

**AGREEMENT BETWEEN HER MAJESTY THE QUEEN IN RIGHT OF
CANADA AND HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO**

**Agreement between Canada and Ontario respecting detention of persons
detained under the *Immigration and Refugee Protection Act (IRPA)***

BETWEEN

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

(hereinafter referred to as “Ontario”)

as represented by the Minister of Community Safety and Correctional Services

AND

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

(hereinafter referred to as “Canada”)

**as represented by both the Minister of Public Safety and Emergency
Preparedness and the President of the Canada Border Services Agency**

INTRODUCTION

WHEREAS the *IRPA* allows for or requires the detention of persons for administrative purposes;

WHEREAS the CBSA is responsible for the administration of Canada's immigration detention program;

WHEREAS Ontario is responsible for the operation of correctional institutions for the secure detention of persons awaiting trial and/or serving sentences in the Province of Ontario;

WHEREAS in the interests of public safety, Canada and Ontario mutually agree that it is necessary to ensure that persons subject to lawful detention pursuant to *IRPA* are held in appropriate places of secure detention within the Province of Ontario; and

WHEREAS Canada and Ontario desire to establish a formal Agreement whereby Ontario will, at Canada's request, detain persons who would otherwise be detained by Canada in accordance with *IRPA*.

THEREFORE the Parties agree as follows:

1. DEFINITIONS

"Agreement" means this Agreement, including any schedules appended thereto, and any amendments, changes or deletions thereto.

"CBSA" means the Canada Border Services Agency.

"Correctional Institution" means a Correctional Institution established pursuant to the provisions of the *Ministry of Correctional Services Act (Ontario)*.

"Emergency Medical Care" means urgent medical treatment that cannot be provided in a Correctional Institution and requires immediate transfer to a hospital.

"Immigration Detainee" means a person who has attained the age of majority as that is defined in the *Age of Majority and Accountability Act (Ontario)*, who is a permanent resident or a foreign national who may be, or is required to be, or has been detained by Canada under the *IRPA*, but does not include a Security Certificate Detainee.

"IRB" means the Immigration and Refugee Board of Canada.

"IRPA" means the *Immigration and Refugee Protection Act, S.C. 2001, c. 27*.

"Legal Costs" means reasonable legal fees on a solicitor and his own client basis and reasonable fees or other charges of accountants and other advisors and experts and reasonable disbursements necessarily incurred with respect to the defence of any action.

“MCSCS” means the Ministry of Community Safety and Correctional Services for the province of Ontario.

“Party” or **“Parties”** refers to representatives of the Canada Border Services Agency and/or Correctional Services for the province of Ontario.

“Per Diem Amount” means the amount payable per day for each Immigration Detainee or Security Certificate Detainee detained in a Correctional Institution.

“Persons detained pursuant to this Agreement” means both Immigration Detainees and Security Certificate Detainees.

“Psychiatric Care” means psychiatric care that can only be provided in a psychiatric facility as defined by the *Mental Health Act* (Ontario).

“Security Certificate Detainee” means an adult person who has been detained under the authority of a security certificate issued pursuant to Section 77 of the *IRPA*.

“Specialty Medical Care” means medical treatment other than Emergency Medical Care or Psychiatric Care that cannot be provided in a Correctional Institution and requires transfer to a clinic, hospital, doctor’s office or other health facility.

2. DETENTION AND TRANSFER OF IMMIGRATION DETAINEES

2.1 Persons detained pursuant to this Agreement may be detained in any Correctional Institution. Canada recognizes all Correctional Institution as “Immigrant Stations”, within the meaning of s.142 of *IRPA*.

2.2 Ontario will, at Canada’s written request and direction, detain Immigration Detainees in accordance with the terms of this Agreement.

2.3 Transfer of custody of a person detained pursuant to this Agreement, from Canada to Ontario, will occur when that person has been delivered by Canada to, and received by Ontario, in a Correctional Institution.

2.4 Canada shall be responsible for the delivery to and removal of persons detained pursuant to this Agreement from any Correctional Institution where Canada has requested that Ontario detain them.

2.5 Unless otherwise agreed upon and subject to any other provision of this Agreement, Canada agrees to provide all of the required transportation for persons detained pursuant to this Agreement to and from the Correctional Institution where they are detained including transportation to and from any immigration activity conducted outside of the Correctional Institution. Transportation

between Correctional Institutions, for persons detained pursuant to this Agreement, will be provided by Ontario.

2.6 Admission and release to and from any Correctional Institution shall be in accordance with MCSCS procedures, directives and this Agreement. Admitting and releasing Immigration Detainees is normally permitted only during operating hours for Admitting and Discharge (0600 hours to 2200 hours during the week and 0900 hours to 1800 hours on weekends). CBSA staff seeking to admit a detainee at any other time must obtain the prior approval of the Correctional Institution's operational manager. Admitting and releasing Immigration Detainees when Admitting and Discharge is not staffed is at the discretion of the operational manager and will only be authorized when, in his/her opinion, the request may be safely accommodated, it is a matter of absolute necessity and the admission cannot be otherwise accommodated.

2.7 Notwithstanding paragraph 2.2 Ontario, in consultation with Canada, may, in its absolute discretion, refuse to detain any Immigration Detainee whom Canada has requested be detained pursuant to this Agreement.

2.8 Notwithstanding paragraph 2.7, Ontario will not refuse to detain an Immigration Detainee except for reasons of operational necessity. Where Ontario refuses to detain an Immigration Detainee, Ontario shall provide CBSA with written reasons for that refusal.

2.9 Where there is a need to detain an individual subject to a security certificate and the CBSA's Immigration Holding Centres (IHC) are not ready to accept detainees, then Ontario agrees to detain such an individual for a period not to exceed 30 consecutive nights.

2.10 Canada may from time to time request that Ontario detain Security Certificate Detainees for periods of detention of 5 consecutive nights or for a period of time otherwise agreed upon.

2.11 Where a person detained pursuant to this Agreement requires Emergency Medical Care, Ontario shall transfer the person detained pursuant to this Agreement to a hospital. Ontario shall immediately notify Canada of the transfer.

2.12 Ontario shall be responsible for the supervision and security of the persons detained pursuant to this Agreement while in hospital until Canada assumes custody. Canada shall assume custody of the persons detained pursuant to this Agreement as soon as possible but in any event within 24 hours of notification of the transfer by Ontario.

2.13 Where Persons detained pursuant to this Agreement require a Specialty Medical Care appointment, Ontario will notify Canada and Ontario shall provide all necessary supervision and transportation to the place where the Specialty Medical Care appointment will be provided and for the return to the Correctional Institution.

2.14 Unless otherwise agreed upon and subject to any other provision of this Agreement, where a medical doctor completes a "Form 1" under the *Mental Health Act* (Ontario) for the assessment of persons detained pursuant to this Agreement, Ontario will notify Canada and Canada shall assume custody and provide all necessary transportation to the psychiatric facility identified by Ontario.

2.15 Ontario shall ensure that all persons detained pursuant to this Agreement who are eligible for health coverage under the Ontario Health Insurance Plan (OHIP) are duly registered and enrolled with OHIP. The costs of medical care provided to persons detained pursuant to this Agreement who are not eligible for OHIP will be covered by the Interim Federal Health Program (IFHP).

2.16 Where an Immigration Detainee or Security Certificate Detainee is detained pursuant to the terms of this Agreement he/she shall be detained in a Correctional Institution. Ontario shall advise Canada of the particular Correctional Institution in which the Immigration Detainee or Security Certificate Detainee is detained including notification of any transfers from one institution to another and upon his/her release from detention.

2.17 The conditions of detention and the treatment and privileges of persons detained pursuant to this Agreement, shall be as specified by the *Ministry of Correctional Services Act, Ontario Regulation 778* and the policy and procedures of the Ministry of Community Safety and Correctional Services, as amended from time to time, which are applicable to inmates confined in provincial Correctional Institutions.

2.18 Where Ontario, in consultation with Canada, determines that any person detained pursuant to this Agreement poses an unacceptable risk to staff and other persons detained in a Correctional Institution, Ontario may transfer the person detained pursuant to this Agreement to another Correctional Institution or discharge the person into the custody of Canada. Where a decision is made to discharge an immigration detainee detained pursuant to this Agreement, Canada shall arrange to assume custody as soon as reasonably possible not to exceed 72 hours of receiving notification from Ontario unless otherwise mutually agreed.

2.19 Ontario shall detain persons pursuant to this Agreement until:

2.19.1 they are ordered released from custody pursuant to an order lawfully made under the provisions of *IRPA*, or, in the case of a Security Certificate Detainee by an Order of the Federal Court of Canada;

2.19.2 they are ordered released from custody by a CBSA officer for the purpose of executing a removal order for their continued detention in a CBSA Immigration Holding Centre; or

2.19.3 this Agreement is terminated.

2.20 Where a person who is an Immigration Detainee or Security Certificate Detainee is detained in a Correctional Institution for any reason other than pursuant to the *IRPA*, the Immigration Detainee or Security Certificate Detainee shall not be considered to be detained by Ontario in accordance with this Agreement.

3. TERMS AND CONDITIONS OF DETENTION

3.1 MCSCS will treat detainees in a responsible, just and humane manner that recognizes their inherent dignity as human beings and affords them rights, privileges and protections prescribed by law.

3.2 Ontario will ensure that all persons detained pursuant to this Agreement have access to telephone communication equipment in accordance with the following general principle: that access be provided on a reasonable basis and that long distance or "toll calls" be collect calls only.

3.3 In any facility where there do not exist sufficient telephone lines or telephone equipment, Ontario will ensure appropriate equipment is available, and will arrange for the installation of such equipment if necessary. Canada agrees to pay for such reasonable costs as may be incurred from such installation of equipment if necessary, and Canada agrees to operate the necessary equipment at its own expense and Ontario shall allow and facilitate such installation.

4. COMMINGLING

4.1 The Parties recognize that:

4.1.1 the primary population of the Ontario's Correctional Institutions are persons subject to criminal process; and

4.1.2 immigration detention is administrative in nature.

4.2 The Parties shall, individually and jointly, endeavour to the maximum extent possible, to ensure that persons detained pursuant to this Agreement are not commingled with inmates.

5. MONITORING

5.1 Ontario will grant entry to institutions identified in this Agreement to CBSA Jail Liaison officers and other CBSA officers who, upon reasonable notice, request such access for the purposes of monitoring the detention of persons detained pursuant to this Agreement and to carry out their enforcement functions under the *IRPA*.

5.2 Canada is a party to a memorandum of understanding with the Canadian Red Cross (CRC) whereby the CRC monitors the conditions of detention. The CRC may meet with persons detained, pursuant to the *IRPA*, in places of detention according to the access granted by Ontario.

5.3 Canada is a party to an agreement whereby representatives of the United Nations High Commission for Refugees (UNHCR) are authorized to have access to persons who are claimants of refugee status. Upon reasonable notice provided by the UNHCR, Ontario will grant entry of officials from the UNHCR as identified by Canada, to institutions identified in this Agreement for purposes associated with the agreement between Canada and the UNHCR.

5.4 Ontario recognises that certain persons detained pursuant to this Agreement may have entitlements under the *Vienna Convention on Consular Relations* and will facilitate meeting those entitlements.

6. DOCUMENTATION

6.1 Canada will provide Ontario with Orders of Detention for all Immigration Detainees and Security Certificate Detainees to be detained by Ontario. Subject to this Agreement, Canada will, provide Ontario with other information, including information on any known medical condition that may be necessary for proper safety and security.

6.2 Canada and Ontario agree that, subject to any other Act of Canada or Statute of Ontario which requires that Ontario detain an Immigration Detainee, and subject to any release provisions in the Act, the written authorization of an officer pursuant to section 56 of the *IRPA* or of a member of the Immigration Division of the IRB pursuant to section 58 of the *IRPA* is sufficient authority to effect release of any Immigration Detainee detained by Ontario pursuant to this Agreement, provided there are no other grounds for their detention.

7. ACCESS TO PREMISES

7.1 Persons detained pursuant to this Agreement shall be allowed to meet with their legal counsel or designated representatives. Said meetings shall be in accordance with Ontario's policies and procedures governing visits by professionals.

8. PAYMENT

8.1 Canada will pay Ontario a daily rate (the "*Per Diem Rate*"), for each day an Immigration Detainee or Security Certificate Detainee is detained pursuant to this Agreement. The "*Per Diem Rate*" shall be the average of the per diem rates for all of Ontario's Correctional Institutions for the preceding fiscal year. Ontario's fiscal year runs from April 1st in any year to March 31st in the following year. As of the execution date of this Agreement the "*Per Diem Rate*" for the purposes of this Agreement is the fiscal 2013-14 rate. Canada shall also pay to Ontario an additional amount equivalent to twenty percent of the "*Per Diem Rate*" (the "*Additional Amount*") for each day an Immigration Detainee or Security Certificate Detainee is detained pursuant to this Agreement. The "*Additional Amount*" is intended to cover administration and overhead amounts related to the accommodation of detainees pursuant to this Agreement.

8.2 Canada will pay Ontario the "*Per Diem Rate*" and the "*Additional Amount*" for the day of transfer of custody from Canada to Ontario and not for the day of transfer of custody from Ontario to Canada.

8.3 Ontario will provide to Canada, on a monthly basis, an invoice comprising a statement which identifies persons detained pursuant to this Agreement, the number of detention days for persons

detained pursuant to this Agreement, the total number of detention days for the month, the “*Per Diem*” Rate, the “*Additional Amount*” and the total amount payable by Canada under this Agreement.

8.4 Canada will pay Ontario the amounts payable under each monthly statement, within thirty (30) days of receipt of an invoice, subject to, and in accordance with, procedures specified in the federal *Financial Administration Act* (Canada).

8.5 Canada will, in accordance with the IFHP which is administered by Citizenship and Immigration Canada, pay directly the costs of all medical treatment, not otherwise payable by or through the Ontario Health Insurance Plan, provided to persons detained pursuant to this Agreement, including all costs associated with the detention of persons detained pursuant to this Agreement at a medical facility. For clarity, Canada shall not be liable for and shall not pay the costs of any medical treatment or health care which are covered by the Ontario Health Insurance Plan (OHIP).

8.6 Where a person detained pursuant to this Agreement is away from the Correctional Institution in which he or she has been detained but is under the control and supervision of Ontario, that person shall, for the purposes of this Agreement, be considered to be detained in the Correctional Institution and Canada shall continue to pay the Per Diem until Canada assumes custody of the person.

8.7 For the purpose of maintenance of MCSCS and CBSA financial recording processes and communication of financial information and transactions MCSCS and the CBSA have identified those persons listed under Schedule “C”.

9. EXCHANGE OF INFORMATION

9.1 Subject to any other agreement or arrangement in place between the Parties, Ontario agrees with Canada that any personal information that Canada discloses to Ontario will be used only for the purpose for which it was disclosed, and the information will not be disclosed by Ontario except where disclosure must be made under the *Freedom of Information and Protection of Privacy Act* (Ontario) or as otherwise required by law. Where Ontario is required to disclose personal information provided by Canada it shall notify Canada as soon as reasonably practicable.

9.2 Subject to any other agreement or arrangement in place between the Parties, Canada agrees with Ontario that any information that Ontario discloses to Canada will be used only for the purpose for which it was disclosed, and the information will not be disclosed by Canada except where disclosure must be made under the *Access to Information Act* (Canada), the *Privacy Act* (Canada) or as otherwise required by law. Where Canada is required to disclose personal information provided by Ontario it shall notify Ontario as soon as reasonably practicable.

9.3 Where a person is detained pursuant to this Agreement, Canada shall provide Ontario, the information available and/or when circumstances warrant, with the information listed in Schedule

“A” regarding the Immigration Detainee or Security Certificate Detainee subject to applicable laws.

9.4 Where a person is detained pursuant to this Agreement, Ontario shall provide Canada, the information available and/or when circumstances warrant, with the information listed in Schedule “B” regarding the Immigration Detainee or Security Certificate Detainee subject to applicable laws.

9.5 Ontario and Canada agree that any records created or maintained by the Parties in the performance of their obligations under this Agreement are and shall remain the property of the Party with possession of the records and the collection, use and disclosure of the records are, in the case of Ontario, subject to the provisions of the *Freedom of Information and Protection of Privacy Act* (Ontario) and, in the case of Canada, subject to the *Access to Information Act* and the *Privacy Act*.

9.6 Canada and Ontario agree to cooperate with any evaluation of the operation of this Agreement.

9.7 Clauses 9.1 through 9.6 will survive this Agreement.

10. HEARINGS

10.1 Canada and Ontario agree that, unless otherwise stated, all hearings pursuant to the *IRPA* will be convened in the provincial Correctional Institutions where the person is detained.

10.2 The Parties may agree to allow the CBSA or the IRB to conduct hearings by means of electronic communication such as videoconferencing, in which case Ontario shall provide the necessary space and accommodations but shall not be responsible for providing electronic infrastructure.

11. GENERAL

11.1 This Agreement takes effect on April 1, 2013 regardless of the date this Agreement is executed by the Parties and remains in effect until terminated by either Canada or Ontario in accordance with the terms of this Agreement.

11.2 This Agreement may be amended at any time, upon mutual consent in writing. For the purpose of this provision, the consent in writing may be affected by an exchange of letters between the Vice-President, Programs Branch for the CBSA, on behalf of Canada and the Assistant Deputy Minister, Adult Institutional Services of the MCSCS, on behalf of Ontario.

11.3 This Agreement may be terminated by either Party, without fault or liability, upon one (1) year written notice to the other.

11.4 For the purpose of ensuring the continued relevancy of this Agreement, and to deal with any outstanding issues, the Parties will by their appointed representatives, review the Agreement annually. For the purpose of this provision, each annual review shall be evidenced in writing by an exchange of letters between the Vice-President, Programs Branch for the CBSA on behalf of Canada and the Assistant Deputy Minister, Adult Institutional Services of the MCSCS, on behalf of Ontario.

11.5 The schedules attached hereto form a part of this Agreement. The attached schedules may be amended as needed without amendment to the Agreement itself upon mutual consent in writing, by the officials identified in 11.4.

11.6 This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and applicable laws of Canada.

12. DISPUTE RESOLUTION

12.1 Any disputes, issues or concerns arising pursuant to this Agreement or pursuant to the operation of this Agreement shall first be communicated by Ontario to the Vice-President, Programs Branch for the CBSA and from Canada to the Assistant Deputy Minister, Adult Institutional Services of the MCSCS, for Ontario.

13. LIABILITY

13.1 Canada will indemnify and hold harmless Ontario from and against any and all liability, loss, costs, damages (including any incidental, indirect, special or consequential damages) and expenses (including Legal Costs), causes of action, actions, claims, demands, lawsuits, or other proceedings (collectively "Claims"), by whomever made, sustained, brought or prosecuted, including for third party bodily injury (including death), personal injury and property damage, in any way based upon, occasioned by or attributable to anything done or omitted to be done in the course of the performance of any obligations under, or otherwise in connection with, this Agreement unless the Claim is attributable to, or alleged to be attributable to, the negligent or wrongful acts of an employee, officer, director, agent or subcontractor of Ontario. As part of the indemnification, Ontario shall be entitled to recovery for its Legal Costs notwithstanding that Ontario's legal representation is provided by a lawyer who is an employee of Ontario.

13.2 Where a person detained pursuant to this Agreement challenges the lawfulness of or the terms and conditions of his or her detention, Canada shall be responsible for the defence of any such challenge. If Canada is not a party to any such proceeding Canada shall seek to intervene in the proceeding. Canada shall indemnify Ontario with respect to any Legal Costs incurred by Ontario in responding to any challenge by a person detained pursuant to this Agreement with respect to the lawfulness of or the terms and conditions of his or her detention in a Correctional Institution. Any Legal Costs or damages awarded in favour of a person detained pursuant to this Agreement in such proceedings shall be the responsibility of Canada. Ontario shall be entitled to recovery for its Legal

Costs notwithstanding the legal representation is provided by a lawyer who is an employee of Ontario.

13.3 Where, subsequent to the commencement of the term of this Agreement, Ontario is required, as a result of a proceeding by a person detained pursuant to this Agreement, to provide terms and conditions of the detention and treatment for persons detained pursuant to this Agreement which are different than those provided for other persons detained by Ontario, Canada shall reimburse Ontario for any additional costs related to any change in the terms and conditions of detention and treatment.

13.4 Clauses 13.1, 13.2 and 13.3 will survive this Agreement.

14. DURATION AND ADVANCE NOTICE

14.1 If this Agreement is terminated, the confidentiality and security of information provisions in clause "9" will continue to apply to the information that has previously been disclosed.

15. DEPARTMENTAL REPRESENTATIVES

15.1 The following officials are designated as the departmental representatives for purposes of this Agreement and any policies required under this Agreement will be delivered as follows:

For Ontario:

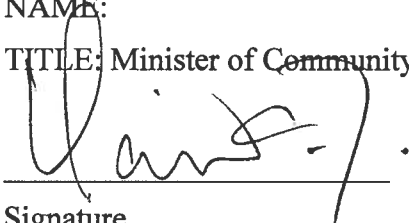
MCSCS
25 Grosvenor Street, 16th floor
Toronto, Ontario
M7A 1Y6

For the CBSA:

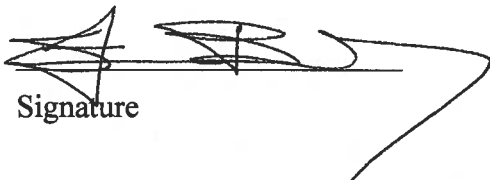
CBSA
Director General
Enforcement and Intelligence Programs Directorate
100 Metcalfe Street, Floor 10
Ottawa, Ontario
K1A 0L8

IN WITNESS THEREOF, this Agreement in both official languages, was signed in duplicate, each copy being equally authentic.

SIGNED ON BEHALF OF HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO,
THIS 21 DAY OF JANUARY 2015
BY:

NAME:
TITLE: Minister of Community Safety and Correctional Services

Signature

SIGNED ON BEHALF OF THE GOVERNMENT OF CANADA
THIS 1st DAY OF Oct., 2014
BY:

NAME:
TITLE: Minister of Public Safety and Emergency Preparedness

Signature

Schedule A

Information to be provided by Canada

- Name, date of birth and gender
- Country of birth, reported citizenship
- Nature and circumstances of offence(s), if on file
- All legal documents authorizing a detainee's admission into custody
- Outstanding charges
- Status of upcoming hearings
- Court reports (e.g., Pre-sentence report) (if applicable)
- Known cautions - mental instability, violence, security risk, escape history
- Any restrictions on visitation access by others etc. if available and applicable
- Report of misconduct while in custody (if applicable)
- Existing photo of the Immigration Detainee or Security Certificate Detainee, notation of body markings (i.e., tattoos, scars)
- Special placement requests
- Next of kin
- Medical information (as outlined in the CBSA-Ontario medical agreement)
- Criminal associates or associates who are of interest to police
- Victim related information

Schedule B

Information to be provided by Ontario

- Name, date of birth and gender
- Correctional Services client number (OTIS number) and FPS number (if known)
- Country of birth, reported citizenship
- Legal order type/sub type, offence information, and OTIS alerts
- Nature and circumstances of offence(s), if on file
- All legal documents authorizing a detainee's admission into custody
- Outstanding charges
- Status of upcoming hearings
- Known cautions - mental instability, violence, security risk, escape history
- Any restrictions on visitation access by others etc. if available and applicable
- Report of misconduct while in custody (if applicable)
- Length of stay in Correctional Institution
- Days stay information (admission date, discharge date, any variations to holding authority)
- Record of the Immigration Detainee's or Security Certificate Detainee's property upon admittance and release
- Any requirements re: transfer of persons detained pursuant to this Agreement between Correctional Institutions if applicable
- Any information protected under Part 6 of the Youth Criminal Justice Act \
- Existing photo of the Immigration Detainee or Security Certificate Detainee, notation of body markings (i.e., tattoos, scars)
- Special placement requests
- Next of kin
- Medical information (as outlined in the CBSA-Ontario medical agreement)

Schedule C

Financial Representatives

For the purpose of the maintenance of the MCSCS and the CBSA financial recording processes, the communications of financial information and transactions, the Parties have identified the following persons:

Ontario Financial Representative:

Manager,
Financial Resources Unit
25 Grosvenor Street, 16th floor
Toronto, ON M7A 1Y6

CBSA Financial Representative:

Attn: Finance
CBSA Greater Toronto Area Region
Enforcement and Intelligence Operations Division
6900 Airport Road, Entrance "B"
Mississauga, Ontario
L4V 9E8