Exceptional State, Pragmatic Bureaucracy, and Indefinite Detention: The Case of the Kingston Immigration Holding Centre

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Introduction

When the scale of the unfolding terrorist attacks in Mumbai became clear, both Indian and international media outlets were quick to proclaim that the event was “India’s 9/11.” Arundhati Roy responded to this branding with the observation that “[w]e’ve forfeited the rights to our own tragedies.”1 The notion that events can or should be described as variations on the archetypes of America’s “war on terror” is an effective way to ensure that they are decontextualized and stripped of their local complexity.

This article is about an immigration detention facility in Bath, Ontario, that has come to be known in activist circles and in the media as “Guantánamo North” but is officially called the Kingston Immigration Holding Centre (KIHC). It has been described as an “enclave within the walls of the Millhaven facility,”2 which itself is a maximum-security penitentiary. There are definite parallels between KIHC and the American facility at Guantánamo Bay—both are “special” post-September 11, 2001, prisons for alleged terrorists, who can be detained indefinitely without charge or trial—but Kingston is not Cuba, security-certificate detainees are not “enemy combatants,” and all contemporary spaces of exceptional detention are not simply variations on the theme of Guantánamo. While the American facility is a military prison and a product of the so-called war on terror, KIHC is jointly operated by the Canada Border Services Agency (CBSA) and the Correctional Service of Canada (CSC), the product of the convergence of immigration, national-security, and penal regimes. To describe KIHC as “Guantánamo North” is to make a heuristic comparison that doubles as a justifiable and effective political denunciation but ultimately draws attention away from important and

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problematic details. It is important to understand local spaces and practices of preventative and indefinite detention in relation to global trends, but this appreciation should not displace efforts to unravel the complexity of national institutions. KIHC is a secretive facility with a secret history, and it is currently Canada’s only prison purpose built for the detention of individuals deemed to represent a threat to national security. Detention without trial in Canada is a serious matter, and KIHC warrants explanation—and problematization—on its own terms.

This study complements the existing critical literature on Canada’s security-certificate regime. To date, scholarship in this area has focused primarily on immigration security detention prior to the creation of KIHC, on overarching themes of sovereign power and legal exceptionality, and on certificates as products of systems of exclusion based on race thinking and the securitization of migration. We support the argument that security certificates function as legal mechanisms of normalized exceptionality and that the spaces of detention associated with them can be understood using the concept of the camp, wherein

the state of exception, which [is] essentially a temporary suspension of the rule of law on the basis of a factual state of danger, is now given a permanent spatial arrangement, which as such nevertheless remains outside the normal order.

In this article, we supplement an analysis of the juridico-political structure of KIHC with an in-depth exploration of the interactions within the Canadian insecurity field that shaped its emergence and governance. We use the concept of the Canadian insecurity field to denote the diverse range of Canadian agencies, both public and private, that have in common the assertion of professional expertise related to the management of insecurity. Our concern here is with the complexities of how a camp comes into being, the relationships (both legal and operational) between such an “enclave” and existing

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4 Despite our emphasis on local complexity, one of us (Larsen) has repeatedly used this term during media interventions, simply because it has journalistic ‘currency.’
7 Sherene H. Razack, Casting Out: The Eviction of Muslims from Western Law and Politics (Toronto: University of Toronto Press, 2008).
8 Giorgio Agamben, Homo Sacer: Sovereign Power and Bare Life, trans. Daniel Heller-Roazen (Stanford, CA: Stanford University Press, 1998), 169. The concept of the camp can be employed at different levels of abstraction. We use it here in its most localized sense, to refer to a space of confinement whose juridico-political character is defined by normalized exceptionality. At a macro level, Agamben suggests that the logic of the camp is the “nomos” of the modern and the “fundamental biopolitical paradigm of the West” (ibid., 181).
9 Didier Bigo, “Security and Immigration: Toward a Critique of the Governmentality of Unease,” Alternatives 27 (2002), 63. Note that this field, though unified by a common meta-project (insecurity), is characterized by a heterogeneity of competing interests and forms of professional knowledge, authority, and expertise.
institutions, and the roles played by various professional actors, both in public
and behind the scenes. We argue that the emergence of KIHC can be under-
stood as the product of a series of decisions designed to functionally blur the
spaces of the camp and the prison while maintaining their technical distinc-
tion. This process is supported by public and internal government discourses
that emphasize themes of exceptional necessity and bureaucratic pragmatism.
KIHC emerges as a unique and highly problematic hybrid space—a product
of the authority to detain indefinitely meeting the capacity to confine pragma-
tically, under the banner of “national security.” While the existence of excep-
tional “laws that suspend the rule of law” provides the conditions of
possibility for the emergence of the camp, it is the operationalization of this
exception through contract, institutional structure, and professional practice
that gives it its form.

Our discussion is organized in four parts. Following a brief note on
method, we provide an overview of the legal nature of the security-certificate
mechanism and a review of the literature on certificates as manifestations of
sovereign exceptionality. The emphasis here is on the use of law—as
opposed to its suspension or absence—to create and maintain a normalized
exception, a process described by Richard Ericson as “counter-law.”

Having set the stage, we shift our focus toward certificate detention, beginning
with a description of the prehistory of KIHC and a discussion of the delibera-
tions that took place among government officials prior to its emergence. We
follow this historical material with a description of the CBSA–CSC Detention
Memorandum of Understanding, signed in April 2006, which allows CSC to
be contracted to provide detention services outside its standard mandate and
stated mission. This arrangement makes KIHC an ambiguous and hybrid
space, considerably more complicated than the “special wing of a
maximum-security prison” as which it has been described. We then
discuss the rules and procedures that govern the day-to-day operation of the
facility, drawing on internal documents. We conclude with comments about
the bureaucratization of exceptionality and the malleability of institutional
mandates, and by making an argument for the abolition of KIHC.

Ultimately, our goal is to tell the story of KIHC, in the spirit of “reclaiming”
the emergence of this facility, to use Roy’s term, as a Canadian event.

A Note on Method

Our account is largely descriptive, based on an analysis of official documents.
While a few of these records are publicly available, we draw extensively on

9 Razack, Casting Out, 11.
11 Canada Border Services Agency (CBSA) and Correctional Service of Canada (CSC),
Memorandum of Understanding between the Canada Border Services Agency and the
Correctional Service of Canada respecting the Detention of Persons Detained Under the
Immigration and Refugee Protection Act (signed in Ottawa, April 19, 2006) [CBSA-CSC
Detention MOU]; obtained through ATI request no. A-2007-01287 to CBSA.
12 Razack, Casting Out, 31.
13 Roy, “The Monster in the Mirror.”
previously unreleased and/or unpublished documents—some classified as secret and heavily redacted—obtained through dozens of requests made under the Access to Information Act. Initial requests were filed in early 2007, and material obtained from successful requests provided the basis for additional and supplementary filings. Over the course of the study, our requests narrowed in focus. A series of very general requests for information allowed us to develop an initial picture of the arrangements that govern KIHC; subsequent targeted requests were focused on particular documents and records, such as memoranda to ministers, draft reports, institutional policies, e-mail messages, and training manuals. Requests were filed with CBSA, which is the agency authorized to enforce security-certificate detention, and with CSC, which is the agency that actually provides the detention services. In addition, given the hybrid and collaborative nature of security-certificate processes, requests were filed with Public Safety Canada, the umbrella department responsible for both CBSA and CSC and for inter-agency coordination on security files.

The use of ATI as a research technique allowed us to move our understanding of KIHC well beyond what can be drawn from the scant body of publicly available official statements and committee transcripts that discuss the facility. Security-certificate detention is, after all, characterized by its secrecy, and teasing out the nuances of the arrangements through which it operates requires engagement with clandestine materials.

Security Certificates and Normalized Exceptionality

Security-certificate cases are often described as “secret trials.” This term captures the essence of the proceedings, which are conducted under a veil of national security confidentiality. Technically, however, certificate hearings are not really trials and are certainly not products of an adversarial process; they operate through administrative immigration law and bear only a superficial resemblance to criminal-justice proceedings. Certificates are issued under s. 77 of the Immigration and Refugee Protection Act (IRPA), which allows two federal ministers—the minister of public safety and the minister of citizenship and immigration—to co-sign a document deeming a non-citizen

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15 Where these materials are cited in the article, we have provided the ATI reference numbers for the requests through which they were obtained. By citing these numbers in a request, other researchers should be able to obtain copies of the materials released to us.
16 Matt Yeager, "The Freedom of Information Act as a Methodological Tool: Suing the Government for Data," Canadian Journal of Criminology and Criminal Justice 48 (2006), 499. While acknowledging Yeager’s important theorization of access-to-information challenges—“suing the government for data”—as a method of conflict criminology, we opted not to initiate formal complaints to the Information Commissioner when we felt that our efforts were being stonewalled or unreasonably delayed. In part, this was because of Yeager’s own cautionary tales about the obstacles faced by researchers who undertake such proceedings. Primarily, though, we felt that an investigative strategy that used frequent requests from a variety of angles and with different formulations would yield better results than a smaller number of requests pursued through the formal complaints system.
to be “inadmissible” to Canada “on security grounds.”\textsuperscript{17} This decision is based on intelligence collected and received—in many cases from highly questionable sources, including statements made by individuals held by foreign intelligence agencies known to employ torture\textsuperscript{18}—by the Canadian Security Intelligence Service (CSIS). CSIS is in a privileged position in the Canadian insecurity field, empowered with secret knowledge and clandestine intelligence-gathering techniques that give it the authority to profile threats. While the ultimate decision to sign a certificate is the province of elected politicians capable of wielding sovereign power—in this case, quite literally, the power to declare a case to be exceptional—the targeting of this power and the legitimation of the decision are the responsibility of intelligence officials. This relationship, which Didier Bigo describes as a “dialectic of securitization,” characterizes the entirety of the security-certificate process;\textsuperscript{19} managers of unease engage in risk profiling and intelligence gathering, and politicians mobilize the products of these processes.\textsuperscript{20}

Once signed, a certificate is a warrant for the arrest and detention of the named individual. The CBSA has the authority to enforce a security certificate. If the certificate is upheld by a judge of the Federal Court according to a threshold of objectively reasonable suspicion—as opposed to “beyond a reasonable doubt”—following an\textit{ in camera} and\textit{ ex parte} hearing, it becomes “conclusive proof” that the person named in it is inadmissible and is a removal order that is in force without it being necessary to hold or continue an examination or admissibility hearing.\textsuperscript{21} In its 2002 decision in\textit{ Suresh}, the Supreme Court of Canada ruled that, in the presence of “exceptional circumstances,” this removal could be legitimate even if it exposed deportee to the risk of torture or death.\textsuperscript{22} The individual subject to the security certificate is given an edited summary of the intelligence dossier that forms the basis of the government case, though neither he nor his legal counsel is permitted to view information that, if disclosed, “would be injurious to national security.” There are presently five individuals—all Muslim men—subject to security certificates, and they are known as Canada’s “Secret Trial Five.”

Security certificates have existed, in one form or another, since 1978, though they were first used in 1991. They are not products of the post-9/11 legislative window that gave Canadians the Anti-Terrorism Act, though they

\textsuperscript{17} Immigration and Refugee Protection Act, S.C. 2001, c. 27 [IRPA].


\textsuperscript{19} Bigo, “Security,” 74.


\textsuperscript{21} IRPA at s. 80.

\textsuperscript{22}\textit{ Suresh v. Canada (Minister of Citizenship & Immigration)} (2002), 1 S.C.R. 3 [Suresh].
have certainly taken on a new character and undergone considerable revision since that time, beginning with the passage of the IRPA in 2001. In February 2007, the Supreme Court of Canada in *Charkaoui #1* found the existing security-certificate procedures to be unconstitutional, primarily because of violations of s. 7 of the Charter concerning the right to a fair hearing. The Court struck down the certificate mechanism but, in a display of judicial deference and complicity on matters of national security, suspended the effect of its judgment for a year, giving the government time to plug the constitutional gaps in the IRPA through new legislation. The result, Bill C-3, was introduced toward the very end of the one-year grace period, resulting in a truncated deliberative process that was further chilled by government statements that failing to pass the bill swiftly would jeopardize national security. It gained royal assent in February 2008. This bill introduced security-cleared “special advocates” who can attend *in camera* hearings and challenge classified documents on behalf of the certificate subjects but cannot communicate with them or take direction from them, lest national security secrets be revealed. The process as initially set out still left the government in the position of information gatekeeper. While CSIS had large dossiers of information on each individual, the special advocates were able to view and challenge only those documents that CSIS had submitted to the Federal Court. It took a series of challenges and court decisions, including *Charkaoui #2* for the special advocates to gain the right to access additional files, which, at the time of writing, CSIS has yet to fully produce.

By limiting its concerns about the security-certificate regime to issues around disclosure of information and the ability of the named individual to respond, the Supreme Court gave a stamp of approval to the rest of the process, including “the ability to arrest, detain, and eventually deport (possibly to torture) a person, on reasonable suspicion, with very limited means of testing the evidence or becoming aware of it in the first place,” and, in lieu of deportation, “the administrative limbo of indefinite detention, without charge or conviction.”

More detailed reviews of the legal aspects of security certificates have been produced by previous authors. Our purpose here is only to provide a brief overview in order to set the stage for a discussion of security-certificate detention. For now, it is important to note that there is a growing consensus among Canadian scholars that security certificates are products of a normalized state of exception, which Giorgio Agamben describes as the structure...
of "the camp." Under the state of exception, "individuals are subject to the law, but not subjects in the law," and thus can be detained under a legal regime yet not afforded the rights contained therein. The relationship between states of exception or emergency and legality is well established, and the subject of a considerable body of literature. Recent scholarship in this area has increasingly focused on the notion of a permanent or underlying state of exception that operates alongside and in concert with the "normal" rule of law as part of a "unified political strategy." When the camp becomes a paradigm of government, emergency powers are normalized through the creation of exceptional laws, as Mark Neocleous notes: "far from suspending the law, violent actions conducted in 'emergency conditions' have been legitimated through law on the grounds of necessity and in the name of security." Central to the contemporary creation and application of exceptional laws is the ascendance of precautionary approaches to security, described by Lucia Zedner as illustrations of the "shift from a post- to a pre-crime society, a society in which the possibility of forestalling risks competes with and even takes precedence over responding to wrongs done." Ericson describes how the convergence of the state of exception and the precautionary paradigm can take the form of counter-law, whereby laws are drafted or reinterpreted with the goal of circumventing barriers to preventative action—such as stringent judicial standards and the right to a fair trial—in the name of "preempting imagined sources of harm."

The Canadian security-certificate mechanism is a textbook example of counter-law: the stated end is precautionary national security, "the established law for the trial and conviction of criminal offences is suspended and declared to be inapplicable to non-citizen detainees," and an obscure component of immigration law is used in its place. The result, as Sherene Razack notes, is a form of pre-emptive punishment, made possible by race thinking and cultural paranoia operationalized through a bureaucracy of suspicion. Categorical suspicion and preventive detention go hand in hand in security-certificate cases. The dossier of intelligence material that forms the basis of the decision to issue a certificate is not a compilation of evidence in support of a case about past wrongdoing. Rather, the material is intended to

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29 Agamben, *Homo Sacer*.
33 Ibid., 71.
36 Ibid.
37 Razack, *Casting Out*, 34.
construct the named individual as a threat to Canada—in the past, present, or future—on the basis of a profile. Drawing these threads together, we argue that security certificates can best be understood as mechanisms of normalized exceptionality that are given form and a semblance of legal legitimacy through counter-law and a political-managerial dialectic of securitization and that operate according to a precautionary and pre-emptive logic. The remainder of this article deals with how this legal exceptionality is reflected in and supported by the institutional structure of the security certificate prison—the Kingston Immigration Holding Centre.

From Metro West to Millhaven via the Boardroom: The Road to KIHC

Prior to the creation of KIHC in 2006, security-certificate detainees were held in provincial detention facilities, through arrangements between the provinces and Citizenship and Immigration Canada. These arrangements paralleled the procedures for the detention of “high-risk” immigration prisoners more generally, illustrating the deep and long-standing links between immigration enforcement and institutions of penality. According to established policy, when their certificates were upheld by the Federal Court, each of the “Secret Trial Five” was placed in provincial custody, in facilities such as the Ottawa—Carleton Detention Centre (Ottawa), the Metro West Detention Centre (Toronto), and the Centre de détention de Rivière-des-Prairies (Laval). While a certificate cannot be directly appealed once it is upheld, each of these men professed his innocence and set about challenging the legality of the certificate regime. None of them elected to leave the country voluntarily, and four have families in Canada. In all cases, the men, who were—prior to becoming certificate subjects—refugees or permanent residents hailing from Algeria, Egypt, Morocco, and Syria, argued that deportation would expose them to a risk of torture or death. This argument is certainly reasonable, given the recent experiences of individuals who have been “rendered” abroad after being branded “terrorists” by the Canadian state. To deport the men, given this risk, would place Canada in violation of art. 3 of the UN Convention Against Torture, which prohibits refoulement—removal to torture. In theory, the aforementioned “Suresh exception” would allow the government, under Canadian law, to proceed with deportation nevertheless,

39 Prior to the creation of CBSA, the Enforcement Branch of Citizenship and Immigration Canada (CIC) was responsible for coordinating security-certificate detention.
40 Pratt, Securing Borders.
41 Mohamed Mahjoub was arrested on June 26, 2000; Mahmoud Jaballah in August 2001; Hassan Almrei on October 19, 2001; Mohamed Harkat on December 10, 2002; and Adil Charkaoui on May 21, 2003.
42 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, 1465 U.N.T.S. 85. The treaty entered into force on June 26, 1987; Canada acceded to it on June 24, 1987.
but this loophole has not been used. By resisting the certificate process and subjecting it to ongoing legal challenges, the “Secret Trial Five” transformed this little-known mechanism into a contentious political topic. The price they pay for their resistance is prolonged indefinite detention.

In the Canadian penal system, individuals sentenced to terms of imprisonment of two years plus a day are placed in federal penitentiaries operated by CSC. Typically, prisoners in provincial prisons are serving sentences of two years less a day. Jails and detention centres that also fall under provincial jurisdiction are used for remand custody, short-term immigration detention, and short sentences. Provincial jails are not designed for long-term detention; they are crowded places with comparatively transient populations and a bare minimum of services. The “Secret Trial Five” each spent well over two years in these facilities, and as far as they knew at the time, they would remain there until their certificates were quashed or they were deported. Facing indefinite detention, the men protested their conditions of confinement, beginning with protracted hunger strikes, using their bodies as sites of resistance. Pressure mounted on the federal and provincial governments, both from the strikes within the prison and from the growing opposition to security certificates without. The provinces recognized that, despite the fact that security certificates fall under federal jurisdiction, if a detainee became seriously ill or died while on hunger strike in protest of his conditions of confinement, they would be held at least partially responsible. Documents obtained under the Access to Information Act show that in 2005 a secret memorandum for the minister was prepared by the Department of Public Safety, stating that

senior officials from Ontario are now indicating that as a result of the pending legal challenges by the s. 77 detainees concerning their conditions of confinement, the province would like the federal government

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44 It should be noted that the s. 16(1) of the Corrections and Conditional Release Act, 1992, c. 20, permits “The Minister . . . with the approval of the Governor in Council, enter into an agreement with the government of a province for (a) the confinement in provincial correctional facilities or hospitals in that province of persons sentenced, committed or transferred to penitentiary; and (b) the confinement in penitentiary of persons sentenced or committed to imprisonment for less than two years for offences under any Act of Parliament or any regulations made thereunder.” An example of this clause in action is the agreement between the government of Canada and the government of Newfoundland and Labrador, which “as a province without a federal penitentiary . . . is in a unique position as it may elect to house federally sentenced inmates within a provincial facility.” See Government of Newfoundland and Labrador, “Minister Meets with Federal Minister Regarding New Penitentiary” (news release, April 3, 2008), http://www.releases.gov.nl.ca/releases/2008/just/0403nl12.htm.
47 A separate paper needs to be written to adequately explore the politics of the hunger strikes. For the purposes of this discussion, we note only that they were long, serious, and ultimately influential as catalysts for political action. Unfortunately, this action did not conform to the demands to “charge or release” the detainees.
to assume responsibility for their continued detention, creating a need for the federal government to develop a viable short-term solution.\textsuperscript{48}

The Department of Public Safety immediately began to move forward with the development of this “solution,” a process that eventually led to the creation of KIHC, which opened in April 2006. We were initially struck at the short period of time that elapsed between the formal request from the province of Ontario and the creation of an operational hybrid detention facility. We suspected that the plan to create a facility resembling KIHC must have been drafted, or at least outlined, at an earlier date. Further ATI requests confirmed our hypothesis.

As it turns out, the story of KIHC begins in the immediate aftermath of the September 11 attacks, while Western nations were under intense internal and international pressure to be seen to be taking serious action on matters of security and anti-terrorism.\textsuperscript{49} In its rush to respond, the government of Canada embraced the approach that exceptional measures found outside the realm of “normal” political practices in democratic nations\textsuperscript{50} were needed to address these concerns. On November 28, 2001, CSC tabled a secret draft document titled “Detention of Individuals Not Serving a Sentence Nor Awaiting Trial: Position of the Correctional Service of Canada.”\textsuperscript{51} We obtained a heavily redacted version of this document through an ATI request. The report was developed in collaboration with an Interdepartmental Working Group on Detention Issues, which included representatives of Citizenship and Immigration,\textsuperscript{52} the Department of Justice, the Department of National Defence, the RCMP, the Solicitor General, the National Parole Board, and CSC. The document begins with the following statement:

The events of September 11, 2001, as well as initiatives such as the Bills C-11 and C-36 have the potential for creating an increased need for detention in Canada—either emanating from illegal immigration or refugee claims, Prisoners of War requests or International Criminal Court results. In anticipation of ministerial direction on this issue, an analysis was undertaken to determine how the Correctional Service of Canada (CSC) should best assist Citizenship and Immigration Canada (CIC) and other Departments or Governments.

\textsuperscript{48} Deputy Minister of Public Safety and Emergency Preparedness Canada (PSEPC), Memorandum for the Minister: Federal Detention of Individuals Subject to Security Certificates (September 2005), 2 [PSEPC Federal Detention Memorandum]. Obtained through ATI request no. A-2007-01287 to CBSA.


\textsuperscript{51} CSC Strategic Planning Division—Policy, Planning and Co-ordination Sector, Detention of Individuals Not Serving a Sentence Nor Awaiting Trial: Position of the Correctional Service of Canada (Draft, November 28, 2001) [CSC Position Paper]. Obtained through ATI request no. A-1336-2008-0023/ah to Public Safety Canada.

\textsuperscript{52} See note 39.
The paper recommends that CSC’s position with respect to detention (i.e., persons detained for reasons other than serving a sentence or awaiting trial) be to share its correctional expertise, [REDACTED].

Section 3 of the report concerns the issues that CSC proposed needed to be taken into consideration when determining the type of assistance CSC was able to provide to other departments. Several legal issues are highlighted, including the specificity of CSC’s legal authority to confine “inmates” and “offenders” and the distinctly correctional nature of its mandate, as set out in the Corrections and Conditional Release Act (CCRA). The tension between precautionary, indefinite, administrative detention and the correctional mandate of Canada’s federal correctional service is discussed at length later in this article, but it is important to note, in the context of this history of KIHC, that the government was aware of the problem well before talks about the facility began. Additionally, while CSC eventually became a partner in the creation and operation of KIHC, this is not to say that the arrangement was embraced enthusiastically from the outset. Potential problems arising from its involvement in incarceration outside the correctional framework—from legal, human-rights, financial, and human-resource perspectives—were noted by CSC as early as 2001. While it is certainly the case that many security processes are the products of competition around truth claims between managers of unease, CSC’s involvement in the KIHC project appears to be characterized by reluctance and driven by appeals to pragmatism.

The bulk of the CSC Position Paper is devoted to outlining three options or models for CSC assistance in the detention of persons not serving a sentence nor awaiting trial, two of which have been redacted pursuant to ss. 21(1)(a) and (b) of the Access to Information Act. The remaining option concerns the “sharing of correctional expertise,” which, according to the outline provided in the report, involves everything from technical assistance and advice to the design or location of potential new facilities, along with the provision of staff, training, or secondments. This was the option that was adopted, at the recommendation of CSC. Again foreshadowing the eventual KIHC arrangement, the report notes that the sharing of correctional expertise could be accomplished through the “co-ordination and authorization of agreements or MOUs between Departments, Governments or other countries.” Despite the title of this option and the aforementioned concerns around CSC’s correctional mandate, the outline of the expertise to be shared

53 CSC Position Paper, 3.
54 See note 44.
55 As observed by Bigo, “Security.”
56 Ss. 21(1)(a) and (b) of the act, under the heading “Operations of Government: Advice, etc.,” allows the agency in question to refuse to disclose records concerning advice or recommendations developed by or for a government institution, or records concerning accounts of deliberations in which members of the government participate.
57 CSC Position Paper, 10.
makes it clear that it was not correctional assistance but, rather, knowledge and services related to maximum-security detention that were of interest.

When Public Safety officials received requests to develop a federal detention “solution” in 2005, they were able to dust off position papers and policy proposals along the lines of the 2001 CSC report. While the exact nature and physical location of the new facility had yet to be decided, it was clear from the start that the “solution” would be collaborative in nature, with CBSA maintaining “authority and responsibility for the detention and supervision of s. 77 cases” and CSC playing a role “limited to providing support and assistance, as well as potential shared services.”

A draft report titled *Options for Detention of Persons Detained Pursuant to Section 77 of the IRPA—"Security Certificates" Using Government of Canada Controlled or Operated Facilities*, prepared by the Department of Public Safety, states that in May 2005, both CBSA and CSC were asked to prepare position papers on the subject. CSC responded by updating its 2001 report, and the CBSA tabled its own document, arguing that it did not have the capacity to detain persons deemed to be “high-risk.” In June 2005, the Corrections Policy branch of the Department of Public Safety was “tasked with merging the two [CSC and CBSA] policy papers . . . into one Portfolio document.” By October, the government of Canada committed to moving the detainees from provincial to federal custody within four to six months.

Several possibilities for a federal detention centre were considered before the decision was made to create a facility on the grounds of Millhaven. For example, a September 2005 secret memorandum for the Minister of Public Safety noted that “officials are exploring the option of using an existing former provincial correctional centre or a former federal penitentiary, under the authority of the Canada Border Services agency, to facilitate the detention of federal security certificate cases.” A similar memorandum from October 2005 outlines a proposal for a “short-term” solution that included “installing ‘portable’ high-security units at an existing federal penitentiary or provincial correctional centre.”

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58 Deputy Minister of Public Safety and Emergency Preparedness Canada (PSEPC), Memorandum for the Minister: Detention of Individuals Subject to Security Certificates (September 26, 2005), 2, 6 [PSEPC Federal Detention Memorandum]. Obtained through ATI request no. PS-SP A-2008-0023 to Public Safety Canada.


60 Ibid, 1.

61 CBSA, Table of Contents for Qs&As for Standing Committee and Follow-Up Questions from the Media (October 25, 2006), Q22 [CBSA Qs&As]. Obtained through ATI request no. A-2007-01287 to CBSA.

62 PSEPC Federal Detention Memorandum, 1.

63 Deputy Minister of Public Safety and Emergency Preparedness Canada (PSEPC), Memorandum for the Minister: Detention of Individuals Subject to Security Certificates (October 7, 2005), 1. Obtained through ATI request no. PS-SP A-2008-0023 to Public Safety Canada.
agreed on a set of principles that would dictate the selection process. “Persons detained pursuant to security certificates,” they stated,

- should preferably be detained in federal facilities as opposed to provincial correctional facilities;
- shall be detained and reside in facilities owned and/or operated and/or wholly controlled by an agency or agencies of the Government of Canada consistent in what is currently understood in correctional parlance to be a “maximum security” environment;
- should be detained in individual, security accommodations which allow no contact or personal interaction between the detainees consistent with a “maximum security-isolation” operating concept for high-risk individuals.\(^64\)

In addition to these criteria, the selection process relied on a number of pragmatic concerns, particularly regarding site location and cost-effectiveness. An October 25, 2006, set of talking points—in the form of questions and answers—prepared for government officials appearing before the Standing Committee on Citizenship and Immigration states that the facility was built in Kingston (1) because Millhaven is a central point between Ottawa and Toronto, the cities where the current detainees and their families were based; and (2) because Millhaven had “existing facilities to accommodate a separate building to house” the detainees.\(^65\) An April 5, 2006, “Questions and Answers Index” on KIHC prepared by CBSA notes that “this facility was built in the most cost-effective and secure manner possible.”\(^66\) For example, by partnering with CSC, CBSA was able to realize cost savings by building the new detention facility within the confines of Millhaven Institution; CBSA was also able to modify an existing facility on the site, which helped to keep construction costs low, again illustrating the role played by bureaucratic appeals to pragmatism in the development of KIHC.

Construction of KIHC began during the fourth quarter of 2005. The start-up cost for the facility was $3.2 million, and its annual operating budget has been quoted as falling between $1.6 million and $2.6 million.\(^67\) On April 24, 2006, CBSA issued a press release\(^68\) announcing the opening of KIHC on the grounds of Millhaven Institution and reporting that the four individuals who were—at the time\(^69\)—subject to security-certificate detention had been

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\(^{64}\) CBSA, Options for Detention of Persons Detained Pursuant to Section of the IRPA—("Security Certificates") Using Government of Canada (Federal) Controlled or Operated Facilities (Draft, July 2005), 6. Obtained through ATI request no. PS-SP A-2008-0023 to Public Safety Canada. Note that the third point was eventually discarded.

\(^{65}\) CBSA Qs&As, Q23.

\(^{66}\) CBSA, Questions and Answers Index: Kingston Immigration Holding Centre (updated April 5, 2006), Q8. Obtained through ATI request no. A-2007-01287 to CBSA.

\(^{67}\) Ibid. (note that while 2006 documents set the projected annual operating cost at $1.6 million, more recent documents show it to be considerably higher).


\(^{69}\) Adil Charkaoui was released on strict bail conditions, still subject to a security certificate, on February 18, 2005.
transferred to the new facility. The construction of KIHC was kept secret, as was the process of deliberation that we have outlined here, meaning that the April 24, 2006, press release marked the first time that the public was made aware of its existence—though by that time the detainees and their counsel were aware of a pending federal transfer. The secrecy around the opening of the detention centre is indicative of “the process of securitization [which] yields a hurried policy that often excludes or limits public debate.”

The facility itself is unremarkable in appearance, which is not surprising given that it is essentially a collection of retrofitted utility sheds, resembling the kind of portable building often found outside high schools. KIHC has a maximum capacity of six and consists of a housing unit and a separate building with a gym, medical room, and visiting area. This enclave is located on the grounds of Millhaven but separated from it by a barbed-wire fence. It is a spatial demonstration of the operation of the state of exception as an inclusive exclusion—a camp located within a correctional institution but simultaneously differentiated from it by an internal layer of fences, security cameras, and policy.

Authority, Capacity, and the Blurring of Mandates: The KIHC MOU

Having set out the story of how KIHC came to be, we now turn our attention to its juridico-political framework. This arrangement is best described as a creative exercise in penal pragmatism. As we have shown, government officials knew that they had to develop a federal detention “solution” for the security-certificate detainees, and they knew that the agency with the most expertise and capacity in the area of confinement was the Correctional Service of Canada. However, CSC had made it clear that the detention of persons neither charged with nor convicted of a crime was something that contradicted its correctional mandate. The challenge was to create an arrangement that would allow CSC to act as a detention service, providing incarceration and supervision without the correctional trappings that supposedly define its mission. This also had to be accomplished behind closed doors and largely in secret—certainly without the drafting of any legislation to amend the CCRA.

This arrangement was created and is sustained by a memorandum of understanding (MOU) that establishes distinct roles for the two agencies involved in the operation of KIHC. This contract sets up a collaborative operational framework that is built upon legal distinctions between authority and capacity; each of the participating agencies brings one of these qualities to the table. The CBSA-CSC Detention MOU begins by setting out the problem

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72 For further details on the layout of the facility see Standing Committee on Citizenship and Immigration, Report, 17–18.
73 This contract is automatically renewed on April 1 of every year.
that it is intended to solve. We reproduce the wording here in detail, as the MOU is not a publicly available document:

WHEREAS the *Immigration and Refugee Protection Act*, S.C. 2001, c.27, (hereinafter called “IRPA”) allows for or requires the detention of persons for administrative purposes;

[...] 

WHEREAS CSC has the management of the building complex and land known as Millhaven Institution, situated on Highway 33, in the city of Bath, in the Province of Ontario, later referred to as “Millhaven Institution”;

WHEREAS the CBSA would like to occupy part of the Millhaven Institution for the purpose of detaining some persons pursuant to the IRPA;

WHEREAS the CBSA recognizes that it does not have the capacity to detain those persons at the present time;

WHEREAS CSC is recognized as the main provider of federal detention services at the present time and could assist the CBSA in accomplishing the mandate related to the detention of the persons pursuant to the IRPA ... 74

It then goes on to outline the general principles of the arrangement:

1. For all aspects of the management of an immigration holding centre the CBSA is the ultimate authority and the legislation is the IRPA;
2. Unless otherwise defined in this MOU, words defined in the IRPA and in the Regulations thereunder have the same meaning when used in this MOU;
3. The CBSA is responsible for the administration of Canada’s immigration detention program. The CBSA is the detaining authority and has sole and absolute jurisdiction in all matters and questions pertaining to the exercise of detention authority;
4. Detention Authority does not vest in nor is it delegated to the CSC in any degree;
5. The role of the CBSA is to provide oversight and monitoring of services provided by CSC under this MOU according to the IRPA and the CBSA policies and procedures;
6. The role of CSC is to provide the detention facility and services required by the CBSA in this MOU in the manner of a contract service provider for and on behalf of the CBSA;
7. Immigration detention is civil and administrative in nature;
8. Detainees are not serving a criminal sentence, nor are they being held on a warrant of committal and consequently shall not be treated as such;
9. To the greatest extent possible, there shall be no contact or communication between any detainee and any inmate of the Millhaven Institution or any other CSC institution or facility;
10. In all matters relating to detainees, the CBSA and its staff shall be the primary point of contact with the Royal Canadian Mounted Police

74 CBSA-CSC Detention MOU, 1.
(RCMP), the Canadian Security Intelligence Service (CSIS) and other lead agencies.\(^75\)

Through this arrangement, KIHC is able to exist as a stable and normalized exception, separate from the existing penal system but, at the same time, clearly within it. It is not simply a special wing of Millhaven Institution, as such a space would still be required, at least on paper, to operate according to the general rules of the federal prison system outlined in the CCRA. As General Principles 7–9 above indicate, however, the government has made maintaining a technical differentiation between security certificate detention and “normal” imprisonment one of the foundational principles of KIHC. Instead of a special wing, it is a camp that is operated by CSC “in the manner of a contract service provider for and on behalf of the CBSA.”\(^76\)

This is a unique collaborative arrangement that allows CSC to act well outside of its mandate while simultaneously insisting that said mandate remains intact.

The normalized exception created by the MOU has a definite spatial character, with the perimeter of KIHC acting as a threshold. The powers of CSC employees who cross this threshold undergo a transformation that allows them to carry out their contracted duties. Within the prison, the CCRA grants CSC employees peace-officer status pursuant to the enforcement of their correctional mandate. Once they cross into the KIHC enclave, a new source of power is required. Accordingly, s. 26 of the MOU states that CSC employees’ “peace officer status under the CCRA will cease to apply in the KIHC and will be replaced by the peace officer status provided in the IRPA.”\(^77\) These employees are correctional officers on one side of the fence and immigration detention officers on the other; they move back and forth between the space of the prison and that of the camp, the fundamental constant being a polyvalent power to detain.

Ericson’s concept of counter-law is applicable here. While security certificates themselves allow immigration law to be used in place of criminal law in order to facilitate precautionary national-security policy, the KIHC MOU uses a legal contract to circumvent the correctional and criminal-justice aspects of CSC’s mandate in order to facilitate preventive detention. In both cases, discourses of security are mobilized to legitimize the use of law to sidestep law. The IRPA gives CBSA the authority to engage in precautionary detention, and the KIHC MOU provides the capacity for the exercise of that authority, giving the exception a normalized and stable institutional setting in the process. The link between the assertion of exceptional authority and the creation of exceptional institutional capacity is worth underscoring, as it highlights the essential relationship between law and other structures of governmental power.\(^78\)

\(^75\) Ibid. 2–3.  
\(^76\) Ibid.  
\(^77\) Ibid., 5.  
To fully appreciate the extent to which the KJHC arrangement represents a departure from CSC’s standard operations, we must read the facility’s MOU against the backdrop of CSC’s own discourse and legislative framework. In its official reports and public communications, CSC embraces and emphasizes the importance of the correctional focus of its mandate. Its own official history, as set out in its online interactive timeline, describes a progressive and modernizing evolution throughout the twentieth and early twenty-first centuries, away from ideals of punitiveness and toward a logic of corrections and rehabilitation. We mention this not to endorse uncritically CSC’s version of the history of imprisonment in Canada but to emphasize the continued centrality of correctional themes in its own claims-making. According to its policies, official accounts, and legal framework, CSC is a prison service that is defined by its correctional mandate. The KJHC arrangement shows how malleable and precarious this mandate can be under “exceptional circumstances.”

The CCRA describes CSC as “the federal government agency responsible for administering sentences of a term of two years or more, as imposed by the courts [and for] managing institutions of various security levels and supervising offenders under conditional release in the community.” By participating in the operation of KJHC, CSC has moved beyond this framework and is now involved in the indefinite “detention of individuals not serving a sentence nor awaiting trial.” The fact that a portion of CSC’s mandate—the portion that deals with the managed deprivation of liberty—can be partitioned off and contracted out in such a mercenary fashion is alarming, but not entirely surprising. The reconfiguration of personnel, space, and purpose reveals the underlying state of exception that permeates all institutions, ready to be invoked when necessity and the declared imperatives of national security dictate.

The emphasis that CSC puts on its progressive and rehabilitative mandate is reflected in the published “Core Values” of the organization. Here again, the KJHC arrangement represents a departure from CSC’s description of itself. For example, Core Value 1 states, “We respect the dignity of individuals, the rights of all members of society, and the potential for human growth and development.” Security-certificate detention is based on the recognition of different rights for non-status persons, who can be detained indefinitely without charge or trial. Further, as we have shown, the detention regime at KJHC is administrative and preventative in nature, explicitly set apart from

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79 CSC, “Corrections in Canada: An Interactive Timeline,” (December 27, 2007), http://www.csc-sec.gc.ca/hist/index-eng.shtml. The most recent additions to this official account, which deal with the impact of September 11 and new security and risk-management practices, retain their emphasis on treatment within a criminal-justice framework. Indeed, CSC makes a point of advertising its expertise in exporting this framework through international collaborative arrangements (see CSC Core Value 4; CSC, “Organization”).

80 CSC, “Organization.”

81 CSC Position Paper.

82 CSC, “Organization.”
any rehabilitative regime said to be based on growth and development. Core Value 2 states that CSC recognizes “that the offender has the potential to live as a law-abiding citizen.” This assertion is also obviously troubled by the KIHC arrangement, which, unlike a correctional sentence, is not a sanction imposed in response to law-breaking. Indeed, none of the detainees who have been held at KIHC have had criminal records, and all can claim to be law-abiding. The security-certificate regime is based on the claim that its subjects must be permanently physically excluded in order to protect law-abiding citizens. Finally, Core Value 5 states that CSC believes “in managing the Service with openness and integrity,” a commitment that is undermined by the highly secretive nature of KIHC. Again, we make no claim here about the extent to which CSC’s Core Values are actually reflected in its standard practices. Rather, we emphasize the extent to which CSC’s involvement in the operation of a camp represents a departure from its stated objective and values. As Thomas Mathiesen has argued, when examining the imperatives that have guided penal policy and practice over time and today, what holds true is that the imperatives of security trump all others, including those under the rubric of “corrections” and justice.

Caught Between the Camp and the Prison: The Everyday Operation of KIHC

We turn now from the MOU that shapes the KIHC arrangement to a discussion of the day-to-day operation of the facility, which falls to specially cross-trained CSC correctional officers, reporting to a CBSA manager. Bigo, in his work on security professionals, suggests that actors from diverse positions within the insecurity field share a habitus—a set of dispositions, perceptions, and skills—defined by a particular “sense of the game” or common illusio, built around the legitimate application of discourse, authority, and technology to the objective problem of “security.” We can certainly situate CSC within the broader insecurity field, and we might therefore expect that CSC officers would share a certain sense of the “security game” with CBSA officials. However, CSC officers also bring with them a professional habitus associated with their background and socialization within the correctional field, itself a part of the criminal-justice system. KIHC operates as a total institution characterized by hierarchical relationships, whereby officials scrutinize the actions of the subjects in order to ensure conformity and institutional order. As we will show below, despite the technical differences between immigration detention and “corrections,” the punitive

83 Ibid.
84 Ibid.
mentality and disciplinary practices of these professionals are not so easily set aside.

Through Access to Information requests, we obtained copies of KIHC’s detention-officer training materials, including printed PowerPoint slideshows, course handouts and guidebooks, test questions and answers, and program outlines. These materials provide unique insight into the pedagogical processes intended to produce hybrid correctional—immigration enforcement professionals, described in some documents as “multi-function detention officers.” In addition to instruction on KIHC policies and procedures, part of the training focuses on developing “basic knowledge of the Immigration and Refugee Protection Act (IRPA)” and security certificates. Religious and cultural sensitivity training specifically tailored to the profile of the current detainees—who are often referred to using the acronym ISSC, for Individuals Subject to Security Certificate, or simply as “s. 77 cases”—are also included. Detention-officer training includes lessons intended to familiarize CSC staff with a range of national-security activities, framing them as players within the broader insecurity field. The training materials emphasize themes of collaboration and integration, noting that “detention officers will become more interactive with CBSA and other Federal Law enforcement Departments and this will require more combined training.”

The “high risk” status of the detainees is emphasized throughout the training documents. For example, a December 11, 2007, training session given to KIHC staff by CBSA’s manager of counter-terrorism (National Security and Intelligence Directorates) included backgrounders on all current certificate cases, with an in-depth discussion of the case of Hassan Almrei. Almrei is described as a “member of an international network of extremist groups and individuals, who follow and support the Islamic extremist ideals of Osama Bin Laden.” Mr Almrei had, at the time of this briefing, been in detention without incident since October 2001. But CSC employees, as detention service providers, do not have the authority to re-evaluate risk in relation to security-certificate detainees. KIHC detention is, by definition, “high risk.” This means that when the continued detention of an individual subject to security certificate is finally deemed unreasonable by the Federal Court—as has now happened in all cases, Almrei having been released in February 2009—the individual goes directly from the maximum-security KIHC setting to a restrictive form of conditional release, with no intermediary medium-security custodial option. This is consistent with the rest of the security-certificate process, in which the demonstrable present-day actions

89 Documents related to detention-officer training were obtained through ATI request no. A-2008-00205 to CBSA. Many of these documents are untitled and undated.
90 CBSA, Kingston Immigration Holding Center Training and Development (attachment to an e-mail message sent November 16, 2007). Obtained through ATI request no. A-2008-00205 to CBSA.
91 CBSA, Hassan Almrei.doc (attachment to an e-mail message sent December 10, 2007). Obtained through ATI request no. A-2008-00205 to CBSA.
92 Larsen et al., “Justice in Tiers.”
of the subjects themselves are disregarded and their status as embodied threats is based on professionally constructed profiles that serve to target and to condemn.  

Razack emphasizes the role that racialized profiles play in certificate hearings. We note that race thinking and cultural profiling extend beyond the court to the space of detention. KIHC was built with a specific prisoner profile—that of the Muslim male—in mind, and the staff receive extensive cultural training to reflect this idea. Operating guidelines make allowances for religious and spiritual practices, and *halal* food is provided in cooperation with the Kingston-area Muslim community. At a spatial level, one draft Q&A document states that the “detention units have been positioned to facilitate praying in the north east direction.” Whether these features and policies are interpreted as worthy acts of cultural accommodation or as extensions of systemic racism, it is clear that KIHC is a camp that has been purpose built around the profile of its inhabitants.

Following their transfer to KIHC, the four initial detainees filed a series of complaints and began renewed hunger strikes in protest of their conditions of detention. In addition to specific complaints about the physical structure of the facility and the provision of health care services, the men expressed the opinion that their treatment was far too regimented and punitive for untried administrative detainees. In a November 2006 brief to the Standing Committee on Citizenship and Immigration, the detainees requested that “the CSC staff who supervise them be replaced with CBSA staff, because CSC staff are used to dealing with criminals and treat them as such.” This observation illustrates the shared characteristics of total institutions, whereby captors operate on the assumption that they are superior to their captives and thus are required to enforce that hierarchical relationship as part of their professional duties. Following its investigation, which included several site visits to KIHC, the committee advised Parliament that “while the KIHC shares many of the elements of a penitentiary, it cannot be run as one, and the mindset of those responsible for the facility must reflect that.” In addition to general allegations of mistreatment and criminalization, they cited some specific policies that seemed unnecessarily transplanted from a correctional framework. For example, the President’s Directives for KIHC initially required that the guards undertake daily formal head counts, during which “each detainee is counted individually, with no movement allowed and resulting in an official record which is maintained.” The facility rules also require

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94 See *ibid*.
95 CBSA Qs&As, Q59.
96 Standing Committee on Citizenship and Immigration, *Report*.
98 Goffman, *Asylums*.
100 CBSA, President’s Directive PD 566-4: Detainee Counts (March 2006), 2. Obtained through ATI request no. A-2007-01287 to CBSA.
that the detainees wear prison uniforms during visits.\footnote{CBSA, \textit{Kingston Immigration Holding Centre: Individuals Subject to Security Certificate Handbook} (October 2006). Obtained through ATI request no. A-2008-00205 to CBSA.} Drawing on the work of Michel Foucault,\footnote{Michel Foucault, \textit{Surveiller et punir} (Paris: Editions Gallimard, 1975).} we have argued elsewhere that such practices reflect the transferability of carceral techniques of disciplinary power to control the prisoners at KIHC.\footnote{Larsen and Piche, "Incarcerating the 'Inadmissible,'" 8.} Combined with the enforcement of a daily routine, “movement controls,” the maximum-security setting, and pervasive surveillance, these policies give detention at KIHC the character of a penal regime.\footnote{Pratt, \textit{Securing Borders}, 40.} 

Despite its punitive characteristics and the mentality of its managers, administrative detention at KIHC remains separate from correctional imprisonment in a number of important ways. The KIHC MOU clearly states that “immigration detention is civil and administrative in nature” and that “detainees are not serving a criminal sentence, nor are they being held on a warrant of committal and consequently shall not be treated as such.”\footnote{CBSA-CSC Detention MOU, 2, 3.} Aspects of policy associated with the management of the deprivation of liberty migrate easily from CSC’s standard playbook to the KIHC President’s Directives and Standing Orders, but the nature of the detention prohibits the provision of rehabilitative or programming services, despite CSC’s professed expertise in this area. Thus, there are clearly established policies for detainee movement, visitor screening, searches, drug detection, use of force, use of restraint equipment, and responding to security incidents\footnote{Copies of the KIHC President’s Directives and Standing Orders, which span several hundred pages, were obtained through ATI request no. A-2007-01287 to CBSA.} but no provisions for educational or recreational programs, paid work, or access to the Millhaven library. Detainees are also denied trailer visits with spouses, as CSC considers such visits part of a rehabilitative framework and therefore unsuited to security-certificate detention.\footnote{Standing Committee on Citizenship and Immigration, \textit{Report}, 20.} Since security-certificate imprisonment falls into a preventive, “pre-crime” paradigm, it makes no provision for post-crime rehabilitation.\footnote{Zedner, “Pre-crime.”} The result is that security-certificate detainees occupy an ambiguous space that shares the worst of both worlds: the residual punitiveness of a set of policies imported from the prison and the day-to-day limbo of long-term indefinite detention associated with the camp.

One of the clearest illustrations of this ambiguity is the grievance procedure in place at KIHC. Under the pre-KIHC provincial detention arrangements, complaints filed by Ontario security-certificate detainees fell under the jurisdiction of the Office of the Ontario Ombudsman. At the federal level, all other prisoners under the custody of CSC have recourse to the
Office of the Correctional Investigator (OCI), an arm’s-length ombudsman empowered by Part III of the CCRA
to conduct investigations into the problems of offenders related to
decisions, recommendations, acts or omissions of the Commissioner or any person under the control and management of, or performing services for, or on behalf of, the Commissioner, that affect offenders either individually or as a group.109

When the detainees were transferred to KIHC, they fell into a gap between provincial and federal grievance procedures: they lost access to the Ontario Ombudsman and did not gain access to the OCI—an arrangement that the OCI protested.110 Instead, a new redress policy was developed by the CBSA, outlined in KIHC President’s Directive 081. This policy operates internally, without the benefit of an arm’s-length ombudsman with legislative authority. It also requires that complaints and grievances be directed toward either CSC or CBSA, depending on the problem. A lack of clarity over jurisdiction resulted in considerable confusion about the grievance process, particularly in the period immediately following the opening of KIHC.111 The exclusion of the detainees from access to the standard grievances afforded to other prisoners at Millhaven Institution again reveals how the ambiguity associated with KIHC’s legal status seems to work consistently against the detainees, constructing them as beings without the rights enjoyed by “inmates” while simultaneously subjecting them to the modes of observation and control associated with the prison setting.

Conclusion: Beyond “Guantánamo North” and Security Certificates

The Kingston Immigration Holding Centre opened its doors in April 2006. It was thought that the facility would enter a dormant period following the release of Hassan Almrei in February 2009. According to the MOU, the KIHC arrangement will continue until one of the signatories chooses to terminate it, or until such a time that there are no individuals subject to security certificate in Canada, whether in detention, at large, or on conditional release.112 For a brief period, the facility was indeed dormant, and there was a sense that the creation and operation of the centre would represent an exceptional short-term detour from “normal” Canadian federal imprisonment.113 In March 2009, however, Mohammad Mahjoub elected to return to prison, citing the oppressive impact of his release conditions on his family.114 At present, he remains the sole occupant of the KIHC. If, at some point in the future, the MOU’s conditions for the closure of the facility

109 CCRA at s. 167(1).
112 CBSA-CSC Detention MOU, 8.
113 Larsen and Piché, “Incarcerating the ‘Inadmissible.’”
are met and the Millhaven prison reabsorbs the enclave, the spectre of KIHC will remain, illustrating the potential for the underlying state of exception to remake law and institutions in its own image.

We have attempted to provide a detailed historical and operational sketch of KIHC, with the goal of establishing it as a uniquely Canadian concretization of the logic of the camp. It will almost certainly remain “Guantanamo North” in the public lexicon, as the label is by now deeply ingrained. Nevertheless, we hope that this article has provided readers with an understanding of how different KIHC is from Guantánamo, despite certain shared attributes. The camp can take different forms, and, while the underlying operation of counter-law is a common feature of such spaces, the manner in which they are created and maintained, along with the actors involved, varies tremendously from context to context.

At KIHC, the state of exception is realized through a form of bureaucratic absolutism. The state of exception, in the form of “laws against law” and “rules about exceptions to rules,” is certainly at the heart of the security-certificate regime, but the operationalization of exceptionality demands—and is reinforced by—the involvement of professionals and institutions operating within a governmentality of unease. As we have emphasized, security certificates operate through counter-law as opposed to the wholesale suspension of law, which makes them all the more insidious, as the juridico-political space of the camp emerges within an institutional setting, cloaked by law, buried in volumes of policy and administration, and consequently claiming legitimacy.

The history of KIHC, from initial deliberations about extraordinary detention in 2001 to the drafting of the MOU in 2006, reads like a series of steps made in the name of bureaucratic pragmatism, stemming from the initial premise that long-term indefinite detention as authorized by the IRPA is both necessary and legitimate. This is the danger inherent in the drafting of counter-laws that enable exceptional detention: the enforcement of those laws necessarily gives rise to subsequent and ancillary exceptions at the institutional level, like ripples emanating from a stone dropped in a pond. What begins with an obscure provision under immigration law results in special courts, special prisons, special advocates, special conditions of release, and so on, all framed as logical and common-sense extensions of the underlying counter-law. These ripple effects have the potential to change institutions and agency mandates, sometimes irrevocably, as may be the case with CSC’s involvement in KIHC. Perhaps KIHC will prove to be an experiment, a first step in the reformulation of CSC as the de facto “Detention Service of Canada,” an evolutionary response to the emergent “pre-crime” paradigm.


116 The federal penitentiary system is under perpetual “transformation.” In response to the release of the report Correctional Service Canada (CSC) Review Panel—A Roadmap to Strengthening Public Safety on October 31, 2007, CSC quickly established a Transformation Office in January 2008 to oversee the implementation of recommendations outlined in the document. The authors of the document recommended, among other things, that statutory release, which allowed prisoners to enter the
In addition to being a reflection of bureaucratic pragmatism, KIHC is also the product of a reformist impulse. The facility was seen as a "solution" when the provinces became unwilling to confine long-term security-certificate detainees in environments designed for short-term detention. The creation of the KIHC represents an attempt to humanize this variation of imprisonment by constructing an environment better suited for long-term incarceration. KIHC can also be seen as a reflection of the broader movement of incremental reform resulting from a series of court challenges and decisions. Beginning with Charkaoui #1 and extending through the Bill C-3 reforms and interpretations of Charkaoui #2, many procedural aspects of the security-certificate mechanism have been reshaped, although the mechanism retains its underlying framework. Despite these "reforms," the "carceral universals" that have always been associated with security certificate detention— involuntary deprivation of liberty, subjection to punishment and control, and detention within a non-rehabilitative framework—remain. Moreover, the conditions at KIHC were not significantly better than those in provincial facilities, as the authorities had promised upon its opening. Currently, four of the "Secret Trial Five" are out on conditional release, under the most stringent conditions in Canadian history. This, too, has been framed by the government of Canada as an improvement for the detainees. However, the release arrangements, which require detainees and their sureties to be monitored at all times by CBSA, have extended the pains of incarceration to their loved ones. For instance, Sophie and Mohamed Harkat have argued that the combination of restrictive bail conditions with the pervasive monitoring and surveillance to which they have been subjected has effectively transformed their domestic space into a carceral environment. Indeed, Mohammad Mahjoub described his choice to return to KIHC as an effort to give his family the opportunity to live a "semblance of a normal life," free from the rigid conditions his release required.

The fact that security certificates are resistant to "reform" should not be surprising. Since research has shown that past attempts to reform penal...
institutions that operate within the rule of law have proved ineffective, the claim that we can humanize the camp through gradual reform is dubious. The alternative to incremental "reform" is abolition, and we close with this idea.

The call to abolish KIHC is common to the advocacy groups representing the "Secret Trial Five" and to a majority of the human-rights groups that have consistently opposed the security-certificate regime. We share this position. In large part, the argument for closing KIHC stems from indignation about the type of detention that it enables, a position grounded in human-rights principles. For example, the first author has regularly argued in the national media that "there is no place in a just society for a prison designed expressly to hold non-citizens, detained without charge or trial." In truth, however, if we wish to advance such a normative position, the underlying politics of abolition must be more radical and must extend beyond the closure of the specific camp in question. The real target must be the logic of the camp itself, and it must be challenged at all levels, particularly where it finds a foothold in expressions of necessity and pragmatism, or legitimacy in institutional setting or counter-law. Thomas Mathiesen argues that abolitionism is, first and foremost, a "stance [... an] attitude of saying ‘no’" to problematic institutions and systems of control and, in so doing, creating the possibility of turning points for change. If we adopt this stance, it means—in the short term—actively rejecting and refuting any arguments that seek to legitimate the security-certificate mechanism or to humanize it through reforms. The story of KIHC's emergence shows that the political and professional managers of unease responsible for security-certificate detention can be influenced by oppositional politics. The long-term challenge is to abolish the underlying mechanism altogether, so as not to give rise to additional ancillary exceptions.

Résumé

Situé sur le site de l'Établissement de Millhaven à Bath en Ontario, le Centre de surveillance de l'immigration de Kingston (CSIK) est une prison spécialement construite pour detenir des individus sujets à des certificats de sécurité. Le CSIK fut créé en 2006 en réponse à la controverse concernant l'utilisation des établissements correctionnels de l’Ontario pour la détention à long-terme des individus en vertu d’un certificat de sécurité. Bien que le mécanisme des certificats de sécurité ainsi que les processus s’y rattachant ont été l’objet de nombreuses critiques académiques socio-légales, l’espace juridico-politique du CSIK n’a, jusqu’à présent, jamais été décrit ou problématisé en profondeur. Cette étude tente de combler cette lacune, d’une


part, en présentant en détail l'histoire de cet établissement et, d'autre part, en explorant les interactions au sein du champ canadien d'insécurité qui ont façonné l'émergence du CSIK, l'organisation de son administration ainsi que ses opérations quotidiennes. Puisqu'il existe une pénurie d'information officielle à propos du CSIK, notre étude se base sur de nombreux documents obtenus à l'aide de demandes faites en vertu de la Loi sur l'accès à l'information. Prenant en compte la littérature existante, nous présentons la détention en vertu de certificats de sécurité comme une contre-loi normalisée, rendue possible de manière exceptionnelle, et avançons l'idée selon laquelle celle-ci est conforme au concept juridico-politique du camp. Nous décrivons comment ce camp particulier est né, tout en mettant un accent particulier sur le rôle qu'ont jouées les interactions entre les professionnels et les institutions au sein du champ canadien d'insécurité. Nous présentons également l'accord interdépartemental contractuel entre le Service correctionnel du Canada (SCC) et l'Agence des services frontaliers du Canada (ASFC), c'est-à-dire l'accord à la base de l'administration du CSIK. Nous décrivons cet accord comme étant le résultat de la rencontre de deux pouvoirs, soit l'autorité de détention infiniment et la capacité de confiner pragmatiquement sous la bannière de la sécurité nationale. Nous considérons les implications de cette rencontre pour le mandat correctionnel du SCC. Le CSIK émerge comme une "exception ancillaire", c'est-à-dire une tentative institutionnelle de reformer et de normaliser le mécanisme des certificats de sécurité. Nous terminons l'article en argumentant favorablement pour l'abolissement du CSIK.

Mots-clés: Certificats de sécurité, détention reliée à l'immigration, contre-loi, état d'exception, emprisonnement (Canada)

Abstract

The Kingston Immigration Holding Centre (KIH) is a purpose-built prison for individuals subject to security certificates, located on the grounds of Millhaven Institution in Bath, Ontario. KIHC was created in 2006 in response to controversy over the use of provincial detention facilities for long-term security-certificate detention. While the security-certificate mechanism and its related processes have been the subject of a growing body of critical socio-legal scholarship, the juridico-political space of KIHC has yet to be described or problematized in depth. The present study addresses this gap by providing a detailed account of the history of the facility and an exploration of the interactions within the Canadian insecurity field that shaped its emergence, governing arrangement, and everyday operations. Given the paucity of publicly available official information about KIHC, our study draws extensively on material obtained through requests filed under the federal Access to Information Act. Building on the existing literature, we frame security-certificate detention as a form of normalized exceptionality made possible by counter-law and argue that it conforms to the juridico-political concept of the camp. We then proceed to describe how this particular camp came into being, with an emphasis on the role played by interactions between professionals and institutions within the Canadian security field. The inter-agency contractual arrangement between the Correctional Service of Canada (CSC) and the Canada Border Services Agency (CBSA) that governs KIHC is outlined. We describe this arrangement as the product of the authority to detain indefinitely meeting the capacity to confine pragmatically, under the banner of national security, and consider its implications for CSC’s correctional mandate. The KIHC facility
emerges as an “ancillary exception,” the institutional reflection of attempts to reform and normalize the security-certificate mechanism. We conclude by making a case for the abolition of KIHC.

**Keywords:** security certificate, immigration detention, counter-law, state of exception, imprisonment (Canada)

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