

**Submission from the Schizophrenia Society of Ontario on
the New National Immigration Detention Framework**

The Schizophrenia Society of Ontario (SSO) applauds the Government of Canada’s commitment to developing a new National Immigration Detention Framework that puts front and centre the mental and physical health and well-being of people in immigration detention as a primary consideration along with the safety and security of Canadians.

We welcome the opportunity to participate in the Canada Border Services Agency's (CBSA) New National Immigration Detention Framework consultations and look forward to the development of this work.

About SSO

SSO is a charitable health organization that supports individuals, families, caregivers and communities affected by schizophrenia and psychosis across the province. For over 30 years we have made positive changes in the lives of people affected by schizophrenia, by building supportive communities, through services and education, advocating for system change and conducting research into the psychosocial factors that directly affect mental illness.

Our organization has a long history of supporting people with mental health issues¹ who are at risk of deportation on an individual and case-by-case basis. Through this work it became clear that the current immigration system is not equipped to deal with the complex mental health needs of newcomer communities, refugees, immigrants and other non-citizen groups.

To further our work in this area, SSO initiated an extensive policy research initiative including a review of the literature and relevant Canadian legislation, as well as consultations with key stakeholders within the mental health, legal, and settlement/immigration sectors which culminated into a 2010 discussion paper entitled, “Double Jeopardy: Deportation of the Criminalized Mentally III”.

Although a full account of the findings from this research is beyond the scope of this submission, it is important to note a few highlights from the paper. One important consideration is that individuals with mental health issues who lack mental health services and supports² come into disproportionate contact with the law compared to the general population for several reasons. These include, but are not limited to, simply being more visible in the community due to exhibiting behaviours related to one’s symptoms;

¹ In this submission, the term “mental health issues” refers to symptoms and conditions which may take the form of changes in thinking, mood or behaviour, or some combination of all three, that impact a person’s ability to function effectively over a period of time and may include a formal diagnosis of a mental illness. This term was chosen because it is the closest in alignment with the language used by CBSA’s New National Immigration Detention Framework. It should be noted that not all individuals living with a mental health issue would identify with this label.

² Due to SSO’s scope as a provincial organization, the issues discussed in this submission related to the mental health sector and to the mental health system apply primarily to the province of Ontario.

or for non-violent crimes which are directly or indirectly related to one's mental health issue, such as causing a disturbance or mischief. Further compounding this criminalization of mental illness is the fact that the *Immigration and Refugee Protection Act (IRPA)* renders any non-citizen convicted of a certain level of offence inadmissible to Canada on the grounds of criminality. Given that people with mental health issues come into disproportionate contact with the law, these inadmissibility provisions can be said to have a disproportionate impact on non-citizens with mental health issues, putting this group at even greater risk of deportation and, by extension, of being placed in immigration detention.

The paper also recognizes the unique needs of people with mental health issues undergoing immigration or deportation proceedings, citing research that immigrant and newcomer groups are at increased risk of mental health issues, such as psychosis and depression, compared to the general population. This could in part be related to stress and isolation resulting from the migratory experience and the settlement process³.

In addition, the paper points out that current enforcement policies place people with mental health issues at greater risk of immigration detention, which has been shown to negatively impact mental health^{4,5,6}. For instance, a 2013 study cited in the paper, "We Have No Rights" found that although there was no significant differences in trauma exposure across study participants held in the Toronto and Montreal Immigration Holding Centres (IHC) compared to participants who were not detained, after 31 days in detention, twice as many of the detainees had clinical Post Traumatic Stress Disorder and over 75 per cent were clinically depressed, compared to 52 per cent of non-detainees. People detained in provincial facilities do not fair better. Correctional facilities do not have the capacity to support people with complex mental health needs and incarceration itself can exacerbate stress and symptoms and impede recovery⁷.

As a result of this work, SSO fostered working relationships and partnerships, including providing consultations and support letters to immigration lawyers representing individuals with mental health issues, as well as a multi-year partnership with the Immigration and Refugee Board (IRB) to provide Designated Representative services to any person deemed to require mental health accommodation support for immigration or refugee hearings. These cases are often complex, with intersecting mental health, justice and immigration issues and SSO is one of few mental health organizations in Ontario providing this service. The challenges of supporting a person as a designated representative, including

³Gross,H. & van Groll, P. (2015). "We have no rights" arbitrary imprisonment and cruel treatment of migrants with mental health issues in Canada. Retrieved from the International Human Rights Program, University of Toronto Faculty of Law website http://ihrp.law.utoronto.ca/utfl_file/count/PUBLICATIONS/IHRP%20We%20Have%20No%20Rights%20Report%20web%20170615.pdf

⁴ Pauline J. McLoughlin and Megan J. Warin "Corrosive places, inhuman spaces: Mental health in Australian immigration detention" *Health & Place* 14 no. 2 (2008): 254-264.

⁵ Peter Hallas, Anne R. Hansen, Mia A. Staehr, Ebbe Munk-Andersen and Henrik L. Jorgensen, "Length of stay in asylum centres and mental health in asylum seekers: A retrospective study from Denmark *BMC Public Health* 7 (2007): 288-294.

⁶ Katy Robjant, Rita Hassan and Cornelius Katona, "Mental health implications of detaining asylum seekers: Systematic review" *The British Journal of Psychiatry* 194 (2009): 306-312.

⁷ Report of the Standing Committee on Public Safety and National Security. (2010). Mental health and drug and alcohol addiction in the federal correction system.

accessing effective legal representation, connecting to mental health and addictions services and accommodating language barriers are further compounded when a person is in detention, raising concerns of fairness and due process for immigration detainees.

This submission is informed by our extensive work in this area and is structured according to the four main topics for consultation: infrastructure, alternatives to detention, minors in detention and detainee health/mental health.

Infrastructure

As noted in the “New National Immigration Detention Framework Summary Report”, under current IRPA legislation and regulations, CBSA officers are authorized to detain a person based on reasons such as: it is necessary to complete an examination; there are reasons to believe that the person is inadmissible to Canada on grounds of security and a danger to the public; the person is unlikely to appear for an immigration proceeding; and/or the person is unable to satisfy the officer of their identity. As mentioned, these provisions have a particular impact on individuals with mental health issues, whose mental health needs would likely be unmet or even exacerbated simply by virtue of being detained.

The Framework Summary Report further highlights CBSA policy which stipulates that, where safety or security is not an issue, detention is to be avoided or considered only as a last resort for vulnerable individuals, including persons with mental health issues. If detention is deemed to be necessary, it should be for the shortest time possible and primarily focused on supporting the removal of the person.

Although evidence suggests that detention should not be used for persons with mental health issues and policy states that detention must be used as a last resort, this position is contradicted by an enforcement philosophy which prioritizes security over health and well-being. In fact, the Immigration, Refugees and Citizenship Canada Enforcement Guidelines state that when determining whether a person is a danger to the public, the “instability of a person associated with mental imbalance at the time of examination may be a very important indicator in the assessment of the danger”⁸. The conflicting message within this guideline results in a policy which does little to protect persons with mental health issues and in fact, can lead to detention and the worsening of their condition.

Considering that the immigration detention of people with mental health issues continues to occur, to mitigate the impact of detention on this group, improvements to the infrastructure of detention facilities are essential.

Recommendations:

- End the transfer of people with identified mental health issues to provincial correctional facilities where the environment is typically stressful, punitive and potentially unsafe

⁸ Immigration, Refugees and Citizenship Canada. (2015). Enforcement guideline 20. Detention. Retrieved from <http://www.cic.gc.ca/english/resources/manuals/enf/enf20-eng.pdf>

(Alternatives to detention for people with mental health needs are considered in the corresponding section in this submission)

- Consider detention as a last resort for all cases and ensure that it is used for the shortest time possible and that people are not faced with additional restrictions, such as placement in segregation
- Consider the call for an independent body/ombudsman, like the federal Office of the Correctional Investigator, for overseeing CBSA enforcement practices and providing a mechanism for accountability⁹
- For people detained in provincial facilities, ensure that recommendations from the stakeholder roundtable discussions are implemented, including:
 - Avoid the co-mingling of criminal detainees with immigration detainees in correctional facilities for reasons including safety and mental health
 - Amend existing laws to specify and define the factors to be considered when deciding to transfer a detainee to a provincial facility; establish a clear policy and transparent processes for these transfers, including record-sharing to ensure continuity in care; and include opportunities for detainees to appeal decisions
 - Provide meeting rooms for non-governmental organizations (NGO), including community mental health agencies, as well as for designated representatives at provincial facilities
 - Ensure that immigration detainees in provincial facilities have at minimal the same level of access to services, programs and information (i.e., medical and mental health care, interpreters, NGOs, designated representatives, family visits, etc.) as those held in IHCs or as other inmates held in those very facilities
 - Ensure staff at provincial facilities are informed and trained on the particularities of individuals detained for immigration purposes (administrative not criminal)
- For people who are detained in an IHC, recommendations by stakeholders should be implemented and enforced, including:
 - Ensure that improvements made to infrastructure do not result in the increased use of immigration detention
 - IHCs should be located close to (or easily accessible by public transit) where social services are available to facilitate access to supports
 - Infrastructure improvements to IHCs should not be modeled after penal institutions
 - IHCs should have space designated for vulnerable people and be separate from those with past history of criminality
 - Ensure that NGOs and designated representatives have access to a private room to meet with detainees

⁹ Gross, H. & van Groll, P. (2015).

Minors in Detention

Although SSO is not a child and youth mental health organization, we strongly support advocates who call for an end to the immigration detention of minors. Concerns raised by advocates about the negative impact of detention on children’s mental health, including increased rates of distress, fear, anxiety and deterioration of cognitive, physical and emotional functioning¹⁰, are especially concerning.

“A Statement Against the Immigration Detention of Children”¹¹ signed by over 40 of Canada’s leading medical, legal and human rights organizations stipulates that children should neither be detained nor separated from their parents as a result of the detention of their parents. The Statement highlights that by continuing the practice of the immigration detention of children, Canada is failing to meet national and international legal obligations. It further cites the United Nations (UN) High Commissioner for Refugees condemning the immigration detention of children; the UN Committee on the Rights of the Child which has called on states to “expeditiously and completely cease the detention of children on the basis of their immigration status”; and the UN Special Rapporteur on the Human Rights of Migrants who has recently released a statement on the growing problem of immigration detention of migrant children.

Recommendations:

- SSO supports calls in the Statement for:
 - Ending the immigration detention of unaccompanied minors and children and families
 - Immediately implementing community-based alternatives to immigration detention which enable minors to remain with their parents or primary caregivers to protect the best interests of children and children’s right to liberty and family life
- In accordance with stakeholder feedback, amend legislation to provide for a designated representative to be assigned to a separated minor from point of first contact with immigration authorities and not only when they first appear in front of IRB
 - Provide training to designated representatives working with children and youth regarding the immigration process, cultural sensitivity and child and youth mental health

Alternatives to Detention (ATD)

In light of the inappropriateness of placing people with mental health issues in immigration detention, the expansion of available ATDs nationally is a welcome initiative. There are some considerations however that must be taken into account when considering expanding ATDs for people with mental health issues.

¹⁰ A statement against the immigration detention of children. (endorsements updated January 24, 2017). Retrieved from the Canadian Bar Association website <https://www.cba.org/CMSPages/GetFile.aspx?guid=4cc12757-a866-4ada-8ccb-2e17944abd91>.

¹¹ Ibid.

The International Detention Coalition points out that common characteristics of successful ATDs include screening and assessment of individual cases; providing case management, legal advice and other resources that support the individual to resolve their case; ensuring basic needs are met; and applying conditions or limited restrictions when necessary¹². These factors are especially important for vulnerable groups.

The challenges experienced by people with mental health issues in regard to current detention release conditions and stay of removal conditions provide helpful insight into some of the considerations that need to be taken into account when considering the use of ATDs for this group.

ATD conditions

SSO supports the position of stakeholders who point out that stricter conditions should not be imposed on people who undergo alternatives to detention. For people with mental health issues, for instance, it may be difficult to adhere to conditions that are overly stringent, inflexible and fail to account for the challenges faced by persons with complex mental health problems.

Reporting requirements imposed on people released from detention including frequency and location, for example, do not take into account access to transportation issues or cognitive impairments which may impede a person with mental health issues from attending these appointments. Changes to voice reporting is an ideal alternative, and an effective solution to help facilitate compliance; at the same time, for someone with complex mental illness such as schizophrenia, the use of reporting requirements that include technology may be problematic if they have the potential of exacerbating certain symptoms of psychosis which some people may experience, such as paranoid delusions.

Moreover, although ATDs should not require the same extent of rules and restrictions as stay of removal conditions, it is important to acknowledge the potential for excessive expectations that may be placed on someone as an alternative to detention. Conditions commonly placed on people who receive a stay on their deportation order, for example, include keep the peace and be of good behaviour; refrain from using alcohol or illegal drugs, including marijuana; and comply with treatment and medications. Such provisions do not account for the realities of mental illness, including the likelihood of relapse, nor do they address complexities of co-morbidities such as addictions, poverty and unstable environment. Even when the right combination of treatments is found, individuals with mental health issues may experience severely limited access to treatments and services and may need extensive supports to adhere to a treatment plan. Non-status Canadians may have additional challenges accessing such services because they do not qualify for provincial health insurance plans and may experience difficulty accessing alternative healthcare coverage.

For these reasons, each case must be looked at on an individual basis to make sure that ATD conditions are appropriate, feasible and accessible for the person on which they are imposed. Conditions or

¹² International Detention Coalition. (2015). *There are alternatives. A handbook for preventing unnecessary immigration detention. Revised edition*. Retrieved from <http://idcoalition.org/publication/view/there-are-alternatives-revised-edition/>

requirements related to ATD should be commensurate with the risk posed by the individual, as highlighted by other stakeholders, and must be realistic in terms of conditions imposed on people with mental health issues. Some flexibility is necessary with regard to people with mental health issues who may also face cognitive challenges in understanding the consequences of their actions, and for whom relapse is a natural part of the recovery process.

Access to community mental health services

A further consideration is that in order to ensure public safety is protected and/or that the individual will appear at their examination or hearing, the use of ATDs will likely require that the person be extensively monitored while in the community – a requirement which is incompatible with the philosophy of the mental health sector and capacity of most community mental health agencies. As observed in our “Double Jeopardy” paper, these agencies offer their services on a voluntary basis; as such, they may be disinclined to take on a supervisory or monitoring role and to report if the individual withdraws from services.

In addition, many community mental health organizations are incapable, due to intake protocols, of taking on clients who are currently in detention, yet traditionally, people will not be released from detention until they are formally accepted into a program¹³. The notable exception is the Toronto Bail Program-Immigration Division, which provides community-based supervision for individuals who are detained and cannot be released under the traditional forms of release.

Recommendations:

- Invest in in-depth training of CBSA officers and staff, IRB members, minister’s counsel and designated representatives on mental health, including persistent and complex mental illness such as schizophrenia, to expand understanding of the needs of people with mental health issues, the availability of mental health services and supports and the ways in which people access these resources
- Expand access to community-based mental health services to support people in avoiding detention and/or being released from detention
 - Efforts should be made with the community mental health sector to remove barriers which impede the provision of service – for example, intake protocols which require a face-to-face meeting before a client is accepted into a program should be reconsidered
 - Some flexibility should be given with regard to individuals who are in detention, including allowing intake to occur by phone or through referral by another mental health worker who the individual may have worked with
 - Exercise flexibility in terms of requirements related to ATDs by recognizing that conditions should be commensurate with the risk posed by the individuals; realistic in terms of the unique needs of people with mental health issues; and appropriate to each individual case

¹³ Key informant interview, June 3, 2009. From SSO. (2010). Double jeopardy: Deportation of the criminalized mentally ill. A discussion paper.

- Programs which support ATDs should be funded. Such programs could be modelled on ones that already exist within the criminal justice system, where the needs and circumstances are similar, but adapted to reflect a non-criminal focus and approach
 - One example is Mental Health Court Support programs, which were created to help facilitate court diversion for people with mental illness. Staff in these programs are mandated to develop and implement court diversion plans and connect clients with the necessary resources to support their success in the community. These staff have a responsibility to work closely with clients to help them abide by their diversion plans, and can alert the court if they have concerns about the individual. This program could be mirrored in the immigration context, with mental health support programs being created for individuals on detention releases
 - Program mandates of Assertive Community Treatment (ACT) Teams and other successful models of service should be re-examined with a view to expanding access to individuals on immigration detention releases
- Expand community bail programs which play both an enforcement and rehabilitative role by providing community-based supervision to individuals who would otherwise be detained in custody. The Toronto Bail Program – Immigration Division provides this service to clients with mental health issues; however, it is the only program of its kind in Canada.
 - It is important, however, to recognize the legitimate concerns of stakeholders, such as the Canadian Council for Refugees, who have pointed out that the Toronto Bail Program is designed along a criminal justice system model. They point out that aspects of the program which reflect the criminal model, including onerous reporting requirements and the name of the program itself, are inappropriate in terms of immigration detention and may contribute to the real or perceived criminalization of migrants¹⁴

Detainee Health/Mental Health

As previously mentioned, detention centres, including provincial facilities, are not adequately equipped to address the needs of persons with mental health issues. Medical staff and mental health services are limited, and correctional staff often do not have mental health training and are unqualified to address individuals with complex mental health needs. Often, individuals on immigration holds are placed in maximum security units or in solitary confinement, further limiting their access to treatment – a practice which is considered to be neither safe nor humane¹⁵. The fact that the nature of immigration proceedings often results in indefinite detention is additionally problematic in terms of mental health. Again, research shows that even brief placement in detention is associated with increased psychiatric

¹⁴ Canadian Council For Refugees. (2015). *Alternatives to detention: CCR comments regarding the Toronto Bail Program*. Retrieved from <http://ccrweb.ca/en/alternatives-detention-comments-toronto-bail-program>.

¹⁵ Office of the Correctional Investigator, *Annual Report of the Office of the Correctional Investigator, 2008-2009* (Toronto: OCI, 2009).

symptoms¹⁶; prolonged and indefinite immigration detention has been shown to further increase rates of stress, anxiety and mental health deterioration¹⁷.

Another issue identified in the paper, “Double Jeopardy”, is that many psychiatrists do not travel to detention centres to conduct assessments¹⁸, or are not permitted to enter the detention centre, thus putting individuals being held in detention at a clear disadvantage. Even community mental health programs that can provide supports, such as ACT teams, can be reluctant to visit clients in detention or may not be permitted entry¹⁹ due to processes related to security at the institution. In SSO’s experience providing designated representative support for instance, visits with individuals who are detained in provincial facilities are permitted with the accompaniment of the person’s legal counsel; this can be problematic in cases where there are delays in obtaining counsel and these visits may themselves be disrupted by security measures such as institutional lock-downs.

Recommendations:

- Implement feedback from stakeholders including:
 - Improve screening tools for CBSA officers to identify mental health issues as early as possible; ensure that these tools are culturally appropriate and adapted for children and youth; ensure appropriate, timely assessment and follow up by a mental health professional for people who are positively screened; and support these people in accessing needed mental health treatments, services and supports
 - Explore best practices and international models in order to amend existing laws and regulations to create a rebuttable presumption in favour of release after a fixed number of days of detention and a process for independent review of any detention placements which exceed this limit
 - Ensure timely mental health screening and assessment for every person placed in immigration detention in an IHC or provincial facility as part of standard intake procedure and at regular intervals throughout their detention:
 - Screening should occur immediately upon admission to ensure that appropriate follow-up, including assessment and treatment, is initiated as soon as possible;
 - Timely assessment by a psychiatrist for anyone screened positively (the Canadian Psychiatric Association has published wait-time benchmarks for people with serious mental illness, which can be used as a guide);
 - Ensure timely access to culturally-appropriate mental health care wherever a person is detained (including community supports, counselling and spiritual supports, family supports and psychiatric and medical supports)

¹⁶Cleveland, J. & Rousseau, C. (2013). Psychiatric symptoms associated with brief detention of adult asylum seekers in Canada. *Canadian Journal of Psychiatry*, 58(7). 409-16. doi [10.1177/070674371305800706](https://doi.org/10.1177/070674371305800706).

¹⁷ Australian Human Rights Commission. (2011). *Immigration detention at Curtin*. Retrieved from https://www.humanrights.gov.au/sites/default/files/content/human_rights/immigration/idc2011_curtin.pdf

¹⁸ Key Informant interview, May 27, 2009. From SSO. (2010). Double jeopardy: Deportation of the criminalized mentally ill. A discussion paper.

¹⁹ Key informant interview, June 3, 2009. From SSO. (2010). Double jeopardy: Deportation of the criminalized mentally ill. A discussion paper.

- Ensure immediate transfer of a detainee whose mental health is deteriorating to a forensic hospital or a correctional treatment centre if release is unlikely
- Increase training for CBSA officers, correctional officers and management, including:
 - De-escalation techniques;
 - Training on mental health issues and anti-stigma that is developed and delivered in conjunction with people with lived experience of mental health issues;
 - Compassion, empathy and non-violent communication skills-training;
 - Cultural competency training
- Establish a training infrastructure to sustain regular training for current and new officers and staff which includes regular formal evaluation to monitor progress and to identify gaps and make appropriate amendments
- Provide psychological and emotional supports for CBSA officers and correctional officers through peer support programs as well as through professional services, such as those offered by Employee Family Assistance Programs
- Ensure that support is provided to people released in the community, including access to effective legal aid (e.g., Legal Aid Ontario), mental health services and supports, transportation and interpretation services

SSO appreciates the opportunity to provide feedback on the CBSA's New National Immigration Detention Framework. We look forward to working with the CBSA and the federal government as the Framework is further developed.

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