



uOttawa

Crimmigration, the new law?

The detention of asylum seekers in Canada

By: Daniela Acevedo and Professor. Delphine Nakache

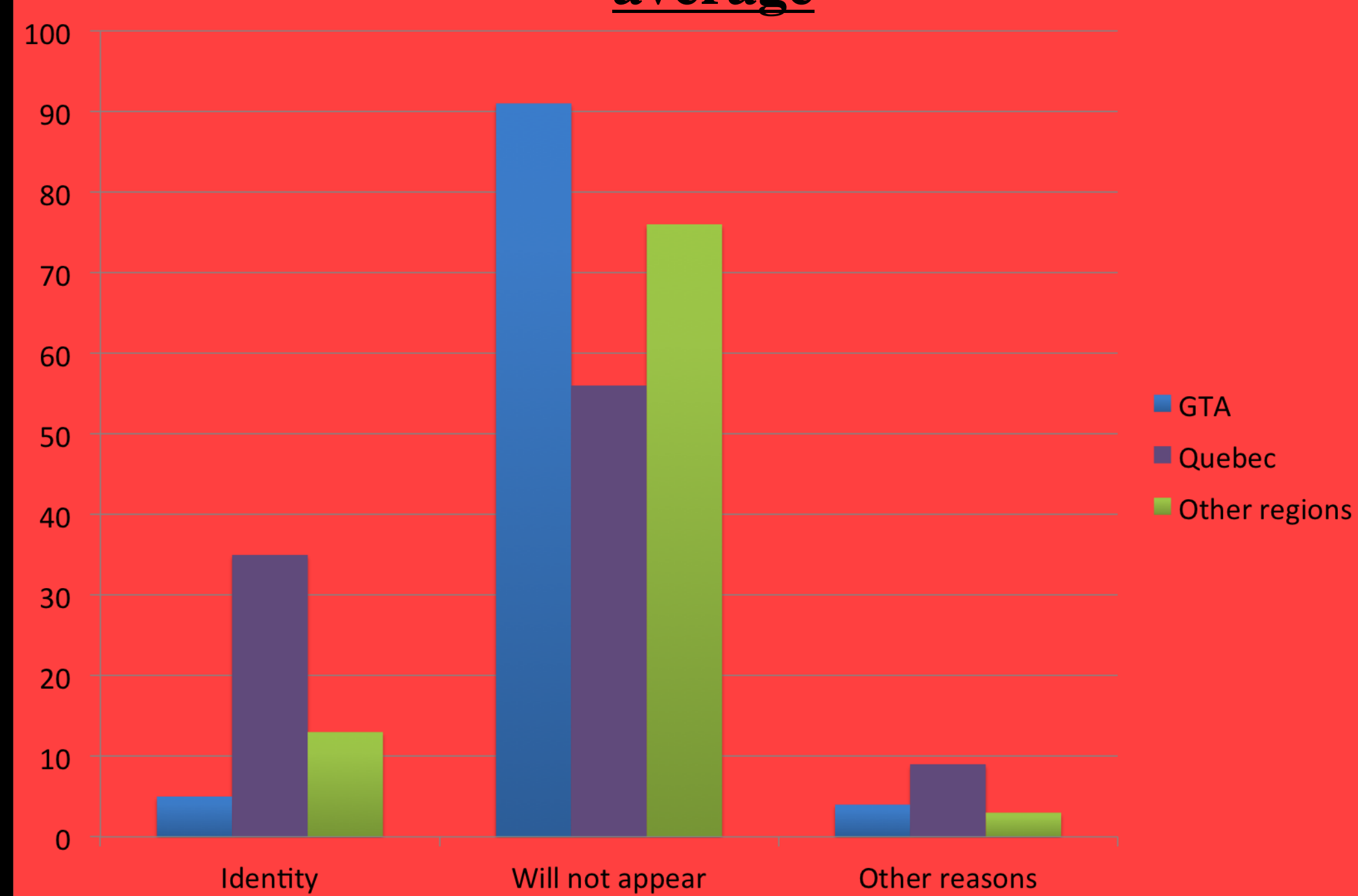


Résumé

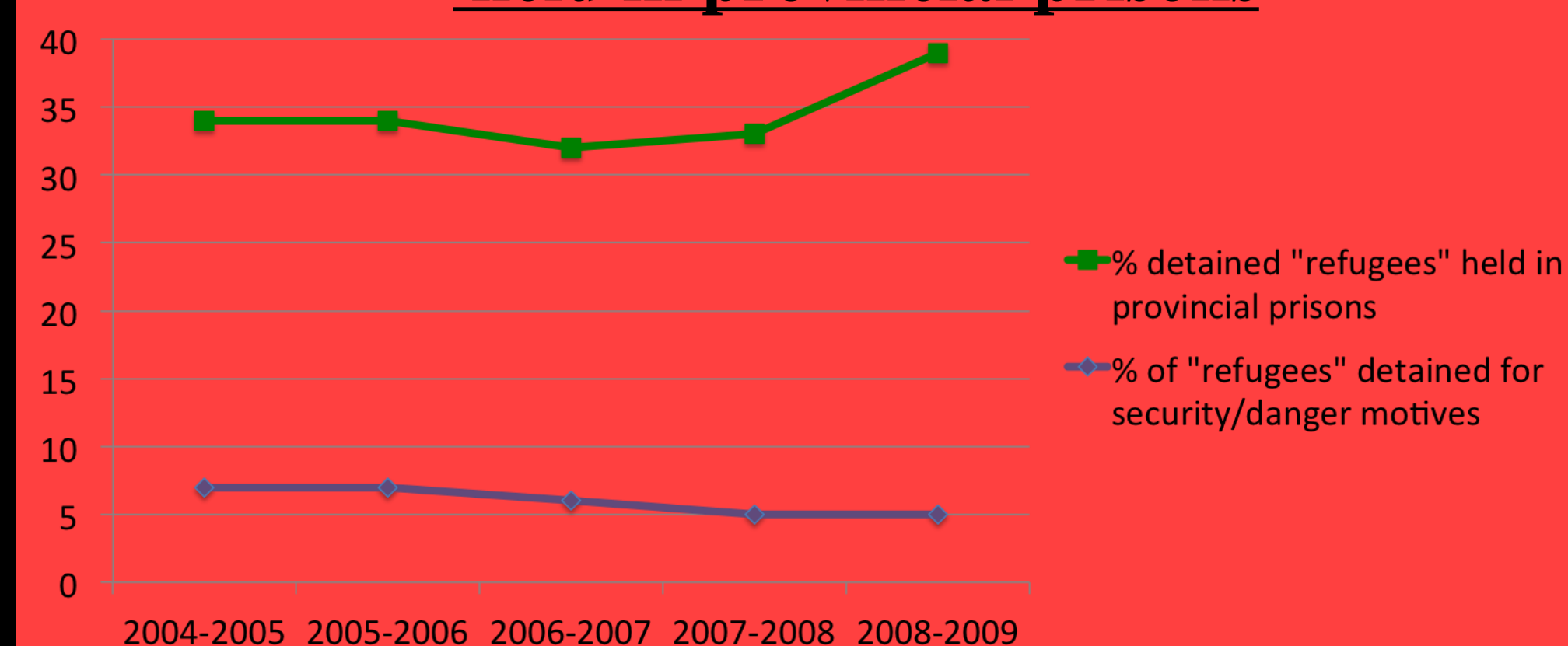
-Ce document se penche sur la détention des demandeurs d'asile au Canada et montre la convergence croissante entre le droit de l'immigration et le droit criminel dans ce domaine. Un accent particulier est mis sur le traitement des demandeurs d'asile par les établissements pénitentiaires. Alors que la majorité des demandeurs d'asile dans les établissements pénitentiaires n'ont pas de casier judiciaire (c'est-à-dire qu'ils sont détenus pour des raisons d'immigration/administratives UNIQUEMENT, et pas pour des raisons pénales), nous montrons que les installations carcérales contribuent, au même titre que les «camps» de réfugiés, à la ségrégation spatiale, sociale, et juridique des demandeurs d'asile.

Methodology/Statistics

Reasons for detention of "refugees", 2004-2010 average



Percentage of "refugees" detained for danger/security motives compared to percentage held in provincial prisons



Did you know?



-A massive 31% of the "refugees" detained in provincial or municipal prisons were held for over 40 days, as compared to 8% of the "refugees" detained in CBSA facilities.

-During 2004-2009, an average of 6% of all detained "refugees" were held because they were considered to be a security risk or a danger to the public, whereas an average of 94% were detained for reasons unrelated to security or danger.

Definitions

-Asylum Seeker: The terms asylum-seeker and refugee are often confused: an asylum-seeker is someone who says he or she is a refugee, but whose claim has not yet been definitively evaluated. (UNHCR)

-Canada Border Services Agency (CBSA): is responsible for carrying out enforcement functions related to immigration and refugee matters. These include detention, removals, investigations, and intelligence and immigration control functions overseas.

-Immigration and Refugee Board of Canada (IRB): Canada's largest independent administrative tribunal. It is responsible for making well-reasoned decisions on immigration and refugee matters, including refugee hearings and detention reviews.

-Criminal law: The law that prohibits certain kinds of conduct and imposes penal sanctions for unlawful behaviour. In its widest sense, it also includes the operation of penal institutions, criminal procedure and evidence, and police investigations.

-Immigration law: The law that deals with non-citizens in a given country. Such legislation provides conditions for their entry and stay and also provides them with a series of specific rights and obligations that vary according to their immigration status.

Context

Grounds for detention

The CBSA may want to detain a person who:

- is unlikely to appear for an examination, hearing or removal (flight risk),
- has not established his/her identity (identity reasons),
- is a danger to the public or has violated human or international rights (security risk),
- is inadmissible for security reasons (security risk)

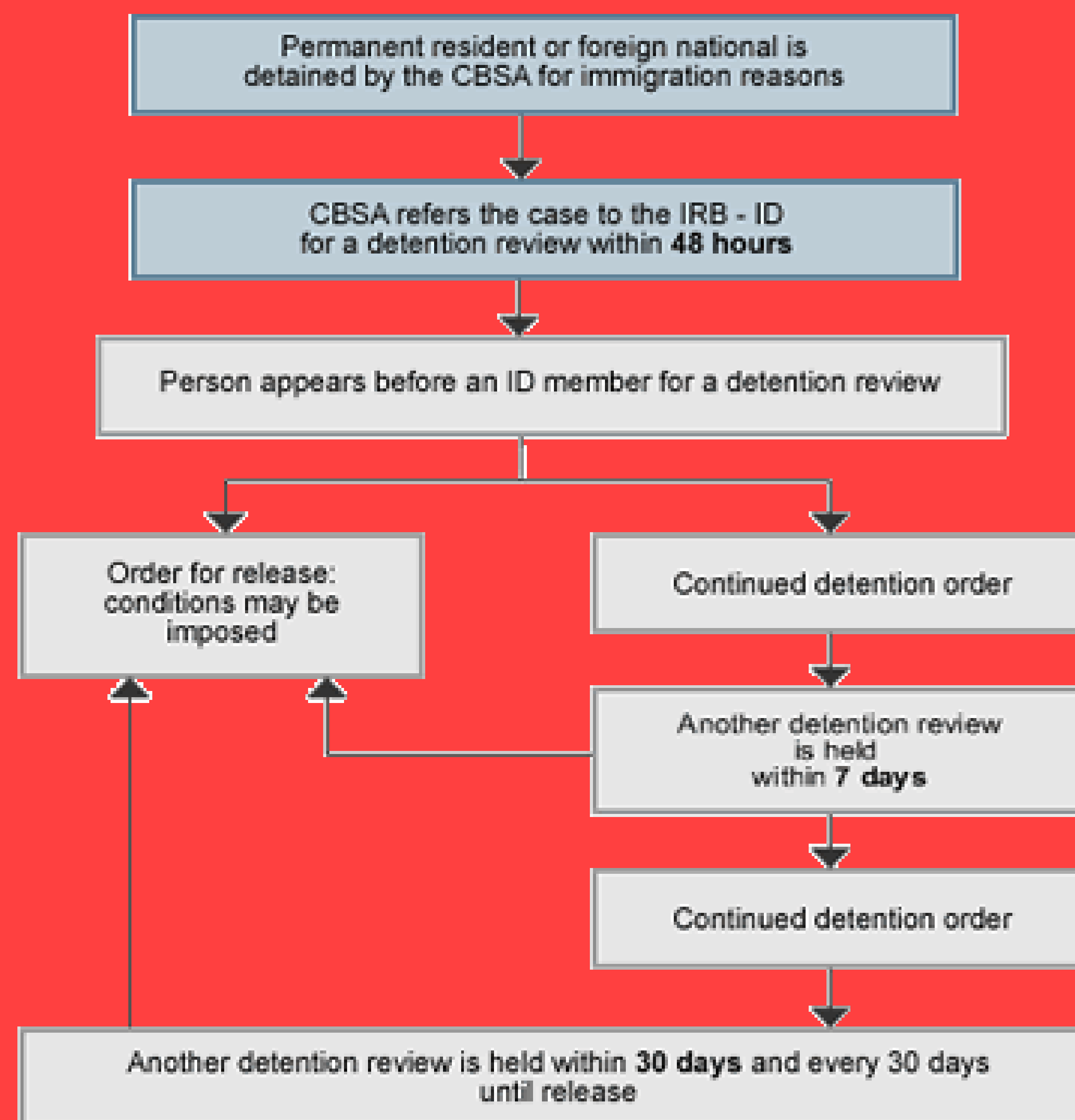
Places for detention

Persons detained for immigration reasons may be held in CBSA immigration Holding Centers (IHC). The CBSA operates three IHC's used for "low-risk detainees":

- 1) Toronto Immigration Holding Centre → capacity of 125 beds
- 2) Laval Immigration Holding Centre → capacity of 150 beds
- 3) B.C Immigration Holding Centre → capacity of 150 beds, for the first 72 hours ONLY

Individuals considered to be "high-risk detainees are held in provincial correctional or remand facilities. Nonetheless, "low-risk detainees" will also be held in provincial jails if the province does not have an IHC.

Detention Review Process (NOT for individuals detained under C-31 provisions)



Conclusion

After this research I came to the following conclusions:

- 1) The convergence of immigration and criminal law in regards to asylum seekers is an increasing phenomenon.
- 2) There is not much written on the topic, as more research needs to be done.
- 3) It was/is important to do research on this topic as it highlights the fact that detention of asylum seekers in penal institutions is problematic because they are treated like criminals without having committed a crime.

References

-Pringle, A. (2012, February 5). Criminal Law. *The Canadian Encyclopedia*. Retrieved March 14, 2014, from <http://www.thecanadianencyclopedia.com/en/article/criminal-law/>
-Canada Border Services Agency. Retrieved March 14, 2014, from <http://www.cbsa-asfc.gc.ca/media/facts-faits/007-eng.html>
-Canada Border Services Agency. Retrieved March 14, 2014, from <http://www.cbsa-asfc.gc.ca/agency-agence/menu-eng.html>
-Immigration and Refugee Board of Canada. Retrieved March 14, 2014, from <http://www.irb-cisr.gc.ca/Eng/BoaCom/Pages/index.aspx>
-UN High Commissioner for Refugees (UNHCR), *The Human and Financial Cost of Detention of Asylum-Seekers in Canada*, December 2011, available at: <http://www.refworld.org/docid/4fafc44c2.html> [accessed 15 March 2014]

Acknowledgements

I would like to express my gratitude to my supervisor, Professor. Nakache for her support and guidance throughout this research project, as well as for the opportunity to let me take this on. Also I would like to thank Mr. Steven DeRidder who has been a great help in providing information needed for this project. Lastly but not least the Undergraduate Research Opportunity Program for giving students the opportunity to further their interests and gain a wonderful experience.

Contact Information:

-Daniela Acevedo
-E-mail: dacev036@uottawa.ca
-Phone number: 613-979-2893
-Supervisor: Professor. Delphine Nakache
-E-mail: delphine.nakache@uottawa.ca

Thank you!