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Immigration detention in Canadian provincial jails through a European lens

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Topic and importance

Every year, the Canadian federal government detains thousands of non-citizens through the immigration detention regime administered by the Canada Border Services Agency (CBSA). Many of those detained include asylum seekers and other individuals who have not been charged with any criminal offence. Nevertheless, many are held in provincial jails, which raises serious concerns about arbitrariness, access to justice, and compliance with fundamental rights.

These concerns are particularly significant given Canada's international reputation as a human rights-respecting and immigrant-welcoming country. While Canadian detention practices are often viewed favourably relative to those of the United States, the case note asks whether this reputation holds when Canada is compared to European standards. Drawing on the class action *Richard v. The Attorney General of Canada* and the jurisprudence of the European Court of Human Rights (ECtHR), the authors argue that Canadian immigration detention practices would

likely violate article 3 of the European Convention on Human Rights. By placing Canada's regime in a European comparative perspective, the case note seeks to offer a more critical portrait of immigration detention in Canada.

Main arguments

Immigration detention in Canada is governed by the Immigration and Refugee Protection Act and administered by the CBSA and the Immigration Division of the Immigration and Refugee Board. The CBSA decides whether to detain non-citizens, while the Immigration Division reviews detention at set intervals. In making detention decisions, decision-makers may consider several factors, including whether an individual is deemed a flight risk, a danger to the public, or whether their identity has not been established. However, the broad discretion granted under this regime, combined with the absence of any statutory maximum time limit on detention, enables prolonged and indeterminate detention, and contributes to the reproduction of systemic racism, particularly against Black individuals.

Although immigration holding centres are intended to be the default detention facilities, limited capacity has resulted in many detainees being held in provincial correctional institutions alongside criminal inmates. This practice of co-mingling subjects immigration detainees to carceral conditions designed for criminal populations, contrary to international human rights standards. While the use of provincial jails formally ended in 2025, immigration detention continues in federal correctional facilities.

Applying ECtHR jurisprudence to the factual record of *Richard v. Canada*, the authors argue that Canadian detention conditions would amount to cruel, inhuman, or degrading treatment. In fact, severe overcrowding,

inadequate personal space, prolonged detention, excessive lockdowns, segregation, and limited access to medical and mental health care fall below European minimum standards. These conditions cause significant psychological harm and expose detainees to treatment indistinguishable from that imposed on individuals serving criminal sentences.

Conclusion and additional considerations

The authors acknowledge that the comparative analysis relies on generalizations drawn from multiple individual cases, whereas ECtHR jurisprudence assesses violations on a case-by-case basis. Nonetheless, this comparison highlights the shortcomings of Canada's immigration detention regime when compared to European human rights standards and calls for meaningful reform of detention practices.

Besides, the authors caution against focusing solely on improving detention conditions. Centering human rights analysis on conditions alone risks legitimizing immigration detention as such and obfuscating the deeper problem posed by the practice itself. The case note, therefore, invites a broader reconsideration of the role of detention within Canada's immigration system.