees and asylum seekers through community-based case management.

ISSUE, EVIDENCE AND KEY FINDINGS

What is Immigration Detention?

Immigration detention is defined as, "the deprivation of liberty for migration-related reasons".[13] In Canada, immigration detention is considered a form of administrative law, because the detainee is not being held for criminal-related charges or convictions, but rather for immigration-related reasons.[14] The key actors involved in the immigration detention process comprise a combination of legal frameworks and levels of government. For example, the Immigration and Refugee Protection Act (IRPA) is the main piece of legislation that overlooks the process of immigration to Canada, and the Minister of Immigration, Refugees and Citizenship Canada is the governing body that has jurisdiction over this legislation.[15] The Minister of Public Safety and Emergency Preparedness enforces the Immigration and Refugee Protection Act (IRPA). Although this Minister is responsible for enforcing areas regarding detention, removals and

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[13] "What is Immigration Detention" International Detention Coalition, 2022. https://idcoalition.org/about/what-is-detention/#1496020154676-e11e870f-de11.

[14] Gerald Heckman. "Revisiting the application of Section 7 of the Charter in immigration and refugee protection." *UNBLJ* 68 (2017): 312.

[15] "Immigration and Refugee Protection Act," Government of Canada, August 2, 2022, https://laws-lois.justice.gc.ca/eng/acts/i-2.5/FullText.html.

arrests, this responsibility was transferred to the Canada Border Services Agency (CBSA) in 2003.[16] The CBSA is the main governing body that polices the borders, enforces the IRPA and overlooks immigration detention. They can detain asylum seekers, permanent residents and refugee claimants if they fall within the grounds for detention.[17] The Immigration Division (ID) of the Immigration and Refugee Board (IRB) is responsible for managing the detention review hearings and coming to a decision on whether detention should continue.[18]

Immigration Detention Process and Grounds for Detention

The Canada Border Services Agency (CBSA) is the main governing body responsible for the immigration detention process as they are the first and sole group to decide on whether to detain individuals crossing the borders.[19] The CBSA can hold or detain an individual, including foreign nationals and permanent residents if that individual is believed to be:

- A danger to the public.

- Unlikely to show up for immigration processes, such as that which could lead to their removal from Canada (flight risk).

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[16] Hanna Gros, "I Didn't Feel like a Human in There," Human Rights Watch, July 14, 2021, https://www.hrw.org/report/2021/06/17/i-didnt-feel-human-there/immigration-detention-canada-and-its-impact-mental.

[17] Immigration and Refugee Board of Canada, "Chairperson Guideline 2: Detention," Immigration and Refugee Board of Canada, April 29, 2021, https://irb.gc.ca/en/legal-policy/policies/Pages/GuideDir02.aspx#s3.

[18] Hanna Gros, "I Didn't Feel like a Human in There," Human Rights Watch, July 14, 2021, https://www.hrw.org/report/2021/06/17/i-didnt-feel-human-there/immigration-detention-canada-and-its-impact-mental.

[19] Canada Border Services Agency Government of Canada, "Arrests, Detentions and Removals - Detentions," Arrests, detentions and removals - Detentions, March 9, 2022, https://www.cbsa-asfc.gc.ca/security-securite/detent/menu-eng.html.

- Inadmissible based on the grounds of serious criminality, security, violating international or human rights, organized crime or criminality.

- Unable to establish their identity or convince the officer of their identity (applies to foreign nationals only).[20]

In addition to the decision to detain an individual, the CBSA is also responsible for making the decision either to send an individual to an immigration holding center (IHC) or a provincial jail facility. Canada has three immigration holding centers located in Toronto, Ontario, Laval, Quebec and Surrey, British Columbia. These holding centers operate like a "medium-security prison", with detainees having very limited access to their items like cell phones or internet access.[21] Provincial jail facilities such as maximum-security prisons treat detainees as inmates by having them adhere to the rules of the jail and the stricter guidelines in terms of who they can contact from outside the jail.[22]

Within the first 48 hours after detention by CBSA, detainees are transferred to either an IHC or a provincial jail and are then referred to a tribunal for their detention review hearing. The Immigration Division (ID) of the Immigration and Refugee Board (IRB) is responsible for managing detention review hearings and making a decision on whether to release or continue to detain the individual. During the tribunal, there are two parties: the detainee and the Minister's council representing the CBSA.[23] If the member

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[20] Ibid.

[21] Hanna Gros, "I Didn't Feel like a Human in There," Human Rights Watch, July 14, 2021, https://www.hrw.org/report/2021/06/17/i-didnt-feel-human-there/immigration-detention-canada-and-its-impact-mental.

[22] Ibid.

[23] Immigration and Refugee Board of Canada, "Detention Review Process," Immigration and Refugee Board of Canada, March 18, 2022, https://irb.gc.ca/en/legal-policy/procedures/Pages/ProcessRevMot.aspx.

finds that the detainee should continue detention, the next hearing will be seven days from the first hearing, and again every 30 days if the detention is still deemed necessary. If the member finds that the person being detained should be released from detention, then the individual may be released, with or without conditions, back into the community. This immigration detention process can take hours, months or years for individuals to be released as there is no legal limit to the duration of time an individual can be detained.[24]

Immigration Detention Process In Canada

Canada Border Services Agency (CBSA) can **detain** permanent residents or foreign nationals, including **refugee claimants**

CBSA **transfers** immigration detainees to an **immigration detention center,** provincial jail, or other facility (such as a police station)

Within 48 hours of detention, CBSA refers immigration detainees to a **tribunal** for a detention review hearing

Immigration detainees appear at a **detention review hearing**

If the tribunal orders continued detention at the first hearing, another takes place **7 days** later. After that, another hearing takes place **every 30 days**.

Tribunal orders **release** from detention, with conditions that may include **supervision** in the community
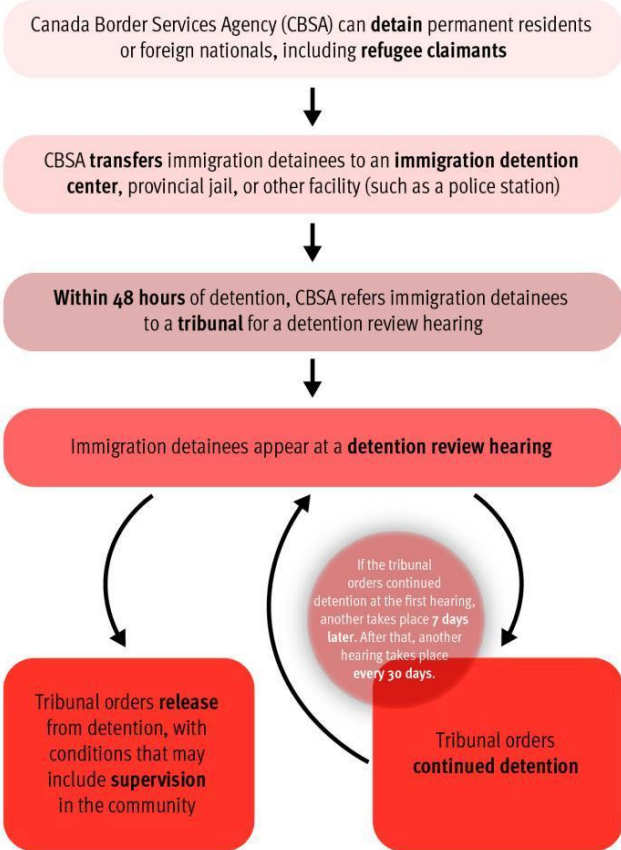
Tribunal orders **continued detention**

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[24] Hanna Gros, "I Didn't Feel like a Human in There," Human Rights Watch, July 14, 2021, https://www.hrw.org/report/2021/06/17/i-didnt-feel-human-there/immigration-detention-canada-and-its-impact-mental.

Figure 1: Immigration Detention Process in Canada[25]

Why Gradual Abolition?

Some of the practices and policies of Immigration detention in Canada can be considered a violation of international human rights law due to the cruel, shameful and inhumane practices within detention facilities and holding centers.[26] Immigration detainees are held and detained under the jurisdiction of the IRPA without facing any criminal-related charges, yet they are regularly handcuffed, shackled and subject to invasive security measures.[27] This practice of Immigration detention is not a new concept, as I believe it is a result of the harms and conflicts created by racism, capitalism and settler colonialism, which are intended to oppress and control vulnerable and racialized groups.[28] For example, Canada has detained, deported and mistreated migrants for decades with the same notion of risk and criminalization placed on non-white and non-European migrants.

From the late 1800s until the 1960s, Canada's immigration laws were explicitly racist and prohibited the immigration of non-white and non-European migrants.[29] Canada implemented a "Chinese head tax" to restrict Chinese immigrants from remaining in the country by forcing them to pay up to $500.[30] The "continuous journey" policy required migrants to arrive in Canada by a non-stop route, which made travel and

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[25] Ibid.

[26] Ibid.

[27] Ibid.

[28] Carrie L. Rosenbaum, "Crimmigration - Structural Tools of Settler Colonialism," SSRN, April 22, 2019, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3366712.

[29] Izumi Sakamoto et al., "Social Work with Immigrants and the Paradox of Inclusive Canadian Identity: Toward a Critical View of 'Difference,'" tspace, January 1, 2018, https://www.semanticscholar.org/paper/Social-Work-with-Immigrants-and-the-Paradox-of-a-of-Sakamoto-Syed/05cc18ce7f39de4984ade2000f58ea33c0ec05b2.

[30] Ibid.

migration from South Asia and Japan almost impossible. The Immigration Act of 1914 permitted migrants from an Asiatic race only if they could pay a sum of $200 upon entry; those who could not afford this fee were detained and deported.[31] The discourse on refugees and migrants during this time was based on racist stereotypes which perpetuated and presupposed migrants as incapable and dangerous. Immigrants from Africa, South and Central America, and Black people from the U.S were described as professional beggars, feeble-minded, insane and "likely to become a public charge," which allowed western countries to completely exclude these groups from migrating to their countries.[32]

The rise of Western values like "diversity" and multiculturalism were created after the 1960s when economic migration from the Global South was on the rise.[33] Western liberal democracies such as Canada wanted to appear tolerant of ethnic and racial diversity and make that the basis for their apparent policy change.

However, very similar to the policies seen during and before the 1960s, the attacks on September 11th, 2001 provoked a new wave of anti-immigration and islamophobic rhetoric. The increased surveillance and profiling of Muslim communities and brown migrants were justified by the media and Canadian public discourse as a means to protect the nation from apparent violence and terrorism.[34] Coincidently, the

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[31] Ibid.
[32] Taylor, K. W. 1991. Racism in Canadian Immigration Policy. *Canadian Ethnic Studies = Etudes Ethniques au Canada* 23. (1): 2.
[33] Izumi Sakamoto et al., "Social Work with Immigrants and the Paradox of Inclusive Canadian Identity: Toward a Critical View of 'Difference,'" tspace, January 1, 2018, https://www.semanticscholar.org/paper/Social-Work-with-Immigrants-and-the-Paradox-of-a-of-Sakamoto-Syed/05cc18ce7f39de4984ade2000f58ea33c0ec05b2.
[34] Ibid.

CBSA was created just a few years after these attacks in 2004, with a mandate to "support national security and public safety".[35]

Recently, Canada has been praised for being a refugee-welcoming country by taking in a great number of migrants from various parts of the globe.[36] However, if you are not a government or privately sponsored immigrant or refugee, your "Welcome to Canada" will look much different.[37] As previously discussed, migrants who claim at the border into Canada can be subject to immigration detention and the harms that come with this practice. Those who want to immigrate to Canada independently through Canada's point system for immigrants will only see success if they are young, skilled, understand the language, have a high level of education and can pay the fees associated with the application process. This point system is strict, as those immigrants who do not meet 67 points are not considered successful applicants. This system can discriminate against those from third-world countries who do not have access to these applications, or simply do not have time to wait as they may be fleeing war, violence or persecution.

Canada is the only western country to not have a "legal limit" on the duration of time that an individual can remain in immigration detention.[38] Therefore, individuals can find themselves spending months, and even years, held in detention on administrative grounds. The longest an individual was held in immigration detention in Canada was for 11 years. This man was forced to spend 11 years in a cycle of hearings without knowing

[35] Ibid.
[36] "Refugees in Canada." UNHCR Canada, January 5, 2022. https://www.unhcr.ca/in-canada/refugees-in-canada/.
[37] Hanna Gros, "I Didn't Feel like a Human in There," Human Rights Watch, July 14, 2021, https://www.hrw.org/report/2021/06/17/i-didnt-feel-human-there/immigration-detention-canada-and-its-impact-mental.
[38] Ibid.

if/when he would be released. He had an apparent and pre-existing mental health condition, and CBSA claimed they could not establish his identity.[39] While detainees are navigating a system of potentially indefinite detention, they're left with minimal support, as the immigration detention process does not provide affordable and effective legal counsel for detainees[40] Detainees have a "one-way telephone" service in holding centers and prisons, limited access to the internet and the opportunity to find translators before their hearings are rare.[41] Therefore, many detainees are not properly represented during their hearings, which could elongate their time in detention.

Similar to the legal process regarding immigration detention, the CBSA is an area of concern as they are not held accountable for their decisions and spend millions of CA dollars on these immigration detention processes that do not lead to deterrence. For example, the CBSA has contracts with the federal government to pay them a per diem rate to house immigration detainees in provincial jail facilities.[42] This process and contract have cost the CBSA $71.3 million CAD with a per diem rate ranging from $200 to almost $400 CAD in the 2019-2020 fiscal year whereas community-based ATD programming would cost $10-12 CAD.[43]

The CBSA has no independent civilian oversight to manage their practices, collect substantive data on detainees, or allow for a formal complaint process for

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[39] Ibid.
[40] Ibid.
[41] Molnar, Petra. "Immigration Detention in Canada." The Canadian Encyclopedia, August 16, 2016 https://www.thecanadianencyclopedia.ca/en/article/immigration-detention.
[42] Hanna Gros, "I Didn't Feel like a Human in There," Human Rights Watch, July 14, 2021, https://www.hrw.org/report/2021/06/17/i-didnt-feel-human-there/immigration-detention-canada-and-its-impact-mental.
[43] Ibid., 84.

detainees.[44] There are no legal guidelines or standards outlining why a CBSA officer chooses to house a detainee in an immigration holding center versus a provincial jail facility. This lack of oversight directly aids and abets systemic racism; specifically anti-Black racism. Racialized migrants, such as those from African countries, are disproportionately represented as a percentage of the immigration detainees held in provincial correctional facilities.[45] The Government of Canada has not signed on to the "Optional Protocol to the Convention against Torture", which would allow for independent oversight and inspection of these detention facilities.[46] Therefore, the CBSA has complete control and power over the immigration detention process while detainees are unable to express their concerns, which leaves room for potential human rights violations and abuses.

Immigration detainees describe detention as incompatible with human living, with one former detainee stating, "I didn't feel like a human in there: I felt like a dog. The guards would just open the latch to feed me".[47] Immigration detention is an area of concern as it has a large impact on the physical and mental wellbeing of those detained and those released.[48] Immigration detention uses confinement practices such as solitary confinement to manage individuals with mental health issues.[49] This inhumane practice

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[44] Lavalee Forbes, Maggie Shi, Adam Iggers, Alison Schwenk, Christopher Main, Elise Burgert, Emily Sheppard, Jessica Pan et al. "Brief on Bill C-3 (Historical): An Act to amend the Royal Canadian Mounted Police Act and the Canada Border Services Agency Act and to make consequential amendments to other Acts." (2021): 3.

[45] Molnar, Petra. "Immigration Detention in Canada." The Canadian Encyclopedia, August 16, 2016. https://www.thecanadianencyclopedia.ca/en/article/immigration-detention.

[46] Hanna Gros, "I Didn't Feel like a Human in There," Human Rights Watch, July 14, 2021, https://www.hrw.org/report/2021/06/17/i-didnt-feel-human-there/immigration-detention-canada-and-its-impact-mental.

[47] Ibid., 35.

[48] Hanna Gros, "I Didn't Feel like a Human in There," Human Rights Watch, July 14, 2021, https://www.hrw.org/report/2021/06/17/i-didnt-feel-human-there/immigration-detention-canada-and-its-impact-mental.

[49] Ibid.

only worsens the condition of detainees and creates new forms of trauma such as Post-Traumatic Stress Disorder (PTSD), depression and anxiety.[50] The immigration detention process also completely severs individuals from having any outside contact, which includes contact with family, friends and legal counsel. This isolation leads to the separation of families, lack of adequate healthcare services, and trauma. This type of trauma and experience is not temporary, nor is it limited to certain individuals, as the CBSA can and does detain children, pregnant or nursing mothers, older persons and people with psychosocial disabilities.[51]

Alternatives to Detention (ATD's)

Although immigration detention is used frequently, the guidelines governing its usage state that it must be used as an "exceptional measure", and that alternatives to detention should be actively considered by the CBSA.[52] An alternative to immigration detention is identified as, "any law, policy or practice by which persons are not detained for reasons relating to their migration status".[53] An ATD allows for individuals to be released from detention and supervised from within the community. In Canada, the CBSA is responsible for selecting the appropriate ATD based on their considerations of the individual's risk posed to the community or their inability to adhere to their

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[50] Robyn Sampson et al., "There Are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention (Revised Edition) - World," ReliefWeb, February 2, 2016, https://reliefweb.int/report/world/there-are-alternatives-handbook-preventing-unnecessary-immigration-detention-revised

[51] Hanna Gros, "I Didn't Feel like a Human in There," Human Rights Watch, July 14, 2021, https://www.hrw.org/report/2021/06/17/i-didnt-feel-human-there/immigration-detention-canada-and-its-impact-mental.

[52] Secor, David, Heidi Altman, and Tara Tidwell Cullen. "Report: A Better Way: Community-Based Programming as an Alternative to Immigrant Incarceration." National Immigrant Justice Center, April 2019. https://immigrantjustice.org/research-items/report-better-way-community-based-programming-alternative-immigrant-incarceration.

[53] Ibid.

immigration proceedings.[54] ATD programs have continued to evolve and have been identified as being effective measures to re-integrate individuals into the community, as well as being very cost-effective. For example, community-based alternatives to detention programs cost $10-12 CAD per day per person, compared to $179 CAD per day per person for detention.[55] These programs do not halt the immigration process, but rather involve other community members and partners that assist in various areas of post-release.

<u>What Types of ATDs are Currently Available?</u>

There are two types of ATDs currently available for consideration by the CBSA, which include ATD community programming and electronic supervision tools. These programs are not mutually exclusive but are used alongside each other when seen fit by the CBSA. These ATD programs attempt to allow detainees back into the community but make clear that public safety is the priority. Any immigration detainee that is held under the Immigration and Refugee Protection Act (IRPA) is eligible for ATDs and is provided with written information about these programs. However, there are also some programs such as the Toronto Bail Program that are exclusive to those in the Greater Toronto Area.

<u>ATD Community Programming</u>

In the context of ATD community programming, individuals can be monitored from within the community through third-party organizations or family members. This

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[54] Ibid.
[55] Robyn Sampson et al., "There Are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention (Revised Edition) - World," ReliefWeb, February 2, 2016, https://reliefweb.int/report/world/there-are-alternatives-handbook-preventing-unnecessary-immigration-detention-revised.

support can be tailored to the needs of the individual to ensure adherence to the program requirements. Three program options can be used individually or concurrently to release an individual from detention, which include:

1. Releasing the individual to a bondsperson on a deposit and guarantor
2. A conditional release whereby the individual regularly reports to the CBSA
3. A Community Case Management and Supervision (CCMS) Program

Each option has different conditions and possible benefits to the release. An individual can be released from detention through a deposit and a guarantee. The deposit is money paid by a guarantor (Canadian citizen or permanent resident) to ensure that the individual adheres to the conditions of their release, and if the conditions are met, this money is returned to the guarantor. A guarantee is a condition whereby the guarantor agrees to pay a sum of money if the individual does not adhere to the conditions for release. In a conditional release, individuals must regularly report to the CBSA which could involve telephone calls or in-person reporting.[56] For those who do not have a bondsperson, the CBSA may choose to release that individual to a Community Case Management and Supervision (CCMS) Program, which is intended to support the individual back within the community, alongside supervision and reporting requirements.

This type of ATD program involves case management and has partnerships with three non-profit organizations. The CBSA has partnerships with the Salvation Army, the Toronto Bail Program, and the John Howard Society of Canada. These three

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[56] Government of Canada, Canada Border Services Agency. "Alternatives to Detention - Questions and Answers." Alternatives to Detention - Questions and Answers, July 24, 2018. https://www.cbsa-asfc.gc.ca/security-securite/detent/qa-qr-eng.html.

organizations assist and provide additional services to individuals alongside supervision within the community. These organizations provide support in areas such as physical and mental health referrals, employment and housing support, addiction support and support for children and families.[57] These CCMS programs can be found throughout all regions of Canada but are limited in their selection of who they choose to enroll in this program. The CCMS program is still based upon a criminal justice model, which makes these three community organizations and programs counterintuitive to the ATD programs that are humane and compassionate, and what I advocate for in this report.

Electronic Supervision Tools

Although ATD community programming is seen as effective on its own, electronic supervision tools provide additional options and tools to support the individual in compliance and meeting their program requirements. Voice reporting systems (VR) use "biometric voiceprint technology" to track the participants of the program through scheduled telephone calls and reporting.[58] This type of voice reporting tool allows for participants to call or pick up using cellphones in various locations, avoiding the need to report in person to the CBSA. Some voice reporting systems are used in conjunction with location-based services (LBS) which enable the CBSA to track individuals' locations during the time of the phone call. Individuals labelled higher risk by the CBSA will use Electronic Monitoring (EM), in addition to tools like VR or LBS. Electronic monitoring is often the use of an ankle monitor on the individual and a radio frequency modem within the individual's residence. This type of EM service is only available in the

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[57] Ibid.
[58] Ibid.

Greater Toronto Area (GTW) and is in partnership with the Correctional Service of Canada (CSC).[59]

Issues with Government-Created ATDs

Although the CBSA has expanded their mandate for ATDs to include re-entry into the community, these programs still heavily focus on surveillance, which undermines the rights and liberties of the individual. ATD community programming is based on a criminal justice system model which continues to perceive the detainee as a criminal.

This type of ATD is restrictive and has a long selection process to "mitigate risk" upon release into the community.[60] The use of a guarantor to monitor the individual also creates rifts within families and communities, because the individual risks deportation alongside the loss of a sum of money for their guarantor if they do not comply. Electronic Supervision Tools are also invasive and can be requested to be worn up to three years after an individual is released from detention.[61] This type of ATD collects live data on the individual's physical location and prevents them from living independently.

Research has shown that ATD programs created by the CBSA have "increased the level of intrusion and surveillance in migrant and refugee communities", leaving many migrants extremely fearful of being re-detained.[62] One former detainee described their release conditions through an ATD program as being so restrictive that he admired the dogs in his community, as they "get to go for walks every day".[63]

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[59] Ibid.
[60] Government of Canada, Canada Border Services Agency. "Alternatives to Detention - Questions and Answers." Alternatives to Detention - Questions and Answers, July 24, 2018. https://www.cbsa-asfc.gc.ca/security-securite/detent/qa-qr-eng.html.
[61] Ibid., 88.
[62] Ibid., 88.
[63] Ibid., 89.

In addition to the harms caused by the government models for ATDs, the feasibility to expand these programs is limited. The CBSA has highlighted in their presentation for the EU Migration Network that it faces challenges such as a shortage of beds and housing services for migrants and creating programming specifically for women and families.[64] However, if the government were to implement community-based case management programs using the existing community-based newcomer support services, I believe these challenges and inhumane practices and treatments could be gradually abolished.

What is Community-Based Case Management?

The current government ATD programs provided by the CBSA are not alternatives *to* detention, but rather alternative forms *of* detention.[65] ATD programs that take a human rights approach would focus on tailored support for migrants, rather than their surveillance by the CBSA.[66] I believe that the basis for ATD programs should not come from a lens of public safety, but rather focus on getting individuals the support and treatment they need to be self-sufficient and safe within the community.

I believe that the CCMS program has the potential to become an effective and rights-based ATD, but it would require non-governmental and community-based organizations to handle the case management programs with no involvement from the CBSA. Case management is defined as, "a comprehensive and systematic service

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[64] "The Canada Border Services Agency's Detention & Alternative to Detention (ATD) Programs." Canada Border Services Agency, December 2020. https://emnbelgium.be/sites/default/files/attachments/Canada%27s%20Detentions%20Program%20-%20EMN%20BE%20-%20December%202020.pdf.

[65] Ibid., 89.

[66] Hanna Gros, "I Didn't Feel like a Human in There," Human Rights Watch, July 14, 2021, https://www.hrw.org/report/2021/06/17/i-didnt-feel-human-there/immigration-detention-canada-and-its-impact-mental.

delivery approach designed to ensure support for, and a coordinated response to, the

health and wellbeing of people with complex needs".[67]

Figure 4: A Diagram from the International Detention Coalition that describes the Case

Management Process.[68]
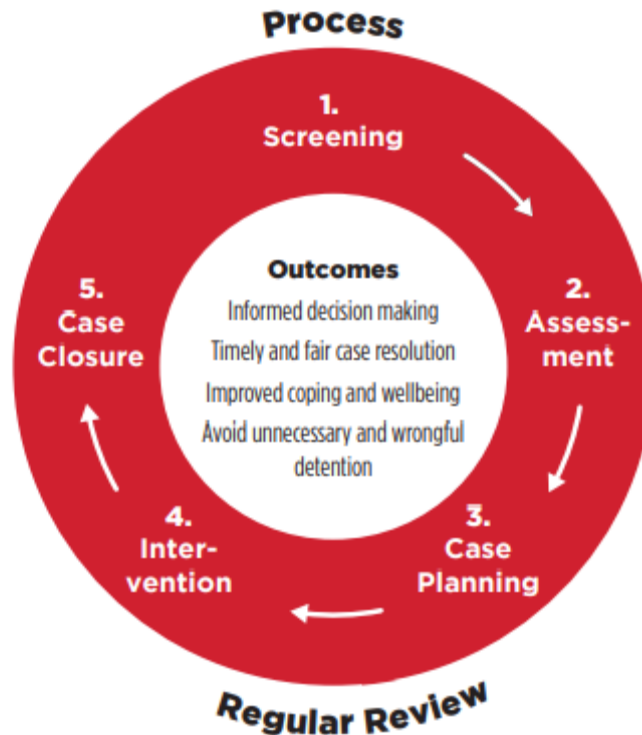
Case management involves the usage of a case manager who is assigned to the

individual or family to assist them in all aspects of their immigration process and is often

an individual in the field of human services.[69] The case management process that I

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[67] Robyn Sampson et al., "There Are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention (Revised Edition) - World," ReliefWeb, February 2, 2016, 48. https://reliefweb.int/report/world/there-are-alternatives-handbook-preventing-unnecessary-immigration-detention-revised.

[68] Robyn Sampson et al., "There Are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention (Revised Edition) - World," ReliefWeb, February 2, 2016, 49, figure 4. https://reliefweb.int/report/world/there-are-alternatives-handbook-preventing-unnecessary-immigration-detention-revised.

[69] Ibid.

believe can provide the best outcomes for migrants is the diagram from the International Detention Coalition. This organization identifies case management as being a five-step process starting with screening and assessing the individual early on in their process, and if the individual demonstrates any great vulnerability, then they can be referred for more comprehensive support.[70] After an initial screening process, the case manager can do a comprehensive assessment of the individual's basic needs, while also engaging all stakeholders including lawyers, healthcare professionals, family members and immigration authorities.[71] This step may lead to a decision on the appropriate management program and response. Case planning is the next step which involves assisting the individual in their current situation and determining what is recommended by stakeholders versus what the individual is currently in need of. This process prepares and plans for all practical needs of the individual which include health care, housing, social support and livelihood.[72] Intervention is the next step and involves the case being implemented and identifying what is working for the individual, alongside suggestions from stakeholders. Case closure is the final step and can be accomplished either if the individual leaves the country or is allowed to remain in the country with status.

Examples of effective ATD programs that involve community-based organizations which provide case management can be seen in countries such as Sweden. Sweden has a reception house and community program for asylum seekers that are community-based.[73] This programming involves four different components, the first

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[70] Ibid.

[71] Ibid.

[72] Ibid., 49.

[73] David Secor, Heidi Altman, and Tara Tidwell Cullen, "Report: A Better Way: Community-Based Programming as an Alternative to Immigrant Incarceration," National Immigrant Justice Center, April 2019, https://immigrantjustice.org/ research-items/report-better-way-community-based-programming-alternative-immigrant-incarceration.

being a separate initial screening and assessment process.[74] This process helps determine their psychosocial, economic and other health needs. The next step is case management whereby the individual is given a photo-ID card to be able to use the services available in their community. A case worker then explains the Refugee Case status and process to educate the individual about their entitlements and rights in the country.[75] Community placement is another component of this program that transfers the individual from the reception house to a community-housing apartment, which is near the reception offices of the migration agency to have assistance and support nearby.[76]

The last component of this program involves providing individuals with human needs such as free legal assistance, interpretation services, medical care, prenatal care, and free dental and emergency care.[77] This example from Sweden demonstrates an ATD program that involves community-based case management which allows asylum seekers to have full freedom and movement within their communities. I believe that these community-based case management programs and frameworks can be applied to ATD programs in Canada through the existing community-based support services already available for newcomers.

In Ontario, many community-based organizations provide support services for newcomers that are similar to community-based case management services. This includes support in various service areas, such as medical, legal, housing, employment, orientation and food services. These organizations are nonprofit, support-focused, and independent from the CBSA. These community-based organizations are tailored,

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[74] Ibid.
[75] Ibid.
[76] Ibid.
[77] Ibid.

compassionate, and focus on supporting the individual rather than labelling them as a threat. I believe that these support services and community-based organizations can help create or even expand government-created ATDs because they have the experience, mandate and capacity to cater to specific migrant populations and provide services in a range of different sectors.

Mapping Community-Based Support Services in Ontario

In this report, I advocate for alternatives to detention that provide case management programs through community-based organizations. Based on the disproportionately high amount of immigration detainees held in Ontario, I believed it was important to look into the possibility of expanding ATDs in this province first.

This research initially collected by Human Rights Watch consists of a list of thirty community-based support services, with various specializations catered to a wide network of refugees, immigrants, and newcomers.[78] I reviewed this data and categorized each community-based program into the following categories: housing, food, medical, employment, legal, language and orientation, to lay out which service areas are heavily represented, and which areas require more focus and attention. I believe that these organizations and support services have the potential capacity to assist or become an ATD that is compassionate, tailored and rights-based. After the mapping exercise, I noticed that support services and organizations were relatively spread out across Ontario, but a large number were clustered within the GTA region.

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[78] Waghma Ahmadzay, "Community-Based Support Services for Newcomers in Ontario," Mapme, August 17, 2022, https://viewer.mapme.com/newcomer-service-map.

Figure 2: Map of Community-Based Support Services for Newcomers in Ontario
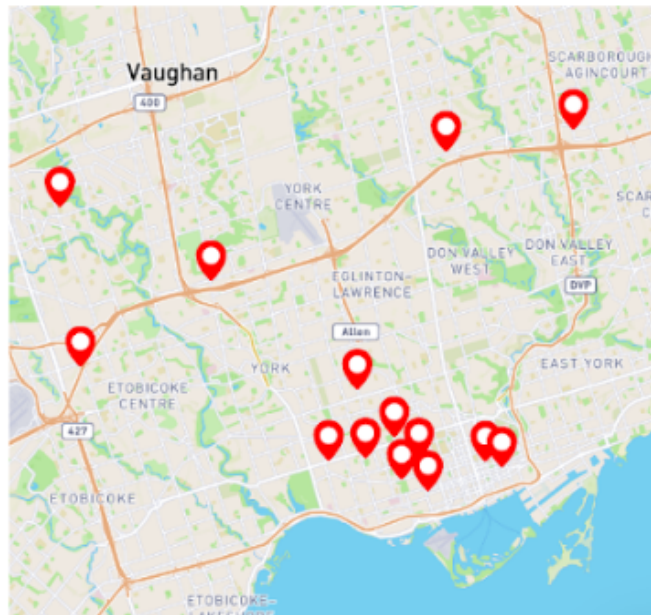
Figure 3: A Closer look at Community-Based Support Services in the GTA[79]

From the data, I found that all 30 community-based programs provide housing services, including short-term housing, long-term housing, housing referral programs,

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[79] Ibid.

lease signing assistance, furniture provision, and support in setting up utilities. Thirty-seven percent of these programs provide food or meal assistance, including hot meals, running a community garden, or supporting food bank referrals. 80 percent provide some form of medical assistance, such as information on the healthcare system, medical assistance and referrals for their mental and physical health. However, 50 percent of the services provided are referral programs, and thus don't adequately address people's needs, especially when people are in a new or unfamiliar place without income or built-in support systems.

Only 23 percent of the 32 surveyed organizations provide physical and mental health assistance; that is, only seven out of the 30 organizations researched. Sixty-three percent of these organizations and programs assist in employment, such as placement options, referrals, mentorship and preparation for the workforce. Seventy-three percent of these organizations assist in legal areas and services, such as assistance in filling out legal documents, legal referrals and introduction sessions to Canada's legal system. Sixty-three percent assist in languages, such as providing formal language classes (ESL), English outreach programs and language class referrals. Lastly, seventy percent provide service in the orientation and positioning of newcomers which includes service in areas, such as school enrollment, Canadian culture orientation, and religious and community connections.

Although I was able to analyze and identify potential ATD programs in Ontario that would be community-based and provide case management services, I have not been able to propose the suggestion directly to these organizations and whether they would agree to this recommendation or have the capacity to follow through.

Case Study: Matthew House, Toronto

Introduction

Out of the thirty community-based organizations and support services analyzed for this report, I decided to interview Anne Woogler who is the founding director of Matthew House Toronto. During this interview, I asked Ms. Woogler a series of questions regarding the mandate and services provided by Matthew House alongside the big question of whether Matthew House would have the capacity or interest to become an ATD. The results from this interview highlighted and demonstrated to me that Matthew House would be an effective ATD program that would be community-based and provide case-management support.

Goal

The purpose of this case study was to envision a real-life example of a potential ATD in Ontario that adheres to the principles of human rights and would be ready and willing to become one if requested by the government of Canada. From this interview with Ms. Woogler, I was able to further understand the history and impact of her organization and also learn more about her recommendations for ATDs based on her experience working with migrants and detainees.

Results

Matthew House Toronto is a faith-based community organization that advocates and welcomes refugee claimants. They have five homes across the city, one of which is a reception house for newly arrived refugee claimants and the other four are long-term transition homes for refugee youth.

Their mission is to become a "welcome home" for refugees on the road to a new and prosperous life.[80] Their founding director, Anne Woogler was inspired to create a Christian-based reception house for refugee claimants after witnessing the shortage of shelters while working at a city-run homeless shelter nearly 30 years ago. Ms. Woogler created Matthew House because she believed all people are worthy of honour, dignity and respect. Matthew House has assisted nearly 2,000 since its opening in 1998 and is looking to expand its programs and services. This organization has four main programs and services which include:

- Welcome to Canada Program

- Shelter and Support program

- Refugee Hearing program

- and Child and Youth Services program.

The Welcome to Canada program provides the physical and emotional support to assist refugees in healing from their journeys and establishing a new life in Toronto. This program offers an orientation to Toronto which includes life skills such as information on banking and school enrollment. The Shelter and Support program provides shelter and support in a welcoming and home-like setting. The Refugee Hearing program assists refugee claimants by preparing them for their refugee hearings before the Immigration and Refugee Board of Canada (IRB). The Child and Youth Services program assists refugee youth with housing and live-in parents that provide long-term support on their journey and prepare them to live successfully on their own.

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[80] Interview with Anne Woogler, July 28th, 2022

Matthew House exemplifies a great foundation for a community-based case management ATD program in Ontario, not only because of the services they provide, but also their pre-existing experience with the CBSA and hosting immigration detainees held for identity-related reasons. In this interview, Ms. Woogler mentioned that the CBSA has previously called Matthew House to request the release of detainees held for identity-related reasons to their organization, and Matthew House has always accepted these detainees. Ms. Woogler states that she believes her organization has the capacity and services to assist these individuals, but does want to emphasise that detainees with pre-existing mental health and substance abuse conditions should be treated with the proper medical attention through organizations focused on addressing these issues.

I believe that Matthew House defies the stereotypes that portray refugees and migrants as risks or threats by taking a chance on them through fostering a family-like setting in their homes and not restricting the migrant's mobility. Ms. Woogler was able to share stories of refugee claimants that entered Matthew House with almost nothing but have been able to flourish and grow through their family-like settings and sense of belonging provided through their programming. One resident at Matthew House stated, "I appreciate the atmosphere and family. I was in a homeless shelter. It was horrible. Offloading the burden off my shoulders, the family atmosphere comforts people when you're far and left your family."[81]

During the end of the interview, Ms. Woogler discussed with me her vision of a sanctuary city center where refugee claimants and migrants could access all the support and services they require in one area. Ms. Woogler exemplifies to me an

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[81] "Our Work." Matthew House Toronto, 2022. https://www.matthewhouse.ca/our-work.

advocate for social connectedness because she believes in a community where everyone has the opportunity to belong, and regardless of one's status in this country, they deserve a loving, valuable and fulfilling home and community. Her organization attempts to prevent social isolation in all aspects of its programs by ensuring family-like settings, communal dinners, the celebration of special occasions and the freedom of mobility and travel.

Call to Action

I believe that although this case study is just one interview analysis out of the thirty community-based organizations and support services, this is the beginning of expanding the ATD program in Ontario and moving towards a gradual abolition of immigration detention. The next steps for this research would be to analyze the remaining thirty organizations to obtain information on whether they would be ready to become an ATD and what their recommendations or requests would be.

RECOMMENDATIONS

- Expand on localized community-based alternatives to detention that support, rather than surveil newcomers.

- Alternatives should be operated by non-government, non-profit organizations and separate from the CBSA.

- Alternatives to detention should not be drawn from criminal justice models.

- End all Provincial contracts with the CBSA to house immigration detainees in provincial jail facilities and reallocate this funding to community-based case management ATD programs.

- Recommended alternatives to detention should focus on alternatives to detention, rather than alternative forms of detention.

- There should be comprehensive case support which allows the individual to select alternative options that they believe would work for them and their circumstance.

- ATD programs for immigration detainees should not be based upon or contribute to any real or perceived criminalization of migrants.

- Have the government of Canada sign on to the "Optional Protocol to the Convention against Torture", to allow for independent oversight and inspection of detention facilities.

IMPACT

In this report, I advocate for alternatives to detention that provide humane, compassionate and tailored support which can be found within community-based case management programs. Through my discussion and research on ATDs that adhere to these principles, I have found that the best programs are those that adhere to the principles of social connectedness and belonging. This is because the immigration detention process currently in place is very socially isolating, and if one wants to achieve social connectedness, they need to be released from social isolation. Social

isolation is defined as a "lack of connection to people, place, purpose, and power".[82] Immigration detention deprives individuals of contacting friends, family and social support services outside the IHC or detention facility. Individuals held in provincial correctional facilities can be subject to extreme forms of social isolation such as solitary confinement.[83] These practices harm the physical and mental well-being of individuals and can lead to extreme feelings of isolation and loss of hope whereby detainees can develop thoughts of suicide while in detention.[84] Replacing detention with ATD programs that are tailored, compassionate and humane can help avoid these feelings and impacts of social isolation. I believe that community-based case management programs discussed in this report can help counter social isolation through their ability to achieve and implement the principles of social connectedness and belonging.

Achieving social connectedness involves "building a society where everyone—no matter their age, race, gender, sexual orientation, ability, or political affiliation—has the opportunity to belong."[85] I believe that this practice of achieving social connectedness can be found within the thirty community-based support services for newcomers and the frameworks of community-based case management that I have recommended. For example, a majority of these community-based support services for newcomers enhance social connectedness by ensuring services in a wide range of areas such as

[82] "About Us," Samuel Centre For Social Connectedness, March 9, 2022, https://www.socialconnectedness.org/about-us/.

[83] Robyn Sampson et al., "There Are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention (Revised Edition) - World," ReliefWeb, February 2, 2016, https://reliefweb.int/report/world/there-are-alternatives-handbook-preventing-unnecessary-immigration-detention-revised

[84] Hanna Gros, "I Didn't Feel like a Human in There," Human Rights Watch, July 14, 2021, https://www.hrw.org/report/2021/06/17/i-didnt-feel-human-there/immigration-detention-canada-and-its-impact-mental.

[85] "About Us," Samuel Centre For Social Connectedness, March 9, 2022, https://www.socialconnectedness.org/about-us/.

housing, food, employment, legal, medical, language and employment support. These organizations providing these services are community-based and can help the individual build connections and foster a sense of belonging without the invasive security measures imposed by the CBSA programs. Matthew House, which is among the thirty organizations listed in this report, has a mandate to, "offer a deep sense of belonging to those who have lost so much" which is a great example of the mandates held by these community-based organizations.[86] I believe that this research is a step in the right direction for policymakers and the CBSA to consider effective ATD programming that comes from pre-existing organizations within communities.

CONCLUSION

In this report I have illustrated the need for the Government of Canada, and particularly the CBSA, to consider alternatives to immigration detention programs that involve community-based case management programs. This report illustrates the great harms and systemic failures of immigration detention and its impact on the overall well-being of those within this system. I argue that these failures can be traced back to Canada's historic immigration policy, which is embedded with anti-white and anti-immigration rhetoric, and although these policies no longer exist, the lack of accountability and oversight within the immigration system does not allow us to make a distinct decision, as what has been presented demonstrates a similar pattern.

This report argues that the current framework of ATD programs provided by the CBSA is counterintuitive and is considered an alternative form of detention rather than a

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[86] "Our Work." Matthew House Toronto, 2022. https://www.matthewhouse.ca/our-work.

true alternative. I propose that the government re-evaluate these ATDs and find replacements through the pre-existing community-based organizations and programs already present within the provinces, such as Ontario. Although I was only able to provide one case study, I believe that this research is just the beginning of a further understanding of how solutions to immigration detention can be rooted in a bottom-up approach without the use of surveillance tools and intrusion within refugee and migrant communities.

TERMS/ACRONYMS

CBSA- Canada Border Services Agency

IHC-Immigration Holding Center

ATD-Alternatives to Detention

IRPA-Immigration and Refugee Protection Act

ID-Immigration Division

IRB-Immigration and Refugee Board

VR-Voice Reporting

CBO-Community-Based Organization

LBS-Location-Based Services

Alternative to Immigration Detention: "any law, policy or practice by which persons are not detained for reasons relating to their migration status".[87]

*Asylum Seeker: "*Someone whose request for sanctuary has yet to be processed".[88]

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[87] Ibid.
[88] United Nations High Commissioner for Refugees, "Asylum-Seekers," UNHCR (UNHCR, The UN Refugee Agency, 2022), https://www.unhcr.org/asylum-seekers.html.

Case Management: "a comprehensive and systematic service delivery approach designed to ensure support for, and a coordinated response to, the health and wellbeing of people with complex needs".[89]

Community-Based Organization: is a non-governmental, non-profit or charitable organization that represents the needs of the community and provides assistance towards helping them. CBOs work toward improving a community's overall function and well-being.90

Foreign National: a person who is not a permanent resident or a Canadian citizen and includes a stateless person.[91]

Immigration Detainee: someone who is held and detained under the jurisdiction of the Immigration and Refugee Protection Act (IRPA) without facing any criminal-related charges

Immigration Detention: "the deprivation of liberty for migration-related reasons".

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[89] Robyn Sampson et al., "There Are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention (Revised Edition) - World," ReliefWeb, February 2, 2016, 48. https://reliefweb.int/report/world/there-are-alternatives-handbook-preventing-unnecessary-immigration-detention-revised.

[90] Community-Based Organizations (CBO)." Community-based organizations (CBO) - Community First, 2022. https://carleton.ca/communityfirst/cu-glossary/community-based-organizations/.

[91] "Immigration and Refugee Protection Act," Government of Canada, August 2, 2022, https://laws-lois.justice.gc.ca/eng/acts/i-2.5/FullText.html.

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