



**International covenant  
on civil and  
political rights**

Distr.  
GENERAL

CCPR/C/51/Add.1  
3 November 1989

ENGLISH  
Original: ENGLISH AND FRENCH

HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 40 OF THE COVENANT

Second periodic reports of States parties due in 1988

Addendum

CANADA \*/

[28 July 1989]

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\*/ For the initial report submitted by the Government of Canada, see CCPR/C/1/Add.43 (Vol. I and Vol. II); for its consideration by the Committee, see CCPR/C/SR.205-SR.208 and SR.211 and the Official Records of the General Assembly, Thirty-fifth Session, Supplement No. 40 (A/35/40), paragraphs 154-196. For the supplementary information submitted by Canada pursuant to the consideration of its initial report, see CCPR/C/1/Add.62; for the consideration of this information by the Committee, see CCPR/C/SR.558-SR.560 and SR.562 and the Official Records of the General Assembly, Fortieth Session, Supplement No. 40 (A/40/40), paragraphs 176-250.

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## INTRODUCTION

1. The Second Report of Canada on its implementation of the *International Covenant on Civil and Political Rights* focuses on information not contained in its First Report of March 1979, its Supplementary Report of March 1983, nor provided to the Human Rights Committee at the time of the presentation of these reports in March 1980 and October 1984. The main period covered is until December 31, 1987. Part I sets out general information relating to constitutional developments in Canada. Part II outlines recent measures adopted by federal, provincial and territorial governments, and also outlines case law relating to the *Canadian Charter of Rights and Freedoms*.

### PART I: GENERAL INFORMATION RELATING TO CONSTITUTIONAL DEVELOPMENTS IN CANADA

#### Implementation of the Canadian Charter of Rights and Freedoms

2. At the time of the presentation of Canada's Supplementary Report in 1984 the general nature and contents of the *Canadian Charter of Rights and Freedoms*, which is similar in content to the Covenant, were outlined to the Human Rights Committee (Annexes 1 and 2<sup>1</sup>). Since that time a substantial jurisprudence has developed in regard to its interpretation and application.<sup>2</sup>

3. Indeed, since the adoption of the Charter in 1982, there have been almost 1,000 reported judicial decisions, and significant changes in the Canadian legal system have been the result. These changes are discussed more fully in Part II of this Report. In general, however, it can be stated that the courts have given considerably more effect to the provisions of the Charter than to comparable provisions of the *Canadian Bill of Rights*, which was discussed in Canada's First Report.

4. Furthermore, Canadian courts have frequently relied upon international human rights law, including this Covenant, in interpreting the Charter. Indeed, the Chief Justice of the Supreme Court of Canada has emphasized the relevance of international human rights law. He wrote that "the Charter should generally be presumed to provide protection at least as great as that afforded by similar provisions in international human rights documents which Canada has ratified" (*Reference re Public Service Employee Relations Act [Alta]*, at p. 349). There are already almost 100 Charter cases where reference has been made to international human rights law (Annex 4).

5. Federal and provincial governments in Canada have also taken a positive approach to Charter implementation. The *Statute Law (Canadian Charter of Rights and Freedoms) Amendment Act* requires the federal Minister of Justice to examine all legislation for consistency with the *Canadian Charter of Rights and Freedoms*, and to report any inconsistency to the House of Commons. This statute also amended almost 60 statutes to ensure

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<sup>1</sup> The annexes are submitted separately and are not reproduced in this report. The list appears on page 27.

<sup>2</sup> Citations for legislation and cases referred to in Part I and the federal portion of Part II are contained in Annex 3.

compliance with the Charter. The provinces and territories have also reviewed their legislation to ensure consistency with the Charter, and enacted appropriate amending legislation, as discussed more fully in Part II of this Report.

#### Some general features of the Charter

6. Certain rights in the Charter (electoral rights in s. 3, mobility rights in s. 6 and minority language educational rights in s. 23) are guaranteed only to Canadian citizens. For the most part, however, rights are guaranteed to "everyone", "every individual" or "anyone", so that they pertain to all persons within Canada (*Singh et al. v. Minister of Employment and Immigration*). This is in keeping with the General Comment of the Human Rights Committee on the position of aliens under the Covenant.

7. Section 32 of the Charter provides that it applies to federal and provincial legislatures and governments. Thus it applies to guarantee the rights of private persons in relation to governments. Under section 32, the Charter has been interpreted by the courts to apply to the full range of governmental activities, including administrative practices and the acts of the executive branch of government, as well as to enactments of Parliament or the legislatures (*Operation Dismantle et al. v. The Queen et al.*). The Charter has also been held to apply to the common law (*Dolphin Delivery Ltd. v. Retail, Wholesale and Department Store Union et al.*).

8. Section 1 of the Charter defines the circumstances in which Charter rights can be limited. The Supreme Court of Canada has indicated that in order for a limit to meet its requirements, it must serve a sufficiently significant objective and employ proportionate means to attain it (*R. v. Oakes*).

9. Section 33 of the Charter permits a *non obstante* clause to be inserted in legislation, so that it may operate notwithstanding a violation of ss. 2 or 7 to 15 of the Charter. In *Alliance des professeurs de Montréal et al. v. A.G. Québec*, the Quebec Court of Appeal stated that to invoke s. 33 the *non obstante* clause must be expressly stated, must be a part of the statute which is to be exempted and must indicate which provision of the Charter is to be disregarded. More generally, the Court indicated that s. 33 must be strictly construed because of its impact on fundamental rights.

#### Constitutional developments

10. Part IV of the *Constitution Act, 1982* provides for the holding of at least three constitutional conferences on matters directly affecting aboriginal peoples, with participation by them. These conferences were held in 1983, 1984, 1985 and 1987. A major issue addressed at them was the possibility of entrenching some form of a right to aboriginal self-government in the Constitution. An agreement has not as yet been reached on this issue, because of difficulties in defining the concept of self-government for constitutional purposes. However, although the process of discussions on aboriginal constitutional issues mandated by Part IV of the *Constitution Act, 1982* has come to an end, the Government of Canada remains committed to pursuing constitutional reform in this area. The federal government is continuing to meet with aboriginal leaders who are attempting to develop a new basis for the renewal of discussions. The Prime Minister has stated his commitment to convene a further First Ministers' Conference on this issue should it be clear that there are reasonable prospects of success for agreement on a constitutional amendment.

11. In 1987 a Constitutional Accord was reached among federal and provincial First Ministers that the *Constitution Act, 1982* be amended in such a manner as to satisfy concerns of the Province of Quebec in 1982 (Annex 5). Of special relevance in the context of human rights protection is an amendment that would require the Constitution of Canada to be interpreted in a manner consistent with the recognition of Canada's linguistic duality and Quebec's place within Canada as a distinct society. By express stipulation this amendment would not, however, affect existing constitutional provisions concerning multicultural heritage and aboriginal peoples. In order to come into force, these proposed amendments will require the consent of the House of Commons and the provincial legislative assemblies. The House of Commons and most provincial legislative assemblies have already provided their consent.

## PART II: MEASURES ADOPTED BY THE FEDERAL, PROVINCIAL AND TERRITORIAL GOVERNMENTS

### A. FEDERAL GOVERNMENT<sup>3</sup>

#### Article 1

12. Canada subscribes to the principles set forth in this Article.

#### Article 2

13. Section 24 of the *Canadian Charter of Rights and Freedoms* enables anyone whose Charter rights or freedoms have been infringed to apply to a court of competent jurisdiction for an appropriate and just remedy. Section 52 of the *Constitution Act, 1982* further provides that any law inconsistent with the Constitution of Canada, including the Charter, is of no force and effect.

#### Article 3

14. Apart from the general equality guarantee contained in s. 15 of the Charter, s. 28 also states that the rights and freedoms referred to in the Charter are guaranteed equally to men and women.

15. Measures to prevent discrimination on the basis of sex and to promote equal opportunities for women are discussed under Article 26 of this report. The number of women entering the labour force and the educational system in Canada has continually increased over the last decade. This is documented in the Department of Labour's report, "Women in the Labour Force", attached as Annex 7. It should also be noted that on March 4, 1982, Madame Justice Bertha Wilson was the first woman to be appointed to the bench of the Supreme Court of Canada, followed by Madame Justice L'Heureux-Dubé on April 15, 1987<sup>4</sup>.

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<sup>3</sup> For the convenience of the Human Rights Committee, Annex 6 sets out the page references for the discussion of the various Articles of the Covenant in the federal portions of Canada's previous reports.

<sup>4</sup> A third woman, Madame Justice Beverley McLachlin, was appointed to the Court on April 17, 1989.

#### Article 4

16. On November 18, 1987, a new comprehensive federal emergencies bill passed second reading in the House of Commons. If it becomes law, it will repeal the *War Measures Act*. In its preamble it expressly states that in adopting emergency measures the Governor in Council is subject to the *Canadian Charter of Rights and Freedoms* and the *Canadian Bill of Rights*, and must have regard to the *International Covenant on Civil and Political Rights*, "particularly with respect to those fundamental rights that are not to be limited or abridged even in a national emergency". Other highlights of the bill are described in Annex 8.

#### Article 5

##### (i) Activities aimed at limiting Covenant rights

17. In Canada, there are a number of statutory provisions aimed at restricting the action of groups or individuals who advocate the limitation or destruction of the rights or freedoms recognized in the Covenant. One of these, s. 13 of the *Canadian Human Rights Act*, prohibits repeated communications by telephone of any matter that is likely to expose persons to hatred or contempt by reason of the fact that they are identifiable on the basis of a prohibited ground of discrimination. In 1979, John Ross Taylor and the Western Guard Party were held to be in violation of this provision and ordered to cease and desist their activities. In 1980, and again in 1984, they were convicted of contempt of court for continuing to transmit telephone messages, and Mr. Taylor was twice sentenced to a one-year prison term.

18. Mr. Taylor also argued that s. 13 of the *Canadian Human Rights Act* violated his guarantee of free expression. This argument was rejected by the Federal Court of Appeal in 1987 and leave to appeal to the Supreme Court of Canada was granted in late 1987.

##### (ii) Respect for rights not recognized by the Covenant

19. Section 26 of the Charter states that "[t]he guarantee in this Charter of certain rights and freedoms shall not be construed as denying the existence of any other rights or freedoms that exist in Canada".

#### Article 6

##### (i) Right to Life

20. Section 7 of the Charter guarantees "the right to life, liberty and security of the person and the right not to be deprived thereof, except in accordance with the principles of fundamental justice." In *Singh et al. v. Minister of Employment and Immigration* the Supreme Court of Canada held that the prospect of removal to a country where one's life would be threatened was a deprivation of the right to security of the person, and that therefore refugee claimants are entitled to a full oral hearing.

21. The Government of Canada has established a variety of social and economic assistance programs. These include family allowance, unemployment insurance and old age security systems by which individuals receive money directly from the federal government.

In addition, the federal government subsidizes various provincial and territorial health and welfare programs, including hospital and health insurance programs.

(ii) Capital punishment

22. The death penalty was abolished in Canada for offenses under the *Criminal Code* in 1976. In recent years, the issue of whether to reinstate the death penalty for the most serious crimes under the *Criminal Code* became a high profile one. As a consequence, a free vote was held in the House of Commons on June 30, 1987 on a motion for reinstatement of capital punishment. The motion was defeated by 148 votes to 127. The death penalty still exists, however, under the *Code of Service Discipline* in the *National Defence Act*. The death penalty provisions of this Act are currently under review and specific attention is being given to Article 6 of the Covenant.

Article 7

(i) Section 12 of the Charter

23. Section 12 of the Charter guarantees that everyone has the right not to be subjected to any cruel and unusual treatment or punishment. In *Smith v. R.*, the Supreme Court of Canada stated that the criterion to be applied in determining whether a punishment is cruel and unusual is "whether the punishment prescribed is so excessive as to outrage standards of decency". Thus, it held that a mandatory 7 year term for importing narcotics was grossly disproportionate where it applied regardless of the relative gravity of the offence. The court also noted that punishments or treatments such as corporal punishment, lobotomization and castration will always be grossly disproportionate and outrage standards of decency.

24. In *Lyons v. R.*, the Supreme Court of Canada held that the imposition of an indeterminate sentence of detention against a "dangerous offender" for a "serious personal injury offence" did not violate s. 12 of the Charter. According to the Court, the sentence took into account the condition of this type of offender, who is not inhibited by normal standards of behaviour, so that future violent acts can be expected.

(ii) U.N. Convention Against Torture

25. On June 24, 1987, the Government of Canada ratified the United Nations *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. Attached as Annex 9 is a summary of amendments made to the *Criminal Code* as a consequence of the Convention.

(iii) Legal provisions governing police and security forces

26. The use of force by police agencies is regulated by legislative, regulatory and administrative provisions. The standards set out in these provisions meet and often exceed those set out in the U.N. *Code of Conduct for Law Enforcement Officials*.

27. Any member of the Royal Canadian Mounted Police who fails to respect the rights of all persons, or who abuses his or her authority in the performance of duties, is, in addition to being liable to criminal penalties, guilty of a Code of Conduct offence and liable to

punishment ranging from a simple reprimand to dismissal from the force (*An Act to amend the Royal Canadian Mounted Police Act*, S.C. 1986, c. 11, ss. 37, 41(1), 43(1) and 45.12(3)). As regards the Correctional Service of Canada ("CSC"), s. 3.1 of the *Penitentiary Service Regulations* specifically prohibits every member of the Service from administering, instigating, consenting to or acquiescing in the cruel, inhuman or degrading treatment or punishment of an offender who is or has been incarcerated in a penitentiary. Staff may be held criminally and civilly liable for any excessive use of force. Other policies of the Correctional Service require the placement of community observers in institutions following a serious incident that involves violence against staff. CSC policy allows for the Correctional Investigator or a representative to be present as an observer during an emergency situation. Post emergency policy also explicitly states that inmates are to be treated fairly and humanely and provides for a thorough investigation into all aspects of the incident. Additionally, the policies of the CSC ensure the offender's right to accept or refuse any medical treatment. Relevant provisions of the *Code of Discipline*, as well as a booklet outlining the principles to be observed by CSC employees, are attached as Annex 10.

### Article 8

28. The provisions discussed in Canada's First Report are still applicable, except that the maximum term of imprisonment provided by the *Criminal Code* for forcible confinement has been increased from five to ten years.

### Article 9

#### Paragraph 1

29. Section 7 of the Charter guarantees the right of everyone "to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice". Section 9 states that "[e]veryone has the right not to be arbitrarily detained or imprisoned." The Supreme Court of Canada in *R. v. Therens* broadly interpreted the term "detained" to include any person who submits or acquiesces in a deprivation of liberty in compliance with a direction of a police officer, in circumstances where the person reasonably believes that no other choice but compliance is available. This, of course, includes arrest.

30. The Supreme Court of Canada has also held that indeterminate detention of persons convicted as "dangerous offenders" is not "arbitrary". Not only is the incarceration statutorily authorized, but the legislation narrowly defines a class of offenders with respect to whom it may be properly invoked and prescribes specifically the conditions under which an offender may be designated as dangerous (*Lyons v. R.*).

#### Paragraph 2:

##### (i) Right to be informed of the reasons for arrest

31. In addition to specific *Criminal Code* provisions, section 10(a) of the Charter provides that "[e]veryone has the right on arrest or detention to be informed promptly of the reasons therefor".



(ii) Right to be promptly informed of charges

32. Section 11(a) of the Charter states that "[a]ny person charged with an offence has the right to be informed without unreasonable delay of the specific offence." This requires, according to the courts, that the charge be stated in a manner that reasonably informs the accused of the offence (*R. v. Lucas*; *Pettipas v. R.*). Additionally, s. 11(a) applies to persons prosecuted by the state for public offenses involving punitive sanctions; i.e., criminal, quasi-criminal and regulatory offenses. Generally, this section does not apply to proceedings aimed at maintaining discipline, professional standards or regulating conduct within a limited private sphere of activity, unless the consequences are of a penal nature (*Wigglesworth v. R.*; *Burnham v. Metropolitan Toronto Police*).

33. The *Criminal Code* requires that a document commencing a criminal process set out the substance of the offence with which the accused is charged and that it be given to the accused personally, subject to exceptional circumstances. Furthermore, every person who appears before a justice must, at that time, be officially informed of the charges being made. These provisions do not address all possible types of offenses, but in practice criminal courts treat them as if they did. In any event, this would now be required by s. 11(a) of the Charter (*Mills v. R.*; *Carter v. The Queen*). Moreover, persons are normally informed of the charges being made prior to appearing before a justice. (Two exceptions to this practice are discussed at pages 29-30 of Canada's First Report).

Paragraph 3:

(i) Right to stand trial within a reasonable time

34. Section 11(b) of the Charter states that "[a]ny person charged with an offence has the right to be tried within a reasonable time". The Supreme Court of Canada held in *Rahey v. R.* that in assessing the reasonableness of a delay, the court may consider the prejudice to the accused, including prejudice to the ability to make full answer and defence and to the civil consequences of the criminal proceedings. Moreover, once an infringement is found, the minimum remedy is a stay of proceedings. Early case law also suggests that the question of unreasonable delay is from the time of the charge onward (*Re R. v. Morrison*; *R. v. Devji*), and that the failure of an accused to assert the right in s. 11(b) while awaiting trial does not necessarily preclude a violation of this section (*Mills v. R.*; *R. v. Askov et al.*).

35. Finally, the Supreme Court of Canada has held that the protection in s. 11(b) has no application to a delay of a foreign government in requesting extradition (*U.S.A. v. Allard and Charette*).

(ii) Right of an accused to be released pending trial

36. Section 11(e) of the Charter states that "[a]ny person charged with an offence has the right not to be denied reasonable bail without just cause".

Paragraph 4:

37. Section 10(c) of the Charter provides that "[e]veryone has the right on arrest or detention to have the validity of the detention determined by way of *habeas corpus* and to

be released if the detention is not lawful". Section 708 of the *Criminal Code* states that anyone deprived of his or her freedom may, subject to certain specified restrictions, apply for a writ of *habeas corpus*. Formerly, s. 459.1 did not permit the use of *habeas corpus* to obtain an order relating to or varying the terms of an interim release before trial or pending the determination of an appeal. This provision was repealed in 1985, and replaced by a provision empowering a court to give directions for expediting "any proceedings" in respect of the accused, including those relating to interim release.

Paragraph 5:

38. Pursuant to s. 24(1) of the Charter a judge in a criminal proceeding may order compensation against an officer who has violated an accused's rights under the Charter.

Article 10

Paragraph 1:

39. Jurisdiction over correctional institutions is shared between Parliament and the provincial legislatures. The *Juvenile Delinquents Act*, discussed in Canada's First Report, has been replaced by the *Young Offenders Act*, which is discussed later in this report. As regards adult inmates in federal institutions, their treatment as well as disciplinary procedures and the inmate complaints mechanism are outlined in Annex 11.

Paragraph 2:

(i) Treatment of accused adult persons

40. Reference should be made to the submissions of the provinces and territories.

(ii) Treatment of accused young offenders

41. On April 2, 1984, the *Young Offenders Act* came into force, replacing the *Juvenile Delinquents Act*. As with adult offenders, there is a preference for pre-trial release, absent considerations which require custody to ensure attendance at future proceedings or to prevent further offenses. Additionally, pursuant to s. 11(b) of the Charter (discussed previously), young persons must be brought to trial as speedily as possible. The Act also requires that young people must, as a general rule, be detained separately from adult offenders.

Paragraph 3:

42. The *Young Offenders Act* provides for a wide range of non-custodial dispositions (e.g., treatment and probation orders) to take into account the special circumstances and needs of young people, the rights and needs of victims of crime and the need to protect society. These are outlined at pages 13 to 14 of Annex 12. In addition, a youth court may order open or secure custody of a young offender in a special facility, separate from those designated for adults. "Open custody" refers to custody in institutions such as community residential centres, group homes, child care institutions or wilderness camps. "Secure custody" refers to custody in a facility for the secure containment of young persons, in which there are greater restrictions on liberty.

43. Custody dispositions which are at least one year in duration must be reviewed by a youth court by the end of one year or earlier. Temporary release is also provided for in the Act. The kinds of custody available and related procedures are discussed at pages 15 to 16 of Annex 12.

#### Article 12

44. Section 6 of the Charter guarantees every citizen of Canada the right to enter, remain in and leave Canada. In addition, every citizen and permanent resident of Canada has the right to reside and pursue the gaining of a livelihood in any province subject to certain specified exceptions, including special programs aimed at ameliorating the social or economic conditions of a disadvantaged province. The Supreme Court of Canada has held that the right to "pursue the gaining of a livelihood" guarantees to an individual the right to work without having to establish residence in the province of employment. It does not, however, grant a person an independent constitutional right to work (*Law Society of Upper Canada v. Skapinker*).

45. It has also been held that although extradition infringes on a citizen's right under s. 6 to remain in Canada, such a limit is justifiable under s. 1 of the Charter, having regard to the rationale of the *Extradition Act*, Canada's obligations to the international community and the history of such legislation in free and democratic societies. However, the manner in which extradition procedures are conducted in Canada and the conditions under which a fugitive is surrendered, can, if improper, still invite Charter scrutiny (*Schmidt v. The Queen et al.*; *Re Federal Republic of Germany v. Rauca*).

#### Article 13

46. Canada's Supplementary Report noted that a decision to grant or refuse a visa is an administrative one, so that a refusal was not subject to judicial review. However, recent case law indicates that Canadian courts will be increasingly responsive to applications for judicial review based on a lack of procedural fairness or error of law in administrative proceedings (*Martineau v. Matsqui Institution Disciplinary Bd.*; *Nicholson v. Haldimand-Norfolk Police Commrs. Bd.*).

#### Article 14

##### Paragraph 1:

##### (i) General

47. The rights contained in this paragraph are protected in Canadian society by virtue of sections 7 and 11(d) of the Charter. Section 7 provides that no one may be deprived of the right to life, liberty and security of the person except in accordance with the principles of fundamental justice. Section 11(d) provides that "[a]ny person charged with an offence has the right to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal". In *Vaillancourt v. R.*, the Supreme Court of Canada held that it is a principle of fundamental justice that the essential elements of a criminal offence contain a minimum mental state reflecting the stigma and penalty attached to that offence. If the Crown is not required to prove this mental state beyond a reasonable doubt, both ss. 7 and 11(d) of the Charter are violated.

48. Examples of what the courts have considered contrary to the requirement of a "fair and public hearing" include pre-indictment delay caused by the police or Crown for an oblique purpose (*Re R. v. Carter*), and prejudicial publicity at a bail hearing (*Global Communications Limited v. State of California*). In contrast, cross-examination of an accused as to previous convictions does not preclude a fair hearing (*Corbett v. R.*).

49. A fugitive at an extradition hearing is not charged with an "offence" for the purpose of s. 11 of the Charter and thus cannot claim its protection. However, some of the interests involved in s. 11 (e.g. the right to bail) may be protected by other provisions of the Charter (*Schmidt v. The Queen et al.*).

(ii) Openness of judicial proceedings - adult offenders

50. In *MacIntyre v. A.G. Nova Scotia* the Supreme Court of Canada held that the common law presumption of openness in the criminal law process governs not only trial proceedings, but all "judicial proceedings, whatever their nature, and in the exercise of judicial powers" (e.g. the issuance of search warrants). However, certain limitations on the presumption of openness may be permitted to protect such "social values of superordinate importance" as the right to a fair trial, the privacy of individuals that are presumed to be innocent or the integrity of police investigations.

51. The above interests would not, however, pre-empt the presumption of openness in the trial process itself. Restrictions on trial proceedings are generally dealt with indirectly through such methods as a ban on the publication of the identity of a Crown witness (*R. v. McArthur*) or of an accused (*R. v. R.*). In either case, restrictions on access to court proceedings are a matter of judicial discretion, assessed on a case-by-case basis.

(iii) Openness of judicial proceedings - young offenders

52. The presumption of openness is also recognized in youth court proceedings. However, a youth court judge is empowered to exclude anyone in the following circumstances: (i) where the exclusion is in the interests of public morals, the maintenance of order or the proper administration of justice; or (ii) where information being presented to the court would be "seriously prejudicial" to any young person or child present, whether he or she is the accused, the victim or a witness. Canadian courts have held that because of the potentially harmful impact of identification and publicity on young persons, the above exceptions are a demonstrably justifiable limit under s. 1 of the Charter (*Southam Inc. v. The Queen*).

(iv) Independence of the judiciary

53. In *The Queen v. Valente* the Supreme Court of Canada held that the three essential conditions of judicial independence are: (i) security of tenure (including the requirement of an independent inquiry before the power to remove a judge can be exercised); (ii) financial security (including security of salary or other remuneration, and, where appropriate, security of pension); and (iii) the institutional independence of the tribunal with respect to matters of administration bearing directly on the exercise of the judicial function. Virtually all Canadian courts, be they federally or provincially constituted, satisfy these conditions. The Supreme Court of Canada in *The Queen v. Beauregard* also affirmed that fundamental to

Canada's democratic system is the principle that the judiciary exercise its authority independently of the executive and legislative branches of government.

Paragraph 2:

54. Section 11(d) of the Charter provides that persons charged with a criminal offence have the right to be presumed innocent until proven guilty according to law. In *The Queen v. Oakes*, the Supreme Court of Canada noted that "[a]n individual charged with a criminal offence faces grave social and personal consequences", and that therefore the presumption of innocence was "essential in a society committed to fairness and social justice".

Paragraph 3:

(i) Right to be informed of charge

55. The right to be informed promptly of the reasons for which an individual is being detained or arrested is guaranteed by s. 10(a) of the Charter. Furthermore, s. 11(a) of the Charter requires that any person charged with an offence "be informed without unreasonable delay of the specific offence".

(ii) Right to make full answer and defence

56. Canadian courts have stated that "the principles of fundamental justice" in s. 7 of the Charter and the right to a "fair and public hearing" in s. 11(d) of the Charter include the right to make full answer and defence (*Corbett v. R.*; *Re R. & Potma*; *U.S.A. v. Smith*).

(iii) Right to be tried without undue delay

57. Reference should be made to the discussion under Article 9(3).

(iv) Right of an accused to be present at trial

58. This right has been given constitutional recognition under s. 7 of the Charter as a principle of fundamental justice and under s. 11(d) as a necessary ingredient of a fair trial (*Rogers v. R.*, *Felipa v. R.*).

59. There are, however, three exceptions to the right of an accused to be present at trial. Two of these, under s. 431.1 and s. 738(3) of the *Criminal Code*, are discussed in Canada's First Report. The third, contained in s. 577(2)(a) of the *Criminal Code*, permits the exclusion of an accused from the courtroom where his or her misconduct interrupts the proceedings in such a manner that it is not feasible to continue the proceedings in the accused's presence. This has been interpreted by the courts as implying conduct calculated to delay and obstruct indefinitely the trial so as to turn the administration of justice into a "farce" (*R. v. Pawliw*).

(v) Legal assistance

60. Section 10(b) of the Charter provides that "[e]veryone has the right on arrest or detention to retain and instruct counsel without delay and be informed of that right."

Courts have interpreted this provision as requiring that all questioning cease if a suspect expresses a desire to retain counsel (*Esposito v. R.*; *R. v. Williams*), and that an arrested or detained person have the right to consult with counsel in circumstances where the consultation cannot be overheard (*R. v. Dempsey*; *Lepage v. R.*; *R. v. McKane*). Section 10(b) does not, however, contemplate the exercise of the right to counsel prior to a lawful and reasonable on-the-scene search that is incidental to a lawful arrest (*R. v. DeBor*; *Guberman v. R.*).

61. Case law to date also indicates that, in certain limited circumstances, the Charter may require the appointment of counsel. For example, where legal aid had been denied in a serious and complex case, it was held that the principles of fundamental justice under s.7 of the Charter and the right to a fair trial under s. 11(d) of the Charter can only be preserved with the appointment of counsel by the court (*R. v. Powell and Powell*; *Kononow v. The Queen*; *Re Martin*).

(v) Examination of witnesses

62. Section 13 of the Charter ensures that a witness can testify without fear that the testimony will be used against him or her in subsequent proceedings (except in the case of perjury). Additional protection is offered by sections 7 and 11(d) of the Charter.

(vii) Assistance of an interpreter

(a) The Canadian Charter of Rights and Freedoms

63. Section 14 of the Charter provides that "[a] party or witness in any proceedings who does not understand or speak the language in which the proceedings are conducted or who is deaf has the right to the assistance of an interpreter".

64. This section may be applicable even if a person speaks broken English or French and understands simple communications. According to the Ontario Court of Appeal, a person may be able to communicate in a language for general purposes, while not possessing sufficient comprehension or fluency to face a trial that has potentially serious consequences without the assistance of a qualified interpreter (*R. v. Petrovic*). Furthermore, even though an accused does not assert the right under s. 14, an interpreter ought to be provided if it appears to the trial judge that there may be a need for such assistance (*Tsang v. R.*).

(b) Right to be tried in either official language

65. *Criminal Code* provisions pertaining to an accused's right to be tried in the official language of his or her choice have been proclaimed into force in four provinces - New Brunswick, Ontario, Manitoba and Saskatchewan - and in the two territories. Two other provinces, Prince Edward Island and Nova Scotia, have partially implemented (i.e. for summary conviction offenses) the right to be tried in either official language. The remaining Canadian provinces are expected to implement the language of trial provisions of the *Criminal Code* in the very near future. Court challenges are underway in several provinces where the *Criminal Code* provisions have not yet been implemented. A number of these cases are currently on appeal to the Supreme Court of Canada. The federal government has introduced C-72, the *Official Languages Bill*, which provides for a fixed implementation date

of January 1, 1990, for all provinces which have not implemented the language of trial provisions.

(vii) Right not to be compelled to testify against oneself

66. Section 11(c) of the Charter provides that "[a]ny person charged with an offence has the right not to be compelled to be a witness in proceedings against that person in respect of the offence". This protection applies to ordinary criminal proceedings, as well as non-criminal proceedings of a penal nature, such as prosecution under the *Customs Act* for illegal importation of goods (*Amway Corporation v. The Queen*). In addition, s. 13 of the Charter ensures that a person will not be compelled to give potentially self-incriminating evidence in proceedings other than the proceedings in respect of the offence with which that person is charged.

67. There also exists in Canada a long-standing rule at common law that a confession obtained involuntarily from an accused by a person in authority is not admissible in proceedings against the accused. The onus of proof of the voluntariness of the confession lies upon the Crown and the burden of proof is proof beyond a reasonable doubt.

Paragraph 4:

68. The provisions of the Charter, discussed in the context of adult offenders, apply equally to young offenders. However, the *Young Offenders Act* has also established specific procedures and a separate court system for young persons, in recognition of their age and the desirability of promoting their rehabilitation. Specific safeguards in the Act include special rights to legal representation, special procedures for involving parents in youth court proceedings and a requirement that young persons be informed of their rights at particular stages of the process. A more detailed explanation of the measures contained in the Act can be found at pages 8-10 of Annex 12.

Paragraph 5:

69. Under the *Young Offenders Act*, young persons have similar rights of appeal to those of adults under the *Criminal Code*. Details of the right of appeal are discussed at page 17 of Annex 12.

Paragraph 6:

70. On March 17, 1988, guidelines for compensating persons who have been wrongfully convicted and imprisoned were endorsed by the federal and provincial governments. In the past, *ex gratia* payments have been made by the federal government in cases of a miscarriage of justice.

Paragraph 7:

71. Section 11(h) of the Charter provides that "[a]ny person charged with an offence has the right if finally acquitted of the offence, not to be tried for it again and, if finally found guilty and punished for the offence, not to be tried or punished for it again." The Supreme Court of Canada has held that, for the purposes of the rule against convictions, disciplinary offenses are separate and distinct from criminal offenses (*Wigglesworth v. R.*).

## Article 15

72. Section 11(g) of the Charter prohibits retroactive penal legislation. Similar to Article 15(2) of the Covenant, it states that one cannot be found guilty on account of any act or omission unless, "at the time of the act or omission, it constituted an offence under Canadian or international law or was criminal according to the general principles of law recognized by the community of nations."

### Change in Penalty

73. Section 11(i) of the Charter provides that "if the punishment for the offence has been varied between the time of commission and the time of sentencing, [the offender is entitled] to the benefit of the lesser punishment."

## Article 17

### (i) Sections 7 and 8 of the Canadian Charter of Rights and Freedoms

74. Section 7 of the Charter, which guarantees the right to life, liberty and security of the person, has not been interpreted by the courts to confer an independent constitutional right to privacy. They have, however, indicated that it protects one's physical and mental integrity (*Videoflicks v. R.*). Thus s. 7 may have some implications in the context of privacy, and indeed there are already cases to this effect (*Dyment v. R.*).

75. Section 8 of the Charter guarantees the right against unreasonable search or seizure. In *Hunter et al. v. Southam Inc.*, the Supreme Court of Canada concluded that its primary purpose is to protect privacy interests (p. 652). On this basis it held that s. 10(1) and s. 10(3) of the *Combines Investigation Act*, which permitted the Director of Investigation and Research of the Combines Investigation Branch to authorize the search of premises for evidence of an offense against the *Combines Investigation Act*, were invalid, because of the perceived lack of impartiality of the Director. The Court stated that where it was feasible to obtain a warrant this was a pre-condition for a reasonable search and seizure. Similarly, in *Weatherall v. A.G. Canada* the Federal Court, Trial Division, held that it was an unjustifiable intrusion of privacy to require male penitentiary inmates to submit to "strip searches" by female guards in non-emergency situations, and therefore a violation of s. 8 of the Charter.

76. The *Statute Law (Canadian Charter of Rights and Freedoms) Act* amended numerous federal statutes to ensure that the requirements of s. 8 of the Charter, as interpreted in *Hunter et al. v. Southam Inc.*, were met. Of particular interest are amendments to the *Food and Drugs Act* and the *Narcotics Control Act* abolishing writs of assistance.

### (ii) Other developments

77. On July 1, 1983 Part IV of the *Canadian Human Rights Act*, which was discussed at pp. 78-79 of the First Report, was replaced by the *Privacy Act*. It accords to Canadian citizens, permanent residents and inmates of federal penitentiaries a right of access to and correction of their personal information which is held by the federal government. The *Privacy Act* also imposes a code of fair information practices on the federal government.



This code provides protection to individuals regarding the use and disclosure of their personal information by government institutions.

78. Between July 1, 1983 and March 31, 1987 there were 125,553 requests for access to personal information under the *Privacy Act*. The Act provides for an independent, two-tiered system of review when such access is refused. The first level of review is the Privacy Commissioner, and the second the Federal Court of Canada.

79. The provisions and operation of the *Privacy Act* have been reviewed by the Parliamentary Standing Committee on Justice and Solicitor General, which presented its report on March 31, 1987. The government's response, *Access and Privacy: The Steps Ahead*, was tabled in Parliament on October 15, 1987. Among the commitments made by the government were the restriction of the use of social insurance numbers, the extension of the application of the Act to Crown corporations, and the promotion of the implementation of the *OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data* throughout the public and private sectors. These Guidelines were adhered to by Canada in 1984.

80. The *Canada Post Corporation Act* provides that "nothing in the course of the post is liable to demand, seizure or detention" except in the following very limited circumstances (s. 38(3)). The Canada Post Corporation may open mail, other than letters, to ensure that conditions prescribed by regulation are met (s. 39(1)), and it may also open all undeliverable mail (s. 39(2)). The Minister responsible for the Canada Post Corporation may order that mail not be delivered, where he has reasonable grounds to believe that it is part of the commission of an offense (s. 41). Customs officials may seize mail in certain circumstances pursuant to the *Customs Act* (s. 99(1)(b)). However, "mail" is defined under that Act in such a way as to preclude effectively letters (s. 99(2)). Finally, pursuant to the *Canadian Security Intelligence Service Act* the Director of the Canadian Security Intelligence Service, or a designated employee, may apply for a warrant to intercept a communication where he has reasonable grounds to believe it necessary for the performance of statutory functions of the Service (s. 21).

81. The *Young Offenders Act* restricts publication of the identity of alleged offenders in youth court proceedings, and also of that of young victims and witnesses (ss. 17, 38 and 39). It also limits access to records of young offenders to persons with a direct interest, and sets out a maximum period for which these records can be kept and used (ss. 40-46).

82. The *Penitentiary Service Regulations* (s. 27) provide that visiting and correspondence privileges, in accordance with Commissioner's Directives, may be extended to inmates to assist in their reformation and rehabilitation. Inmates are encouraged to maintain and develop family ties through written correspondence, telephone communications and visits. The content of the envelopes of general correspondence is usually examined for contraband. However, privileged correspondence and correspondence with legal counsel is usually forwarded unopened. The Director of an institution may authorize that the correspondence be read, where he deems it necessary to ensure the security of the institution, the prevention of crime by inmates, or the protection of individual members of society. Inmates are given reasonable access to telephones and reasonable privacy during telephone conversations, consistent with security considerations. They are also permitted visits by legal counsel on official business under conditions which ensure confidentiality of the matters discussed.

83. In its General Comment 16(32)(d)(art.17) the Human Rights Committee has invited States to indicate in their reports the meaning given in their society to the terms "family" and "home". Neither of these terms has a legal definition in Canada. However, in regard to the term "home", both in the *Statute Law (Canadian Charter of Rights and Freedoms) Act* and in case law (*Belgoma Transportation Ltd. v. Director of Employment Standards*) the position has been taken that stricter requirements must be met for entering private dwellings than for entering business premises in order for the requirements of s. 8 of the Charter to be met.

84. Furthermore, although in general the term "family" is given a broad meaning in Canadian society, in *Toward Equality*, the response of the federal government to the Report of the Parliamentary Committee on Equality Rights entitled *Equality for All*, the position was taken that for certain purposes it may be appropriate to differentiate between legally married spouses and common law spouses. However, none of these different implications relate to the privacy context.

### Article 18

#### (i) Charter developments on freedom of religion

##### (a) The scope of the Charter guarantee of freedom of religion

85. Section 2 of the *Canadian Charter of Rights and Freedoms*, which guarantees everyone freedom of conscience and religion (s. 2(a)) and freedom of thought (s. 2(b)), has been interpreted by the courts in a manner consistent with Article 18. Thus, in general conformity with paragraph 1 of Article 18, in *R. v. Big M Drug Mart* the Supreme Court of Canada stated that "[t]he essence of the concept of freedom of religion is the right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly and without fear of hindrance or reprisal, and the right to manifest religious belief by worship and practice or by teaching and dissemination" (p. 336).

86. Similarly, in a manner compatible with Article 18, paragraphs 2 and 3, the Court in that case characterized freedom of religion as "the absence of coercion and restraint, ... includ[ing] indirect forms of control" (p. 336), and restricted limitations on it to those which are "necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others" (p. 337).

87. In regard to paragraph 4 of Article 18, in *Jones v. R.* the Supreme Court of Canada held that it was not inconsistent with the Charter to require a fundamentalist pastor who taught his and other children in a church basement to obtain governmental approval of the educational program. The Court noted, however, that "[c]ertainly a reasonable accommodation would have to be made in dealing with this issue to ensure that provincial interests in the quality of education were met in a way that did not unduly encroach on the religious convictions of the appellant" (p. 298).

##### (b) Charter litigation

88. In *R. v. Big M Drug Mart* the Supreme Court of Canada held that the federal *Lord's Day Act*, which required Sunday to be observed as a religious holiday, violated freedom of religion. On the other hand, in *Edwards Books and Art Ltd. v. The Queen* it held that the

Ontario *Retail Business Holidays Act*, which is framed in a secular manner and contains an element of accommodation to those with a religious holiday other than Sunday, was valid as involving a reasonable limit on freedom of religion within the terms of s. 1 of the Charter.

89. Certain practices have been challenged unsuccessfully on the basis of s. 2(a) of the Charter. They include a judicial order preventing a Sikh accused from wearing a ceremonial sword in a court room (*R. v. Hothi et al.*), and a requirement that the children of Jehovah's Witnesses submit to blood transfusion, (*McTavish and McTavish v. Director, Child Welfare Act*).

(ii) Other developments

90. The Correctional Service of Canada ensures that adequate facilities are made available for religious worship in federal penitentiaries. Within the boundaries of institutional safety, security and good order, special programs and facilities must be made available for Native offenders in these penitentiaries.

91. In 1984 the *Canada Labour Code* was amended to deal with the issue of employees who object on the basis of religious convictions or beliefs to joining a trade union or paying regular union dues. Section 169 of the Code now permits the Canada Labour Relations Board to order that such employees be exempted from these requirements, so long as they pay an amount equivalent to the union dues to a registered charity.

Article 19

(i) Section 2(b) of the Charter

(a) Paragraph 1 of Article 19

92. Paragraph 1 of Article 19 guarantees the right to hold opinions without interference and, as pointed out by the Human Rights Committee in its General Comments on this Article, permits no exception or limitation. Similarly, in *R. v. Big M Drug Mart* the Supreme Court of Canada stressed the centrality of individual conscience to the democratic political tradition, and the consequent need for an "unremitting protection" of the fundamental freedoms set out in s. 2 of the Charter, which as indicated above include freedom of thought, conscience and opinion (p. 346).

(b) Paragraph 2

93. The courts have concluded that s. 2(b) of the Charter applies to all modes of communication, including non-linguistic ones such as picketing (*Dolphin Delivery Ltd. v. Retail, Wholesale and Department Store Union et al.*), and to all phases of communication from maker, supplier, distributor, retailer to the receiver (*Videoflicks Ltd. et al. v. R.*).

94. The courts have stressed that the core of s. 2(b) is the protection of political speech (*National Citizens Coalition Inc. et al v. A.G. Can.*). Artistic expression has also been provided protection (*Ontario Film and Video Appreciation Society v. Ontario Board of Censors*). The question of whether protection is also afforded to commercial speech has not as yet been conclusively determined, but in a decision which is under appeal to the

Supreme Court of Canada, the Quebec Court of Appeal has held that commercial advertising is within the scope of s. 2(b) of the Charter (*Irwin Toy Ltd. v. A.G. Québec*).

95. Consistently with Article 19(2), the Federal Court, Trial Division has held that freedom of expression must include freedom of access to all information pertinent to the ideas or beliefs sought to be expressed, subject to reasonable limitations (*International Fund for Animal Welfare et al v. The Queen*). Indeed, the court expressly took into account the terms of Article 19 of the Covenant in reaching its conclusion (p. 259).

96. Section 2(b) specifically provides for freedom of the press and other media of communication. A major issue has been restrictions on access by the media to judicial proceedings. In general, the courts have concluded that freedom of the press to report court proceedings is a fundamental safeguard of a democratic society, and therefore that any limitations on this freedom must be carefully scrutinized for compliance with s. 1 of the Charter (*Southam Inc. v. The Queen*).

(c) Paragraph 3

97. The courts have held that limitations on freedom of expression must be clearly defined and have legal force (*Ontario Film and Video Appreciation Society v. Ontario Board of Censors*). Limitations have been upheld based on such considerations as public morals (*Red Hot Video Ltd. v. R.*), public order (*Osborne et al. v. The Queen*), and the rights and reputations of others (*Canadian Human Rights Commission v. Taylor*).

(ii) Other developments

98. In 1983 the *Access to Information Act* came into effect. It gives Canadian citizens and permanent residents access to records in the control of federal institutions, subject to certain limited exceptions, and provides for an independent review procedure of denials of access. Among the exceptions to access are information relating to the operations and responsibilities of government (e.g. bearing on national security), personal information, and third party information. In 1987 in *Access and Privacy: The Steps Ahead* the federal government stated its commitment to extend the right of access to entities not previously covered, and to foster public education about access legislation.

## Article 20

99. The *Radio Regulations, 1986* and the *Television Broadcasting Regulations, 1987* prohibit the broadcast of any abusive comment or pictorial representation that tends to expose an individual, group or class of individuals to hatred or contempt on the basis of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. The question of the compatibility of such legislation with the guarantee of freedom of expression in the Charter has so far been answered affirmatively in the courts (*Zundel v. R.*).

## Article 21

100. Section 2(c) of the *Canadian Charter of Rights and Freedoms* guarantees freedom of peaceful assembly. The courts have indicated that it is closely linked with the other fundamental freedoms set out in s. 2. Indeed, in *Dolphin Delivery Ltd. v. Retail Wholesale and Department Store Union et al.* it was on the basis of the guarantee of freedom of

expression in s. 2(b) that the Supreme Court of Canada concluded that peaceful picketing against the employer himself would receive the benefit of Charter protection, although on the facts of that case it held that the prohibition of secondary picketing (that is, against someone doing business with the employer) was justifiable within the terms of s. 1 of the Charter.

101. Similarly, in a case under appeal to the Supreme Court of Canada, the Federal Court, Trial Division concluded on the basis of s. 2(b) that political groups have the right to congregate and express their political views in a public airport, subject to reasonable limitations (*Comité pour la République du Canada et al v. The Queen in Right of Canada*).

## Article 22

### (i) Section 2(d) of the Charter

102. The Supreme Court of Canada has concluded that freedom of association as guaranteed by s. 2(d) of the Charter only protects the right to engage collectively in those activities which are lawful for an individual but does not protect the objects of an association nor the means used to obtain these objects such as the right to strike (*Reference re Public Service Employee Relations Act (ALTA)*). As the Human Rights Committee is aware, this same matter was brought to its attention by the Alberta Union of Provincial Employees in Communication No.118/1982, which was dismissed at the admissibility stage on the ground that freedom of association in Article 22 does not include the right to strike.

103. In a case under appeal, it has also been decided that freedom of association must necessarily include the freedom not to associate, and furthermore that a requirement that employees who are not members of the union nevertheless pay union dues involved an unconstitutional impediment on the exercise of this freedom (*Lavigne v. Ontario Public Service Employees Union et al*).

### (ii) Other developments

104. In 1986 employees of Parliament were granted collective bargaining rights for the first time by the *Parliamentary Employment Staff Relations Act*.

## Article 23

105. Section 15 of the *Canadian Charter of Rights and Freedoms*, which is discussed more fully under Article 26, prohibits discrimination on a number of grounds, without specifically mentioning marital or family status. However, in a Discussion Paper entitled *Equality Issues in Federal Law*, the federal government took the position that s. 15 should be interpreted to preclude discrimination on this basis (Annex 13). In *Equality For All*, the Parliamentary Sub-committee on Equality Rights supported this position, referring in particular to Article 23(1) of the Covenant (Annex 14). The application of s. 15 to marital or family status has been confirmed by early case law (*MacVicar v. Superintendent of Family and Child Services*).

106. Section 248 of the *Criminal Code*, which made it an indictable offense to take away a female person with intent to force her to marry a male person, has been repealed, because

of concerns that it involved the application of an unequal standard as between men and women.

107. The 1968 *Divorce Act* was repealed and replaced in 1986 by the *Divorce Act, 1985*. Pursuant to the new Act either spouse may apply for support, child support and custody, with awards made on the basis of considerations that apply equally to both spouses. Provision is also made for joint custody awards.

#### Article 24

##### (i) Section 15 of the Charter

108. Section 15 of the *Canadian Charter of Rights and Freedoms* guarantees every individual equality without discrimination on a number of grounds, including age. Furthermore, "every individual" in s. 15 includes children, and thus they are accorded the full ambit of its protection. Also, as discussed under Article 23, it would appear that s. 15 precludes discrimination on the basis of family status, which would include the adoptive or illegitimate status of children.

109. A major issue that has been considered in this context is whether the distinctions based on age contained in the *Young Offenders Act* are justifiable in light of s. 15 of the Charter. In general the courts have concluded that the very special purposes of this Act justify the drawing of certain distinctions based on age (*Re M and the Queen*).

##### (ii) Other developments

110. The Correctional Service of Canada ensures that adequate accommodation and pre-natal and post-natal care are provided to pregnant female offenders. Custody arrangements are made for the child outside the institution taking into account as much as possible the offender's wishes.

111. The *Family Orders and Agreements Enforcement Assistance Act* was passed by Parliament in 1986 and, in 1987, agreement was reached with the provinces to give effect to Part I of this Act, which deals with the release of information from federal information banks to trace persons in default of support payments and to locate missing children taken by a parent contrary to custody and access arrangements. Part I was proclaimed November 30, 1987. Part II of the Act permits the garnisheeing of federal payments to debtor spouses in default of a support order, and was proclaimed on May 2, 1988.

112. In 1986 s. 10(3) of the *Canada Labour Standard Regulations* was amended so that there is no longer any difference between the minimum wage payable to employees under the age of 17 and those over 17.

113. Measures have been taken to provide more assistance to Indian communities and organizations so as to avoid the need to place Indian children outside their families, and also to ensure that services are culturally sensitive to the needs of these children and their families.

114. In 1987 the Minister of Health and Welfare appointed a Special Advisor on Child Sexual Abuse, to co-ordinate action in this area.

Article 25

(a) Right to take part in public affairs

115. Section 3 of the *Canadian Charter of Rights and Freedoms* gives constitutional protection to the right of every citizen of Canada to stand for office in federal and provincial elections.

(b) Right to vote

116. Section 3 of the Charter also guarantees every citizen of Canada the right to vote in federal and provincial elections. The disqualification of penitentiary inmates from voting in federal elections pursuant to s. 14 of the *Canada Elections Act* has been held to be consistent with s. 3 (*Jolivet and Barker v. The Queen et al.*). On the other hand, it has also been held that federal authorities are required to take the necessary administrative measures to enable inmates in federal penitentiaries in Quebec to exercise their right pursuant to Quebec law to vote in Quebec provincial elections, and that neither administrative nor security considerations would justify denying this right (*Lévesque v. Attorney General of Canada*). The Government of Canada accepted this decision without appeal. As the Committee is aware, this same factual situation was considered by it in communication no. R.25/113, which was dismissed at the admissibility stage.

(c) Equal access to public service

117. As discussed at pages 104-105 of the First Report, the *Public Service Employment Act* requires appointments to the Public Service to be based on merit and to be made without discrimination. In 1983 the Act was amended to include family status and mental disability as prohibited grounds of discrimination.

118. In the case of certain positions, such as those requiring access to classified information or involving matters of security, applicants may be denied entrance into the Public Service on the basis of concerns about their loyalty to Canada or their reliability so far as it relates to their loyalty. The definition of security assessment appears in s. 2 of the *Canadian Security Intelligence Service Act*. Procedures and criteria relevant to the making of a security assessment are set out in the *Security Policy for the Government of Canada*, the statutory basis for which is the *Financial Administration Act*.

119. Under this policy the senior official of the department or agency concerned decides, on receipt of a security assessment, whether to grant or deny a security clearance. Any person who suffers an adverse employment decision or is denied a contract as a result of the denial of a security clearance can ask the Security Intelligence Review Committee to review the decision to deny a security clearance. This Committee, which is independent from government, is required, following its investigation of the matter, to advise the officials involved and the complainant of any recommendations it may make on the matter.

120. Section 32 of the *Public Service Employment Act*, which precludes public servants from engaging in work for or against a candidate in an election for a political party, has been held to be consistent with the Charter, on the basis of the importance of maintaining the political impartiality of the public service (*Osborne et al. v. The Queen*).

## Article 26

### (i) Section 15 of the Charter

121. On April 17, 1985, s. 15 of the *Canadian Charter of Rights and Freedoms*, which guarantees equality rights, came into force as part of the Constitution of Canada. It has not as yet been interpreted in a case before the Supreme Court of Canada. However, lower court decisions indicate that it has a broader meaning than the comparable provision of the *Canadian Bill of Rights*. In particular, early case law has interpreted s. 15 to apply to the content of legislation as well as its administration (*McBeth v. Governor of Dalhousie College and University*), to preclude systemic or unintentional discrimination as well as direct discrimination (*Blainey v. Ontario Hockey Association et al.*), and to extend in scope beyond the grounds of discrimination enumerated in s. 15 (*Andrews v. Law Society of British Columbia*). The *Blainey* case also indicates that federal and provincial human rights legislation is subject to review for compliance with s. 15 of the Charter.

122. Section 36(1) of the *Constitution Act, 1982* commits federal and provincial governments to promote equal opportunities for the well-being of Canadians and to provide essential public services of reasonable quality to all Canadians. Section 36(2) sets forth a commitment to the principle of making equalization payments to ensure that provincial governments have sufficient revenues to provide comparable levels of public services at comparable levels of taxation.

### (b) Litigation Issues

123. Among the federal practices and legislation that have been successfully challenged on the basis of s. 15 of the Charter are the following: permitting female guards to do "strip searches" of male penitentiary inmates, where such searches cannot be conducted on female inmates by male guards (*Weatherall et al. v. A.G. Canada et al.*); requiring federal court judges to retire by age 70 (*Addy v. The Queen*); and permitting juries of 6 rather than 12 in the Yukon Territories (*R. v. Bailey*).

### (c) Initiatives of the federal government relating to s. 15

124. In 1985 the Parliamentary Sub-committee on Equality Rights tabled its report, entitled *Equality for All*, which made 85 recommendations pertaining to equality on matters coming within federal jurisdiction. In its response to this report, entitled *Toward Equality*, the federal government made a number of commitments, including the abolition of mandatory retirement, the repeal of distinctions based on marital status in regard to pension rights, and increasing the availability of employment for women in the Canadian Armed Forces (Annex 15).

125. The following are among the steps that have been taken to implement these commitments: repealing s. 28 of the *Public Service Superannuation Regulations*, which established mandatory retirement age of 65; amending the *Canada Pension Plan* to provide for flexible retirement; and significantly increasing the number of gender-free and mixed gender positions in the Canadian Armed Forces.

126. The federal government provides financial assistance for individuals or groups seeking to challenge federal legislation or practices in the courts on the basis of the equality rights



guaranteed in the Charter or seeking to challenge federal or provincial legislation or practices based on constitutionally guaranteed language rights. The Court Challenges Program has a \$9-million budget for litigation and legal research plus administration funds over 5 years, and is administered by a private, non-profit organization, the Canadian Council on Social Development.

(ii) Canadian Human Rights Act

127. In 1985 the *Canadian Human Rights Act* was amended to establish an independent official, the President of the Human Rights Tribunal Panel, to select and appoint Tribunals to adjudicate human rights complaints, and also to replace the Canadian Human Rights Commission's power to "substantiate" complaints with one to determine whether the appointment of a Tribunal is warranted.

128. In *Toward Equality*, the federal government agreed to add the concept of reasonable accommodation to the *Canadian Human Rights Act*, to consider whether political belief and criminal conviction or criminal charges should be added to prohibited grounds of discrimination, and to repeal those provisions of the Act which permit mandatory retirement on a general basis.

129. Section 11 of the *Canadian Human Rights Act* requires employers to pay male and female employees employed in the same establishment equal wages for work of equal value. In 1986, guidelines on the application of that principle were gazetted. Up to March 1987, approximately 5,665 employees in female-dominated occupational groups in the federal Public Service have shared some \$64.4 million retroactive and ongoing wage adjustments following settlement of equal pay for work of equal value complaints. These occupational groups include librarians, home economists, occupational and physical therapists, food and laundry workers and hospital service workers. Furthermore, in March 1985, all thirteen Public Service unions accepted the invitation of the President of the Treasury Board to participate in a Joint Union/Management Committee to investigate and make recommendations on the service-wide implementation of Section 11 within the Public Service. In March 1987, the terms of reference and plan of action developed by the Committee for the study were presented to the President of the Treasury Board. Conduct of the study began in June 1987. The results of the study could possibly affect the wages of 81,000 employees of female-dominated groups.

130. There have been several very significant recent decisions of the Supreme Court of Canada pertaining to the *Canadian Human Rights Act*. In *Bhinder v. Canadian National Railway Co.*, the Supreme Court of Canada held that it prohibits systemic or adverse discrimination, as well as intentional discrimination. In *Action Travail des Femmes v. Canadian National Railways Co. et al.* the Supreme Court concluded that orders of affirmative action programs which take into consideration the effects of past discrimination are permissible under the Act. In *Robichaud et al. v. The Queen* it held that the Act contemplates the imposition of liability on employers for all acts of their employees in the course of their employment, so that they are vicariously liable for sexual harassment practiced by employees.

(iii) Other initiatives pertaining to equality

131. As discussed in the First Report at pages 105-107, s. 12(1)(b) of the *Indian Act* formerly provided that Indian women, but not Indian men, lost their status upon marrying non Indians. This provision was the subject of a communication to the Human Rights Committee in *Lovelace v. Canada* (Communication No. 23/93), and the Committee concluded that it violated Article 27 of the Covenant.

132. In the subsequent process of amending the *Indian Act* to remove sexually discriminatory provisions, Canada was very conscious of its obligations under the Covenant, both in repealing discriminatory provisions and in formulating replacements for them. Thus, sexually discriminatory and other problematic provisions of the *Indian Act* were repealed in 1985. Furthermore, those women who lost Indian status and band membership in the past as a result of the former s. 12(1)(b) are entitled to regain status and membership upon application. Their first generation descendants are entitled to acquire Indian status, and may apply to Indian bands for membership. Any dependent children may reside on the reserve with their parent who is a band member. Further data is provided under Article 27 on implementation of this legislation.

133. Changes have been made to the conditions for maternity benefits provided by the *Unemployment Insurance Act, 1971*. Since 1984 it is no longer required that a woman have been an active member of the labour force at the time of conception. The 15 weeks during which maternity benefits are payable need no longer be consecutive. Section 46 of the Act, which prevented a pregnant women who did not qualify for maternity benefits from applying for regular or sickness benefits during the maternity period, has been repealed.

134. Section 37 of the *Canada Labour Code*, according to which disabled persons could in certain limited circumstances be paid less than the minimum wage, was repealed in 1985.

135. At the November 1986 First Ministers' Conference, the Prime Minister tabled *Dimensions of Equality: A Federal Work Plan for Women*. The workplan outlines government commitments to action that will improve the status of women in Canada. A report on progress made in implementing the commitments will be produced in the fall of 1988.

136. In 1986 the *Employment Equity Act* came into force. It guarantees equality in the work place and establishes measures which seek to correct the conditions of disadvantage in employment experienced by women, aboriginal peoples, disabled persons and visible minorities. Employers under federal jurisdiction with 100 or more employees are required to eliminate systemic barriers to employment and to institute positive policies and practices designed to achieve the equitable representation of the designated groups in the work force. Employers are required to file annual reports on the representation of these groups in the work force.

137. The Federal Contractors Program requires that suppliers of goods and services to the federal government who employ 100 persons or more and who bid on contracts with \$200,000 or more, commit themselves to implement employment equity as a condition of their bid.

138. Much progress has been made in the 1980's with respect to access for the disabled. Transport Canada has been conducting a "barrier free program" to remove transportation

barriers for disabled travellers, where the department is the facility owner or source provider. Thus, for example, the Edmonton Airport has been modified to feature "state of the art" physical access, communication aids and sensory equipment.

## Article 27

### (i) Relevant Charter provisions

139. Sections 15(2), 16-22, 23, 25, 27 and 35 of the *Constitution Act, 1982* are relevant to Canada's implementation of Article 27.

140. On the basis of s. 23 of the Charter, which provides for certain language educational rights for English or French minorities throughout Canada, in *Quebec Association of Protestant School Boards et al. v. Attorney General of Quebec* the Supreme Court of Canada held that provincial legislation which denied English-speaking Canadians access to English language schools in Quebec was invalid.

141. Section 27, which requires that the Charter be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians, has proved to be a significant factor in the interpretation of s. 2 on the fundamental freedoms and s. 15 on equality rights (*Videoflicks Ltd. et al. v. R.*; *Reference re Act to Amend the Education Act*).

### (ii) Other developments

142. There are many minority groups in Canada, and the Government of Canada has not taken any steps to deny them their rights as set forth in Article 27. Indeed, although not in its view required to do so by this Article, the Government has taken the following positive steps to enhance their status within Canada.

143. In 1987 Bill C-72, which would replace the 1969 *Official Languages Act*, was tabled in Parliament. It elaborates on the principles contained in ss. 16 to 20 of the Charter and defines the rights of citizens and the obligations of federal institutions in language matters. Among the major features of the Bill are provisions on language of work and language of service to the public, participation of both official language communities in federal institutions, judicial recourse for breaches of the Act, and the promotion of the two official languages.

144. Steps are being taken towards the achievement of self-government for aboriginal groups in Canada, although agreement as to a constitutional amendment guaranteeing this right has not as yet been reached. However, with the proclamation of the *Cree-Naskapi (of Quebec) Act* in 1984 and the *Sechelt Indian Band Self-Government Act* in 1986, forms of selfgovernment were achieved by the Cree and Naskapi communities in northern Quebec and the Sechelt band in British Columbia. Self-governmental proposals are currently being developed with Indian communities across Canada. The federal government has also made a commitment to pursue tripartite self-government discussions with the representatives of the Metis and off-reserve aboriginal peoples and the province concerned, where so requested by the province. To date these tripartite discussions are underway in three provinces: Ontario, Manitoba and Prince Edward Island.

145. In 1986 the federal government policy on comprehensive land claims was revised. The new policy clarifies that aboriginal rights to be negotiated are limited to land-related rights, establishes new approaches to the resolution of claims to aboriginal title, and permits a broader range of self-government matters to be considered in the context of land claims. Six comprehensive land claims are currently being negotiated. Nine settlements of specific land claims have been reached since 1985, including several major settlements, such as that reached with the Cree Band of Fort Chipewyan in Northern Alberta, where the Band received \$26 million in cash settlement as well as 12,275 acres of reserve land. Strenuous efforts are currently being made to settle the land claim of the Lubicon Lake Band of Alberta, including the appointment of a new federal negotiator and the first provincial negotiator.

146. As discussed under Article 26, sexually discriminatory and other provisions of the *Indian Act* were repealed in 1985, and Indians who had lost status in the past as a result of their operation became entitled to regain status and band membership. Also, Indian bands acquired the right to establish their own membership codes. Under this reinstatement process so far some 33,000 people have been registered as status Indians. Documentation regarding membership codes has been received from 282 bands, or nearly half of the Indian bands. Furthermore, the transfer of membership control has now been completed for many of the bands submitting codes.

147. At present over one half of Indian students in elementary and secondary schools receive some instruction in native languages. In addition, the number of cultural and educational centres administered by Indians has risen from 57 to 71 between 1979 and 1987, and the annual budget from \$5 million to \$7.2 million.

148. In 1978 the Native Court Workers Program was established. Pursuant to this program, which has an annual budget of over 3 million dollars, the federal government cost-shares services delivered to native clients by provincial court workers for orientation to the court process and for referral to legal and social services.

149. A major initiative was undertaken in 1987 with the tabling of Bill C-93, the *Canadian Multiculturalism Act*. It embodies a policy which promotes the understanding that multiculturalism reflects the cultural and racial diversity of Canadian society and acknowledges the freedom of all members of Canadian society to preserve and share their cultural heritage. Article 27 of the *International Covenant on Civil and Political Rights* is specifically quoted in the preamble of the Bill. The Multiculturalism Bill provides that all federal institutions should promote policies, programs, and practices that enhance the ability of individuals and communities of all origins to contribute to the continuing evolution of Canada.

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<sup>5</sup> These annexes are submitted separately as reference material for the convenience of the members of the Human Rights Committee.

## B. PROVINCIAL GOVERNMENTS

### 1. ALBERTA

150. Canada's first report provided information on Alberta's legislation that gave effect to the provisions of Articles 1 to 27 of the *International Covenant on Civil and Political Rights*. This report will summarize the changes that affect the legislative review provided in the first report under Articles 3, 10, 17, 23 and 24 and provide new information respecting legislation and policy affecting the application of other articles of the Covenant.

#### Article 3

151. The *Canadian Charter of Rights and Freedoms* came into force generally in 1982, and its equality provisions came into force in 1985. In 1985, a number of Alberta acts were modified to bring them into conformity with the Charter provisions guaranteeing equality rights. For example, the *Exemption Act* and the *Minors' Property Act* were changed so that references to specific gender have been replaced with language which is gender neutral. As well, the provisions in the *Land Titles Act*, which placed married women in an inferior position to their husbands in respect to legal actions concerning land, were changed to reflect the view of the Charter that men and women (married or unmarried) are to be held equal before the law.

152. The *Domestic Relations Act* discriminates to the extent that it does not recognize guardianship rights of the father of a child born out of wedlock providing that the mother is the sole guardian of such a child; however court decisions have resulted in equality being extended to unwed involved biological fathers.

153. Section 15 of the *Domestic Relations Act* also impacts on the rights of unwed fathers with respect to children who are taken into the protective care of the Department of Social Services and who may be relinquished or placed for adoption, since the *Child Welfare Act* imports the definition of guardian contained in the *Domestic Relations Act*.

#### Article 6

154. Under the amended *Workers' Compensation Act* (1983), employers are obliged to inform workers of their responsibilities and duties under the Act.

155. Under the *Occupational Health and Safety Act*, no worker shall carry out any work where on reasonable and probable ground he/she believes that there exists an imminent danger. On being notified of the reasonable and probable belief that an imminent danger exists, the employer is required to investigate and take action to eliminate that danger. Where any disciplinary action is taken against a worker acting in compliance with the Act or regulation, the worker may appeal to an Occupational Health and Safety Officer who following an investigation may require: that the disciplinary action cease; that the worker be reinstated; that the worker be paid monies that would have been earned if he/she had not received a disciplinary action; and the removal of any employment reprimands from the employee's employment record. An order made by an officer in this regard may be appealed by the employer to the Occupational Health and Safety Council.

#### Article 7

156. Departmental policies in child welfare do not prohibit the use of corporal punishment by foster parents in relation to children under their care.

#### Article 9

157. The *Dependent Adults Act* (R.S.A. 1980, c. D-32) contains provisions for the apprehension, confinement, compulsory care and treatment of an incompetent adult for whom a guardian has been appointed where a court is satisfied that (a) the adult is in a condition (as evidenced by expert assessment) presenting a danger to himself/herself or others; (b) the confinement is in the best interests of the dependent adult, and (c) compulsory care is appropriate to ensure the protection and treatment of the dependent adult. Such orders may be in effect for up to three years and may be continued for subsequent periods of up to three years upon review. Reviews may be initiated by others, other than the guardians of the dependent adult, once every six months and temporary leaves of absence from places of compulsory care may be granted. Dependent adults may be represented by legal counsel at hearings.

158. The recently amended *Child Welfare Act* contains provisions for the apprehension, confinement and *secure* treatment of children who suffer from mental or behavioural disorders and who present a danger to themselves or others. Initial confinement of up to eight days may be authorized by a court and subsequent secure treatment orders of up to 30 days which are renewable for successive 60 and 90 day periods may be granted. A child may have legal representation at any appearance before a court. A child or guardian may apply for a review of a secure treatment order once during the period of any order or renewal thereof. A child aged 12 or older is entitled to service of notice of an application for an application for a secure treatment order.

#### Article 10

159. Under the *Child Welfare Act*, a Court order is required for the apprehension of a child in all cases other than emergencies. If a child is apprehended, a director has exclusive custody of the child, is responsible for care, maintenance and well-being, and may confine the child in a secure treatment institution if it is considered necessary to do so in order to protect the survival, security or development of the child. If a director confines a child, the director shall appear before the Court within one day of the confinement to show cause why the confinement was necessary and, if necessary, to apply for an order authorizing the confinement of the child for a further period of not more than eight days. The Court may order the child to be returned to a guardian or to be placed under supervision for a period of not more than six months.

160. In 1984, the *Young Offenders Act* was brought into force. It clarifies the rights of young people in respect to provincially created offences, protects children from incarceration with adult offenders, and limits the severity of sentences for young offenders (under 16 years of age). In addition to the enhancement of other procedural protections, it improves the right of young offenders to legal representation. This Act also modified provisions in the *Summary Convictions Act*.

#### Article 14

161. The *Alberta Evidence Act* was changed in 1985 to enhance the right of witnesses to protection from self incrimination. A witness now has automatic protection from having his/her answers used or received in evidence against him/her in a prosecution under an act of the Legislature.

#### Article 17

162. Under the *Child Welfare Act*, the court may exclude any person, including the child and guardian, except a director, the Children's Guardian or a lawyer representing any of the parties, from all or part of the proceedings if the court considers that person's presence to be unnecessary to the conduct of the proceedings.

163. Privacy is considered to be encompassed under the "security of the person" definition in the Act.

164. Reporting of *Child Welfare Act* cases is permissible, however, publications of reports of proceedings under the Act may not confirm information which will identify or lead to the identification of a child or guardian of a child who are the subjects of such proceedings without prior consent of the court.

165. Hearings under the *Child Welfare Act* are presumed open unless the court orders that any person, including a guardian, be excluded.

166. Generally, decisions to disclose personal information under social services legislation are not subject to procedural safeguards or review mechanisms.

167. The *Juvenile Court Act* was repealed in 1980 with the enactment of the *Provincial Court Act* (R.S.A. 1980, c. P-20).

#### Article 18

168. Under the *School Act*, the Protestant or Roman Catholic minority may establish separate schools and may tax property for support of the schools so established. Private schools may be established by religious denominations upon approval of the Minister of Education.

169. Under the *Child Welfare Act* the family's privacy and freedom, with respect to its own interests, are protected. The child, if capable of forming an opinion, is entitled to an opportunity to express that opinion on matters affecting him/her. A person who assumes responsibility for a child should make the child aware of the child's familial, cultural, social and religious heritage. A decision to remove a child from its family should likewise take this into account. In custody application under the *Domestic Relations Act*, the Court may make such order as it thinks fit to ensure that an infant is brought up in a religion in which the parent or other responsible person has a legal right to require that the infant be brought up.



### Article 23

170. Persons are prohibited from marriage where there is a guardianship order or trusteeship order or certificate of incapacity under the *Dependent Adults Act* unless a physician has certified in writing that the party has the capacity to understand the nature of the contract of marriage and the duties and responsibilities relating thereto. The trustee or guardian must have been given prior notice of the issuance of the marriage license or the solemnization of the marriage, as the case may be. Under the *Dependent Adults Act*, the guardian has the authority to decide whether or not the dependent adult should apply or be permitted to apply for a license. It is also an offense to solemnize a marriage where a party is under the influence of alcohol or drugs.

171. The *Matrimonial Property Act* provides for the distribution between the spouses of all property owned by both spouses and by each of them.

172. With the proclamation of the *Maintenance Enforcement Act* (R.S.A. 1985, c. M-05) in 1985, the enforcement of maintenance orders for benefit of children and families was greatly enhanced. Enforcement is centralized and the full resources of the state are brought to bear on the task of pursuing those who are delinquent in maintenance payments. This Act also altered some of the provisions of the *Reciprocal Enforcement of Maintenance Orders Act*, *Court of Queen's Bench Act* and *Domestic Relations Act*.

### Article 24

173. Under the recently amended *Child Welfare Act*, a child is given protective services if there are reasonable and probable grounds to believe that the survival, security or development of the child is endangered because he/she has been abandoned or lost, has no guardian, his/her guardian is unable or unwilling to provide the child with necessities of life including essential medical, surgical or other remedial treatment recommended by a physician, the child has been physically or emotionally injured or sexually abused, is in danger of being subjected to cruel and unusual treatment or punishment, or the condition or behaviour of the child prevents his/her guardian from providing him/her adequate care appropriate to meet his/her needs.

174. The Act states that the family is the basic unit of society and its well-being should be supported and preserved. A child, if he/she is capable of forming an opinion is entitled to an opportunity to express that opinion on matters affecting him/her, and the child's opinion should be considered by those making decisions that affect him/her. The family is responsible for the care and supervision of its children and every child should have an opportunity to be a wanted and valued member of a family.

175. Any person who has reasonable and probable grounds to believe and believes that a child is in need of protective services shall forthwith report the matter to a director. Any person who fails to do so is guilty of an offence.

### Article 25

176. The *Public Service Act* provides for: departmental competitions (where there are a large number of well-qualified applicants within the Department); limited competitions (where a large number of well-qualified applicants exist within the public service); and open

competitions (where sufficient in-service applicants would not normally be forthcoming to ensure a good selection).

177. The Commissioner may exempt an appointment from competition if: satisfied that the person to be appointed has specialized knowledge or qualifications which are unlikely to be bettered through competition; the urgency of the requirement is such as to render the competition procedure impractical; or the exemption is necessary for the effective utilization of employees.

#### Article 27

178. Both the *Law of Property Act* and the *Sale of Goods Act* were amended in 1985 by the removal of provisions invalidating commercial transactions on Sunday, to remove any suggestion that the acts had discriminatory effects on religious grounds.

## 2. BRITISH COLUMBIA

### Part I

179. Since the first report, many changes have been made to legislation in British Columbia relevant to the *International Covenant on Civil and Political Rights*. In particular, passage of the *Canadian Charter of Rights and Freedoms* has had a significant impact. The *Charter of Rights Amendments Act, 1985*, S.B.C. 1985, c. 68, amended provisions of 51 provincial statutes to bring them in line with the equality provisions of section 15 of the Charter. In general, these statutory changes have had the following results:

1. the equal treatment of male and female persons;
2. the abolition of the distinction between children born in and children born out of lawful wedlock;
3. the removal of irrelevant references to age; and
4. the extension of rights of Canadian citizens to other persons who are permanent residents of Canada.

180. All of the statutes of British Columbia were revised in 1979 after the first report was submitted. Accordingly, citations of relevant statutes have been updated.

### Part II

#### Article 2

181. Since the first report, British Columbia has passed new human rights legislation. The *Human Rights Act*, S.B.C. 1984, c. 22, continues the prohibition of discrimination with respect to public facilities, purchase of property, tenancy, employment advertisements, employment, and membership in trade unions, employers' and occupational associations. In addition to the grounds of race, religion, colour, sex, ancestry and place of origin, protected from discrimination by the previous *Human Rights Code of British Columbia*, the new Act includes marital status, and mental and physical disability. The *Human Rights Act* no longer includes a "reasonable cause" test for discriminatory acts.

182. Section 10 establishes the British Columbia Council of Human Rights which is empowered to investigate complaints of discrimination (sections 11 and 12). The Council may attempt to facilitate a voluntary settlement between the parties during this process. Following the investigation, the Council either decides to discontinue the proceedings or refers the complaint to a hearing (section 14). The designated Council Member can either conduct a formal oral hearing or receive written submissions from both parties.

183. If a complaint is upheld, persons who are found to have contravened the Act shall be ordered to cease and desist the discriminatory practice and may be ordered to pay compensation for lost wages or salary and up to \$2,000 for humiliation or injury to personal dignity. There is provision for judicial review of decisions of the Council.

184. Since its inception in September 1984, the Council has dealt with 333 complaints filed under the previous *Human Rights Code*, and has received nearly 800 under the new legislation. Approximately two thirds of complaints are employment-related, with racial discrimination, physical disability, and sex and sexual harassment being the most prevalent basis of discriminatory treatment.

185. Under the *Ombudsman Act*, R.S.B.C. 1979, c. 306, the Ombudsman is empowered to receive and investigate citizens' complaints regarding decisions, actions or procedures of government and other public agencies. Since the office of the Ombudsman was established in 1979, it has received 61,194 complaints and inquiries to the end of 1986, with average of more than 11,000 annually from 1984-86. Approximately half of these problems fall within the Ombudsman's jurisdiction. Of this number, slightly over a third of complaints are resolved or corrected, while the remainder are either withdrawn by the complainant or found to be unsubstantiated. The Ombudsman's office has also issued a number of public reports aimed at reducing unfairness in public administration, such as identifying needed safeguards in procedures for criminal record checks of persons who work with children and other vulnerable individuals, and a review of the Workers' Compensation claims and appeals process.

### Article 3

186. The *Family Relations Act*, R.S.B.C. 1979, c. 121, has been revised since the first report. Part 3 of this Act provides for the equality of entitlement to family assets on the breakup of the marriage. Family assets are defined as property owned by one or both spouses and ordinarily used for family purposes by a spouse or a minor child of either spouse.

187. The language of section 2(a) of the *Name Act*, R.S.B.C. 1979, c. 295, has been amended by the *Charter of Rights Amendments Act, 1985*, to permit either spouse to take the name of the other spouse, if so desired. The *Vital Statistics Act*, R.S.B.C. 1979, c. 425, was revised in 1986 to allow a child to be registered with the surname of either the mother or the father.

188. The *Land (Spouse Protection) Act*, R.S.B.C. 1979, c. 223, (formerly *Wife's Protection Act*) incorporates equal rights of both spouses with regard to land ownership.

### Article 4

189. The *Emergency Program Act*, R.S.B.C. 1979, c. 106, has been implemented when required for particular emergencies such as the search and rescue of a hiker or salvage of a plane crash, but there has been no occasion requiring declaration of a general public emergency since the first report. Administration of this Act has been moved from the Ministry of the Environment and Parks to the Attorney General.

### Article 5

190. The *Civil Rights Protection Act*, S.B.C. 1981, c. 12, prohibits the dissemination of hate literature. In reaction to several racist incidents in the province in the late 1970's, the Minister of Labour requested a report on the subject which led to the drafting of this Act, passed unanimously by the legislature. The Act defines a "prohibited act" as "any conduct

or communication by a person that has as its purpose interference with the civil rights of a person or class of persons by promoting hatred... or (relative) superiority or inferiority... on the basis of colour, race, religion, ethnic origin or place of origin". Remedies for persons who have been so violated can include the recovery of damages or exemplary damages.

#### Article 6

191. British Columbia has a comprehensive system of publicly insured hospital and medical coverage, preventive care, community care programs, and public health protection initiatives. The primary legislation directed toward the maintenance of life and health was outlined in British Columbia's section of Canada's second report on Articles 6-9 of the *International Covenant on Economic, Social and Cultural Rights*, under article 9. Information on a range of statutes pertaining to income assistance, workplace health and safety, food standards, public safety and environmental protection has also been provided in previous provincial reports on this covenant.

192. With respect to Acquired Immune Deficiency Syndrome (A.I.D.S.), a considerable number of public health initiatives are being undertaken. These include an A.I.D.S. testing and counselling service provided by the Ministry of Health, and public education and prevention initiatives for physicians, schools, employers and the general public.

#### Article 7

193. As indicated in the first report, the *Police Act*, R.S.B.C. 1979, c. 331, provides a procedure for citizens' complaints regarding police misconduct (section 39). Approximately 300 complaints are received per year, of which over half are resolved informally and the remainder are taken to a formal investigation or public inquiry. In 1987, legislative amendments were introduced which would make the complaints mechanism more accessible to the public by means of the appointment of a special Complaints Commissioner.

194. Inmates in correctional institutions have the right under the *Corrections Act*, R.S.B.C. 1979, c. 70 (section 45), to appeal prison conditions or disciplinary measures. Each year, approximately 500 complaints from prisoners are received by the Ministry of Attorney General which carries out a thorough investigation on a confidential basis. Persons not satisfied with the handling of complaints may also pursue the matter with the Ombudsman of British Columbia.

195. With respect to cruel or degrading treatment in the home, the Women's Secretariat under the Ministry of Advanced Education and Job Training has established an interministry Working Group on Family Violence. This group will coordinate activities with regard to law enforcement, victim services and social services. Abuse of the elderly in family situations has recently been identified as a specific problem, and is being addressed by various agencies who work with the elderly through provision of respite and homemaker services to ease stress on the family.

#### Article 8

196. Very limited use has been made of provisions described in the first report which permit the use of compulsory or unpaid labour for civil defence under the *Emergency Program Act*, or for controlling forest fires under the *Forest Act*, R.S.B.C. 1979, c. 140.

For example, the latter provision is seldom used because most forest fires are fought by volunteers who are locally recruited and trained, and receive payment based on the *Forest Act Regulation*, B.C. Reg. 139/81 and the *Employment Standards Regulation*, B.C. Reg. 37/81.

#### Articles 9 and 14

197. The *Offence Act*, R.S.B.C. 1979, c. 305, has replaced the *Summary Convictions Act* in providing procedures for fair treatment of persons who are charged with offences and also at later stages in the judicial process, including trial, sentencing, and appeal procedures.

#### Article 10

198. The *Corrections Act* authorizes the minister responsible to inspect a correctional centre, and permits the minister to investigate the conduct of any person employed in the correctional centre. The *Correctional Centre Rules and Regulations 1986* specifies what constitutes proper treatment of inmates as well as inmates' rights such as contact with family, a fair hearing process regarding discipline and right of appeal.

199. Maltreatment of prisoners is also prohibited by the codified standards of conduct accepted as working conditions by Correction employees. In a recent case, a provincial corrections officer was dismissed for allowing two fellow officers to beat an inmate in his custody. The officer did not intervene, report the incident or acknowledge that it took place when asked about it by his superiors. A neutral labour arbitrator upheld the dismissal on the ground that his passive behaviour was a breach of trust.

200. Section 12 of the *Young Offenders (British Columbia) Act*, S.B.C. 1984, c. 30, requires a young person (12 to 17 years of age) in custody to be held separate and apart from an adult convicted of an offence. Under section 5(a) of the *Correctional Centre Rules and Regulations*, all persons remanded in custody but not convicted are held in separate centres or units from those who have been convicted and sentenced.

#### Article 16

201. As indicated in the first report, every citizen of British Columbia has a right to recognition as a person before the law unless specifically excluded by statute. The main exceptions are children under 19 and those who are not mentally competent. However, they have the right to have their interests represented by a relative or other guardian, as the case may be, pursuant to the *Infants Act*, R.S.B.C. 1979, c. 196, the *Mental Health Act*, R.S.B.C. 1979, c. 256, the *Young Offenders (British Columbia) Act* and the *Family Relations Act*.

#### Article 17

202. Letters from provincial inmates destined to the Attorney General, Director of Inspection and Standards, other branches of the Correction System, or the Ombudsman are not to be opened and viewed by prison officials according to section 42(1) of the *Correctional Centre Rules and Regulations 1986*. Police records are not available to the public and can be used only by authorized agencies for the purposes of security clearance or investigation of violations against the law. In addition, the identity of young offenders (aged 12 to 17 inclusive) is protected by the *Young Offenders (British Columbia) Act*.

203. Section 10 of the *Credit Reporting Act*, R.S.B.C. 1979, c. 78, formerly the *Personal Information Reporting Act*, S.B.C. 1973, c. 139, restricts the disclosure by a reporting agency of a person's personal and financial records. Such information may only be disclosed to a person who the agency has reason to believe intends to use the information for prescribed purposes, including employment, business transactions, credit, tenancy agreements, insurance and other areas of consumer eligibility. Section 14 of the Act provides access to an individual's own file.

#### Article 18

204. Section 11 of the *Industrial Relations Act*, S.B.C. 1979, c. 212 (formerly *Labour Code of British Columbia*), permits individuals to apply to the Industrial Relations Council for exemption from union membership on religious grounds, where union membership is required as a condition of employment. A recent change to section 11 permits individuals to apply to have deductions from their wages, normally intended to pay union dues, redirected to a charitable organization.

#### Articles 19 and 20

205. On the issues of freedom of expression and hate literature, a significant new development has been the *Civil Rights Protection Act* discussed under article 5.

206. Film content is addressed in the *Motion Picture Act*, S.B.C. 1986, c. 17. This Act provides for advertisement warnings and age-restricted admittance to sexually explicit or excessively violent films and for removal or erasure of portions of films depicting coercive sexual behaviour or brutality. The Act also regulates distribution and rental of video cassettes, and provides an appeal board whereby a filmmaker can appeal a classification decision.

#### Article 22

207. In 1987, the *Labour Code of British Columbia* was reviewed and significantly revised under a new title - the *Industrial Relations Act*. The revisions were intended to provide a wider range of dispute resolution alternatives and to provide a means of protecting the public interest from the effects of a work stoppage. More protections are provided for individual free speech on the worksite and limitations are placed on the extent to which a union can discipline its members.

208. Certification of a union bargaining unit was addressed in 1984 amendments (continued in current legislation) which ensured that all affected employees must be given an opportunity to vote on representation by the union. A mandatory vote also applies in applications for decertification of a bargaining unit.

#### Article 23

209. The *Family Relations Act* has been revised since the first report and outlines in some detail the rights and obligations of parents, spouses, and children. Section 2 of the Act provides for the appointment of a family advocate to represent a child in proceedings such as adoption, guardianship and custody. Sections 21-42 contain provisions for child custody, access and guardianship in the case of marriage breakup or death of the parents. Parental

obligations to support a child are specified, as are the obligations of an adult child to support dependent parents.

#### Article 24

210. Provisions of the previous *Protection of Children Act* have been transferred to the *Family Relations Act*. Custody of neglected or mistreated children is now assigned to the Superintendent of Family and Child Services, who has the duty to provide appropriate foster care. Financial support of a child in care is the responsibility of the parents at a rate set by the Court and established in relation to the parents' ability to pay. Section 29 of the *Family Relations Act* provides for appointment of a Public Trustee to manage the assets of a child under age 19 whose parents have died.

211. The *Infants Act*, R.S.B.C. 1979, c. 196, provides a young person with the right of consent to medical treatment (i.e. without needing parental consent) at age 16. The Act also outlines the enforceability of a contract made by a young person under age 19.

212. References in the previous report to the *Provincial Court Act* and the *Juvenile Delinquent's Act* are no longer relevant. The new provincial *Young Offenders (British Columbia) Act* places emphasis on the responsibility of a young offender (aged 12 to 17) for his/her acts in order to protect society from illegal behaviour. A young person is entitled to counsel, and there is a prohibition on publication of the name of the child. A child under age 12 cannot be charged, although someone who counsels such a child to commit a crime is liable to prosecution.

213. The employment of children is now regulated by the *Employment Standards Act*, S.B.C. 1980, c. 10, which prohibits the employment of children under the age of 15 without the permission of the parents and of the Employment Standards Branch. In cases where permission is given, specific guidelines are established under which such employment may take place.

214. Appointment of a deputy Ombudsman to be solely responsible for issues relating to children and youth has recently been announced.

#### Article 25

215. The *Elections Act*, R.S.B.C. 1979, c. 103, entitles all residents of British Columbia who are Canadian citizens and at least 19 years of age to be registered as voters (section 2), but not those convicted of an indictable offence and still serving a sentence or detained in a mental institution by court order (section 3). Every person who is a registered voter and a resident of the province for the year preceding election day is qualified to be a candidate for election (section 55) except for certain grounds for disqualification relating to illegal acts (section 260).

#### Article 26

216. The *Legal Services Commission Act* has been replaced by the *Legal Services Society Act*, R.S.B.C. 1979, c. 227, with provisions similar to those outlined in the first report.



Article 27

217. Ethnic, religious or linguistic minorities in British Columbia have the right to enjoy their own culture, practice their religion, or use their own language. Discrimination against such minorities is prohibited by the *Human Rights Act* and the *Civil Rights Protection Act* as discussed under articles 2 and 5. Preservation of the various ethnic cultures of British Columbia's multicultural population is the objective of a special Cabinet Committee on Cultural Heritage and of the Office of the Cultural Heritage Advisor. The Province has also recently established a Cabinet Committee and Secretariat on Native Affairs.

### 3. MANITOBA

#### Introduction

218. The *International Covenant on Civil and Political Rights* is a document that is very broadly worded. A strict respect for or interpretation of individual articles may not result in compliance with the spirit of the Covenant in all cases. Therefore, to report on compliance with the Covenant it is necessary to judge compliance with the general purpose and spirit of the Covenant, in addition to compliance with the individual articles.

219. A report on compliance with the Covenant serves three important and distinct purposes. The first is to encourage governments to conduct their business in compliance with the Covenant. The second is to oblige governments to practise thinking about the principles of the Covenant and to be aware of the many, sometimes discrete ways in which governments exercise power over citizens. The third is to hold the government's record up for public examination.

220. The *International Covenant on Civil and Political Rights* is primarily concerned with identifying the ways in which governments exercise power over citizens and ensuring that there are protections for the citizens from an abuse of that power. The Covenant's secondary concern is to ensure that societies are structured so that individual citizens must respect the human and civil rights of other citizens.

221. This report on compliance with the Covenant has 5 subject headings: (1) extraordinary powers of the government over its citizens; (2) protections of citizens from the abuse of the Government's extraordinary powers; (3) measures to ensure respect of rights between citizens; (4) services and programs, in addition to the above measures and protections, designed to enhance the rights of citizens; and (5) measures taken since 1979 to enhance civil and political rights in Manitoba.

222. In a general report of this nature it is impossible to give anything more than the most general descriptions of the powers, protections, measures, and services that will be referred to.

223. The citations for individual statutes are not given in this report. Manitoba's statutes can be found easily as they are kept alphabetically in the Continuing Consolidation of the Statutes of Manitoba, CCSM. Each act contained in the CCSM shows the date and year that royal assent was given to the act, just below the title. The acts and their amendments can also be found in the annual bound volumes of the Statutes of Manitoba (S.M.).

224. In 1979, Canada's initial report on implementation of the provisions of the Covenant included a 25 page, article by article compliance report for Manitoba. In 1983, a supplementary report provided more detail to the report. The present report, different in format from the 1979 report, is essentially an update of that report, although some references that were made or could have been made in the 1979 report appear here. However, this report should be read together with the 1979 and 1983 reports.

225. Manitoba is pleased to present this report, and is proud of its improvement in the past 8 years. Manitoba commits itself to continuing to find ways to ensure that the spirit and the letter of the Covenant receive the fullest possible recognition.

## 1. Extraordinary powers of the Government

226. Extraordinary powers can be put into categories: powers in case of emergencies, powers that deprive physical liberty, powers that restrict freedom of expression, powers that restrict personal relationships, and powers that restrict economic freedom. Almost all government regulation falls into one of the above categories. The choice of which powers to designate as "extraordinary" are determined by subjective estimations of a given power's degree of intrusiveness on a citizen's rights.

### A. Emergency powers

227. The powers in this category include many or all of the powers in the categories B, C, D, and E below. The following acts provide the Manitoba Government with special powers in cases of emergencies: *The Emergency Measures Act*, *The Fires Prevention Act*, *The Manitoba Hydro Act*, and *The Manitoba Water Services Board Act*. *The Emergency Measures Act* creates powers that can be invoked by a declaration of civil disaster. After a declaration of civil disaster, the Cabinet may do all things necessary for the protection of persons or property.

### B. Deprivation of physical liberty

228. The power to physically confine a person is created for criminal law and health reasons. The criminal law is primarily found in the *Criminal Code*, an act of the Government of Canada, but administered by the provincial Attorney General. Other federal statutes and some provincial offences also permit incarceration. The *Summary Convictions Act* is the most relevant provincial act giving powers to incarcerate. Once incarcerated, federal and provincial legislation controls the treatment of prisoners. The provincial government exercises power over persons imprisoned for less than two years, and persons who are awaiting trial. The most relevant provincial act is *The Corrections Act*. Another act that permits confinement is *The Intoxicated Persons Detention Act*, which is designed to allow police to take a person who is intoxicated in a public place to a detoxification centre for up to 24 hours.

229. The confinement of persons for health reasons, or the compulsory treatment of health problems, is another extraordinary power of the Government. These powers are found in *The Mental Health Act* and *The Public Health Act*.

### C. Restriction of freedom of expression

230. Provisions that might be considered to be restrictions on freedom of expression are found in *The Amusements Act*, *The Petty Trespasses Act*, *The Defamation Act*, *The Civil Service Act*, *The Human Rights Code* and the federal *Criminal Code*. *The Amusement Act* does not censor, but classifies films and restricts access to some films to adults. *The Petty Trespasses Act* permits the communication of true statements (such as pickets demonstrating a strike action is occurring) on any roadway or parking area to which the public normally has access, even if that property is privately owned. *The Defamation Act* restricts the ability to defame other persons. *The Civil Service Act* provides for secrecy by Government employees. *The Human Rights Code* restricts hate literature. The *Criminal Code* restricts hate literature and obscene material.

#### D. Restriction of personal relationships

231. The *Criminal Code* restricts certain conduct between persons, for the purpose of protecting the liberties of individuals who would be harmed by the conduct if it were unrestricted. A simple example is the prohibition of assault. The restrictions extend to the regulation of sexual relations, especially with respect to young persons. *The Child and Family Services Act* also protects children, sometimes with the effect of interfering in family relationships. *The Marriage Act* and the federal *Divorce Act* also prohibit or continue temporarily certain legal relationships despite the wishes of the persons involved.

#### E. Restriction of economic freedom

232. Most Government action can be interpreted as a regulation or limitation of economic freedom. The most significant examples in Manitoba are: the raising of tax revenue under various taxing statutes; taking property without the owner's consent under *The Expropriation Act*; creating obligations on persons to support other persons; and regulation of labour and management relations through various labour statutes. The principal statutes creating support obligations are *The Family Maintenance Act*, *The Testators Family Maintenance Act*, *The Parents Maintenance Act*, and the federal *Divorce Act*. Labour statutes are discussed below as measures to ensure respect of rights between citizens.

233. The Government also restricts economic freedom in the interests of conservation. The main relevant acts are *The Environment Act*, *The Natural Resources Act*, *The Farm Lands Ownership Act*, *The Heritage Resources Act*, *The Provincial Park Lands Act*, *The Forest Act*, and *The Crown Lands Act*. The Government also regulates the use of property to take into account the interests of the community and neighbours of the property holder. This is primarily accomplished through *The Planning Act* and *The Municipal Act*.

#### F. Other restrictions

234. While much of government action can be interpreted as restrictive in some sense, there are a few miscellaneous powers exercised by government that should be mentioned here. These are *The Elections Act*, *The Elections Finances Act*, and *The Age of Majority Act*. The first two of these acts regulate who may participate in elections and how money may be used in elections. *The Age of Majority Act* creates significant legal differences for persons younger than the age of majority than exist for older persons.

#### 2. Protections of citizens from the abuse of the Government's extraordinary powers

235. By far the most important protections of citizens against the Government's abuse of powers is an effective and democratic legislative assembly, a free and active media, and an independent, vigilant judiciary. Together, these protections should place a high value on scrutinizing government action and presenting alternative viewpoints. This is doubly important for the protection of rights of minorities. An unwillingness to expose or criticize abuses if they are known can make even the most explicit guarantee ineffective. The denial for almost a century of the constitutionally guaranteed linguistic rights of the francophone minority in Manitoba is a vivid example of the ineffectiveness of statutory guarantees without the above protections functioning properly. Manitoba is proud to be able to say that those linguistic rights are now being respected.

236. Aside from the protections mentioned above, the most important sources of protection of abuse of Government power are the restrictions of Government powers that are contained in the empowering statutes themselves. In this respect, all of the statutes referred to above have protections for citizens. Each statute should be referred to for specific detail. The majority of the statutes referred to above provide procedures that must be followed in order for the powers to be exercised. Only the emergency powers do not contain extensive procedures, and these powers are limited by the language used to create the powers.

237. There are a number of additional protections available to prevent abuses of power by the Government. The *Canadian Charter of Rights and Freedoms* and *The Manitoba Human Rights Code* are fundamental protections that protect individual rights. *The Jury Act* is an important law to ensure that the right to a trial by jury is protected by procedural safeguards of fair jury selection.

238. The recently enacted *Freedom of Information Act* will provide improved access to government information. *The Legislative Assembly and Executive Council Conflict of Interest Act*, *The Municipal Council Conflict of Interest Act*, and *The Public Schools Act* ensure that locally elected representatives are not acting out of personal financial interest. *The Ombudsman Act* ensures that there is an independent person familiar with the operation of government to assist individuals who are having unsuccessful dealings with some part of the government. *The Proceedings against the Crown Act* creates legal remedies enforceable in the courts where there is a legal dispute between the government and a person.

239. *The Law Enforcement Review Act* provides for challenges to oppressive behaviour of law enforcement officers. The common law actions of malicious prosecution and false imprisonment are other remedies against law enforcement abuses. Further, the Government has recently adopted a policy of compensating persons who have been wrongfully convicted.

### 3. Measures to ensure respect of rights between citizens

240. There is a wide range of measures that ensure citizens respect the rights of other citizens. These measures generally apply to Government as well. The *Criminal Code* provides protection for the most extreme infringements. It remains to be seen how the *Canadian Charter of Rights and Freedoms* might help protect citizens from abuses of other citizens and corporations. *The Human Rights Code*, *The Privacy Act*, *The Defamation Act*, and the common law of tort, especially in relation to negligence, all provide general and basic protections that are not specific to any particular area of activity or relationship. Other principal areas where there are measures to ensure respect of rights between citizens are labour practices, landlord and tenant law, family relationships, and consumer protection.

241. *The Workplace Safety and Health Act*, *The Employment Standards Act*, and *The Labour Relations Act* are the principal laws guaranteeing fair labour practices and workplace health and safety. *The Landlord and Tenant Act* is the principal law to ensure that landlords and tenants understand their rights and obligations, and respect the rights and obligations of the other. *The Public Health Act* and municipal by-laws also operate to ensure workplaces and residences meet basic health standards.

242. *The Child and Family Services Act*, *The Marital Property Act*, *The Family Maintenance Act*, *The Parents' Maintenance Act*, *The Testators Family Maintenance Act*, *The Dower Act*, *The Infants' Estates Act*, and *The Devolution of Estates Act* all have measures to

ensure that family members understand and fulfill their obligations as family members, and respect the rights of others in the family.

243. The principal measures that protect consumers are *The Sale of Goods Act*, *The Consumer Protection Act*, and provisions in laws that create professional associations that ensure that professionals act ethically and provide their best service to the public. *The Discriminatory Business Practices Act* provides that businesses may not refuse to enter into contracts because of personal attributes (for example race, religion, sex, national origin) of persons associated with a contracting party, and businesses may not enter into contracts that require them to discriminate on grounds of personal attributes.

4. Services and programs, in addition to the above measures and protections, designed to enhance the rights of citizens

244. In addition to all of the above measures, there are a number of services, programs, and laws that the Government can offer to enhance the political and civil rights of citizens. The measures are not in response to any extraordinary power or any abuse of rights by Government or other citizens, but are rather a recognition that basic, accessible services enhance the ability of all citizens to enjoy and exercise their political and civil rights.

245. There are four fundamental measures that are essential to make civil and political rights meaningful. These are the provision of acceptable standards of health care, income assistance, legal assistance, and education to all persons in a society, without discrimination and without individual ability to pay being a barrier to enjoying the basic standards set. For these measures, it is the society's ability to pay that determines the standards that can be offered.

246. The Manitoba Health Services Commission is one part of Manitoba's program of providing health care to all persons, without requiring payment before the health care is provided. *The Social Allowances Act* is a major part of the provision of social assistance. *The Legal Aid Services Society of Manitoba Act* is the foundation for the provision of legal assistance to those unable to pay for legal assistance by themselves. *The Public Schools Act* is the cornerstone of the provision of education to all children. For post-secondary students there is a program of student financial aid.

247. It is recognized that poverty, inadequate health care, lack of education, and restricted access to independent, legal assistance creates conditions that make the existence of abstract political and civil rights meaningless.

248. In addition to the above fundamental measures required to give meaning to political and civil rights, there are a number of other services that exist in Manitoba that greatly enhance the ability of Manitobans to enjoy and exercise their rights.

249. *The Workers Compensation Act*, *The Criminal Injuries Compensation Act*, and *The Manitoba Public Insurance Corporation Act* all create mechanisms and funds that reduce the effects of accidents to individuals.

250. *The Crime Prevention Foundation Act* and *The Justice for Victims of Crime Act* create mechanisms and funds to assist in crime prevention and in providing services to crime victims.

251. The Government has adopted a policy of affirmative action in its hiring practices to help ensure that the public service is reasonably representative of the composition of the public. *The Pay Equity Act* ensures that there is equal pay for work of equal value in the public service.

252. Manitoba has many programs and laws designed to protect and promote Manitoba's heritage and multiculturalism. Important funds for these and other purposes are raised by the Manitoba Lotteries Foundation, which operates or controls all lotteries, bingos, and casinos in Manitoba.

253. Manitoba has a policy of increasing access to law. In addition to legal aid, there is, among other services, the Community Legal Education Association, and court enforcement of family maintenance and child custody orders.

#### **5. Measures taken since 1979 to enhance civil and political rights in Manitoba**

254. Manitoba has been extremely active in the past 8 years in finding innovative ways to enhance rights, and in redressing past omissions that made rights vulnerable. This part of the report will discuss firstly a number of measures that correspond with three or more articles in the Covenant, followed by a brief discussion of measures that correspond with individual Covenant articles.

255. The most important new measure in Manitoba for improved compliance with the Covenant is the new *Human Rights Code*. This Act was enacted in the summer of 1987. It improves the previous *Human Rights Act* by improving the definitions of prohibited grounds of discrimination. For example, pregnancy is now expressly recognized as a prohibited ground of discrimination. So too is harassment based on any of the prohibited grounds. Sexual orientation is a prohibited ground of discrimination. Developments in case law have been incorporated into the Act, and the members of the Human Rights Commission are more protected from political interference with their appointments. The new Act enhances Manitoba's compliance with articles 2, 3, 5, 18, 19, 20, 24, 26 and 27.

256. *The Charter Compliance Acts*, 1985, and 1986, improved Manitoba's compliance with the *Canadian Charter of Rights and Freedoms* protections from unreasonable search and seizure. *The Charter Compliance Act* of 1987, *The Equal Rights Statute Amendment Act* of 1985, and *The Equality of Status Act* of 1982 are all acts which improve Manitoba's compliance with the *Canadian Charter of Rights and Freedoms'* protection of equality. These acts correspond with the large majority of Covenant articles. These amendments were made by identifying conflicts and rectifying them, rather than waiting for individual sections to be challenged in courts.

257. *The Discriminatory Business Practices Act* (1987), mentioned above, restricts the ability of businesses to refuse to enter into contracts for discriminatory reasons, and restricts the ability of businesses to demand or accept discriminatory conditions as part of a contract. This Act corresponds to articles 2, 3, 5, 18, 26, and 27.

258. Manitoba has taken a number of other steps to reduce discrimination under articles of 2, 3, and 26 of the Covenant. One such step was to prohibit discrimination on the basis of sex for different rates or benefits under pension or insurance plans. Automobile insurance premiums and drivers licences no longer discriminate based on age or sex. As of April 1,

1988, the minimum wage of persons under 18 will be the same as that for older persons. *The Social Allowances Act*, amended in 1984, no longer discriminates between single mothers and single fathers. *The Employment Standards Act*, amended in 1985, has extended unpaid paternity leave to 6 weeks and unpaid adoptive leave to 17 weeks (unpaid maternity leave was already 17 weeks). The reason for the above changes is that Manitoba has adopted the philosophy that statistical generalizations do not justify differential treatment of individuals, who may or may not be or become part of the statistical norm.

259. *The Emergency Measures Act* (1987) is a major revision of the previous Act. It eliminates reference to war emergencies, as these are dealt with by federal legislation. The Act requires greater planning and training by municipalities as a precaution against civil disaster, and the Act makes it possible for an emergency to be declared more quickly than at present. The Act relates to Covenant articles 4, 8, and 12.

260. *The Child and Family Services Act* (1985), *The Family Maintenance Act* (1978) and *The Child Custody Enforcement Act* (1982) all deal with family relationships. *The Child and Family Services Act* reorganized Manitoba's system of providing aid and protection to children, and created new family services in Manitoba. *The Family Maintenance Act* strengthens the obligations to support one's family and strengthens the enforcement of court ordered family support. *The Child Custody Enforcement Act* strengthens the enforcement of court orders concerning custody of children. Each of these measures corresponds to Covenant articles 17, 23, and 24, and *The Family Maintenance Act* also relates to article 11.

261. Manitoba has created a child abuse registry to help protect children. The registry is composed of names of persons thought to be child abusers, and the names of child abuse victims. A person whose name is included on the registry is notified of the inclusion, and has a right to appeal that inclusion. The purpose of the registry is to assist employers who provide services or care of children to assure themselves that they have not hired child abusers.

262. Other measures relating to family relationships and child protection include *The Community Child Day Care Standards Act* (1982) and *The Infants Estates Act* (1985). These measures relate to articles 17, 23 and 24. Also, substantial revisions to the following acts have recently been passed: *The Marriage Act* (1983), *The Vital Statistics Act* (1983), and *The Change of Name Act* (1987). These acts affect family relationships and article 16's right to recognition as a person before the law. *The Family Maintenance Act*, by an amendment in 1983, eliminates all distinctions in law concerning illegitimate children.

263. The following references are to new measures that relate to one or two of the articles in the *International Covenant on Civil and Political Rights*.

264. Among other things, article 1 deals with the right of self-determination. In this regard, the *Constitution Act, 1982* provides for constitutional conferences on issues relating to aboriginal peoples, including the identification and definition of aboriginal rights. The Conferences have, so far, resulted in failure, and no more conferences are presently scheduled. Manitoba has been and continues to be a strong advocate for aboriginal rights, for conferences to produce results in respect of those rights, and for significant development of the concept of Native self-government. The Manitoba cabinet also has a Minister without portfolio responsible for Native affairs, and a Native Affairs Secretariat to advise cabinet.



265. *The Justice for Victims of Crime Act* (1986) and *The Crime Prevention Foundation Act* (1987) are related to preventing the breach of rights of citizens, and to providing effective remedies and services after any such breach. Both acts are the first legislation in Canada on these subjects. These acts correspond to article 2.

266. *The Pay Equity Act* (1985) ensures that Province of Manitoba employees receive equal pay for work of equal value. This is especially important for the promotion of equality of women in the workplace. *The Manitoba Advisory Council on the Status of Women Act* (1987) is designed to promote the equality of women in society. These acts relate to articles 2 and 3 of the Covenant.

267. In addition to the extensive services and protections to ensure an adequate standard of living for all Manitobans that existed in 1979, there are several new measures to further enhance the basic standard of living. A good example is *The Jobs Fund Act* (1984) which provides for provincial contributions to employers who create new jobs. This is one reason why Manitoba consistently has one of the lowest unemployment rates in Canada. *The Residential Rent Regulation Act* (1982) ensures that accommodation costs do not increase unduly over short periods of time. These measures relate to article 6 as they are important to providing the necessities of life.

268. *The Human Tissue Act* and *The Mental Health Act* have both been substantially amended and improved in 1987. These measures relate to Covenant articles 7 and 9, and *The Mental Health Act* also relates to article 10. These articles deal with rights to liberty and protection from medical experimentation. The acts allow for compulsory medical treatment in certain exceptional circumstances, and for consent for body parts to be used in different ways after one's death.

269. *The Law Enforcement Review Act* (1983) provides important new measures for persons to present claims of harassment or abuse by peace officers. This Act relates to Covenant articles 9 and 10. The Attorney General announced a government policy in 1986 that would compensate persons wrongfully imprisoned. Article 14(6) of the Covenant was a major factor in the introduction of this policy, and there has already been one payment made under the policy. The policy also relates to article 9 of the Covenant. *The Jury Act* (1983) is a substantial revision and further enhances rights to a fair trial under articles 9 and 10 of the Covenant. The Department of the Attorney General will soon be introducing legislation that deals with the treatment of young offenders, in compliance with articles 10 and 14.

270. The right to freely choose a residence and to have free movement under Covenant article 12 is limited by conservation and environmental measures. New legislation includes: *The Farm Lands Ownership Act* (1983), *The Manitoba Habitat Heritage Act* (1985), *The Heritage Resources Act* (1985), *The Transportation of Dangerous Goods Act* (1983), *The Ecological Reserves Act* (1981), *The Wildlife Act* (1980) and *The Environment Act* (1987).

271. Manitoba has been especially active in improving the ability of its citizens to find and understand the law. This is important for article 14, but also for the ability to enjoy to the fullest all civil and political rights. Manitoba has significantly improved the drafting and publication of its regulations. Manitoba has significantly improved court organization in the province. Manitoba has continued its strong legal aid program. Manitoba has expanded legal education by the creation of the Community Legal Aid Association in 1985. Better

court organization, procedure, and accessibility, simpler laws; and greater community education continue to be important goals of the Manitoba Government, and further improvement in these areas can be expected in the near future.

272. Article 17 of the Covenant addresses itself to privacy. In 1987, Manitoba signed agreements with the Canadian Security Intelligence Agency and with federal correctional institutions to provide those agencies with access to provincial information. The agreements formalized a long-standing tradition of sharing information with such agencies. The citizens of Manitoba benefit from the existence of formal agreements and information request procedures because it enables the Government to have a much improved knowledge of and control over information that is being requested and supplied to these agencies. Furthermore, in the case of information provided to the correctional institutions, one of the principal purposes for this agreement is to allow the correctional institutions to release information to inmates concerning information about themselves contained in the files of the institution, even if that information's source is the Province of Manitoba.

273. Article 25 of the Covenant deals with the right to take part in public affairs. Article 21 deals with the right of peaceful assembly subject only to restrictions required in a democratic society. This implies there is access to government and accountability of government. Aside from the protections that existed in 1979, there have been important new measures created. *The Freedom of Information Act* (1985) is expected to come into force next year. The delay has been caused by improving government filing systems so that records can be retrieved once requested. *The Legislative Assembly and Executive Council Conflict of Interest Act* (1983), *The Municipal Council Conflicts of Interest Act* (1983) and 1987 amendments to *The Public Schools Act* are important laws ensuring those involved in public affairs perform their tasks openly and ethically. There have been revisions of *The Election Finances Act* and *The Elections Act* in 1980. *The Act respecting the accountability of Crown Corporations* (1987) and the Office of Expenditure Review, created in 1987, are both designed to give the public greater control over the spending of its money.

274. Article 27 of the Covenant deals with protection of ethnic, religious, or linguistic minorities. In November, 1985, the Supreme Court of Canada instructed Manitoba on what was required for compliance with the guarantees to the French language minority in Manitoba, as set out in the constitution, in *The Manitoba Act, 1870*. These provisions had not been respected since 1890. Manitoba is now nearing completion of the translations and the implementation of the bilingual procedures that are necessary to comply with the constitution. Manitoba will soon have fulfilled the instructions of the Court and will be in full compliance with the constitution.

275. In addition, Manitoba continues to be a strong promoter of multiculturalism. The Manitoba Lotteries Foundation, created in 1982, ensures that profits from gambling in Manitoba are devoted to multiculturalism, and to the provision of provincial services. *The Manitoba Intercultural Council Act* (1983) has been enacted to provide advice to the Province on how to promote multiculturalism.

276. In conclusion, Manitoba has been extremely active in the past 8 years in adopting measures that significantly enhance the civil and political rights of all Manitobans. Some of the measures have been administrative, others have been legislative. Some of the measures have placed greater limitations on the exercise of extraordinary power, others have provided

citizens with greater remedies against the abuse of government power, other measures have enhanced the responsibility of citizens to respect the rights of their fellow citizens, while still other measures have increased the range of services that enhance civil and political rights. Some of the measures have corrected past omissions, but most of the measures represent innovative, proactive leadership in improving civil and political rights.

277. The past 8 years have produced many measures that are sources of pride for Manitobans, and the Manitoba government continues to commit itself to proactive and innovative action to further improve civil and political rights in Manitoba.

#### 4. NEW BRUNSWICK

278. In Canada's first report, information was provided concerning New Brunswick's legislation that gave effect to the provisions of articles 1 to 27 of the Covenant. This report will update the information, under relevant articles, that has been affected by legislation since the first report.

##### Article 2

279. Since the first report, a number of amendments were made to the *Human Rights Act*, R.S.N.B. 1973, c. H-11. These include the addition of mental and physical disability as proscribed grounds of discrimination. As well, the Act was amended to include specific protection against sexual harassment.

280. The preamble of the Act states that:

(WHEREAS) recognition of the fundamental principle that all persons are equal in dignity and human rights without regard to race, colour, religion, national origin, ancestry; place of origin, age, physical disability, mental disability, marital status or sex, is a governing principle sanctioned by the laws of New Brunswick.

281. Under the *Family Services Act*, R.S.N.B. 1973, c. F-2.2(1980), adopted in 1980, children have basic rights and fundamental freedoms no less than those of adults. Under the Act, a "child" includes an "unborn child".

282. Beginning in 1983, five omnibus acts have been enacted by New Brunswick with respect to compliance with the *Canadian Charter of Rights and Freedoms*. This comprehensive and exhaustive set of acts affected more than 60 pieces of provincial legislation.

283. With reference to article 2, paragraph 3(a), the *Ombudsman Act*, R. N.B. 1973, c. O-5, gives to an Ombudsman the power to obtain information pursuant to the *Family Services Act*, the *Archives Act*, R.S.N.B. 1973, c. A-11.1(1977) and the *Right to Information Act*, R.S.N.B. 1973, c. R-10.3(1978). The Ombudsman has the power to verify if an individual has been denied access to information to which he/she ought to be entitled.

##### Article 3

284. An Advisory Council on the Status of Women allows for an examination and distribution of information to the Government and the public on matters of concern for women. The Council was established under the *Advisory Council on the Status of Women Act*, R.S.N.B. 1973, c. A-3.1(1975).

285. The *Dower Act* and the *Deserted Wives and Children Maintenance Act*, R.S.N.B. 1973, c. D-8, cited in the first report, were repealed and are no longer in effect. However, deserted wives and children maintenance is included in the comprehensive *Family Services Act*.

#### Article 4

286. The *Emergency Measures Act*, R.S.N.B. 1973, c. E-7, was repealed and replaced with the *Emergency Measures Act*, R.S.N.B. 1973, c. E-7.1. No changes were made affecting the implementation of the Covenant.

#### Article 6

287. As mentioned above, the "unborn" is considered a "child" and is granted the privileges of a child under New Brunswick law. This is stated in the *Family Services Act*.

#### Article 7

288. Organ transplants and donations are regulated by the *Human Tissue Act*, R.S.N.B. 1973, c. H-12.

#### Article 14

289. The *Legal Aid Act*, R.S.N.B. 1973, c. L-2, cited in the first report, did not include the opportunity for a person of modest means to be provided with a solicitor on civil matters. It dealt only with criminal matters. In 1981, civil aid was introduced to New Brunswick and operated until April 1988. It was stopped due to lack of funding.

#### Article 18

290. The *Lord's Day Act*, R.S.N.B. 1973, c. L-13, was repealed and was replaced with the *Days of Rest Act*, R.S.N.B. 1973, c. D-4.2(1985). This was done to eliminate the discriminatory language of the previous act and to bring it into conformity with the *Canadian Charter of Rights and Freedoms*.

#### Article 23

291. A new marital property regime is established under the *Marital Property Act*, R.S.N.B. 1973, c. M-1.1(1980). It provides for equality between the spouses without discrimination. For example, in the case of divorce or separation, et cetera, "each spouse, ... is entitled to have the marital property divided in equal shares".

#### Article 24

292. Major legislative changes were made pursuant to article 24. The *Family Services Act* establishes a comprehensive regime for the protection of children. All aspects of the general welfare of children are covered in the Act and include the mental, emotional and physical health of the child, a secure environment, cultural and religious heritage, and a recognition of the child's views and preferences.

293. A number of acts that were cited in the first report were repealed because of the *Family Services Act*. They include the *Day Care Act*, R.S.N.B. 1973, c. D-4.1(1974), the *Deserted Wives and Children Maintenance Act*, the *Devolution of Estates Act*, R.S.N.B. 1973, c. D-9, and the *Parents' Maintenance Act*, R.S.N.B. 1973, c. P-1, among others.

294. Children born out of wedlock are no longer treated by a different scheme. The term "illegitimate" is no longer used. In this regard, the *Legitimation Act*, R.S.N.B. 1973, c. L-4, and section 30 of the *Marriage Act*, R.S.N.B. 1973, c. M-3, were repealed.

#### Article 25

295. The *Civil Service Act*, R.S.N.B. 1973, c. C-5, was repealed and replaced with the *Civil Service Act*, R.S.N.B. 1973, c. C-5.1(1984). The Act's anti-discriminatory clause, cited in the first report, was removed. However, people subject to the *Civil Service Act* enjoy anti-discrimination protection under the *Human Rights Act*.

#### Article 27

296. In 1981, *An Act recognizing the Equality of the Two Official Linguistic Communities in New Brunswick* was adopted. Equal status and equal rights were given to the English and French communities because of the "unique character of New Brunswick". Cultural, economic, educational and social development are promoted in the policies and programs of the Province.

## 5. NEWFOUNDLAND

### Introduction

297. Since Canada's first report in 1979, Newfoundland has enacted various legislation offering guarantees of rights recognized by the *International Covenant on Civil and Political Rights*, details of which follow with reference to the relevant Article of the Covenant. Perhaps the most notable change was the coming into force of the *Canadian Charter of Rights and Freedoms* (the Charter) and the *Constitution Act, 1982*, on April 17, 1982. Section 52(1) of the *Constitution Act, 1982* provides that any law or governmental act that is inconsistent with the Constitution of Canada, including the Charter is, to the extent of the inconsistency, of no force or effect. Section 15 of the Charter guarantees equality rights which complement and add to the anti-discrimination provisions found in Newfoundland's provincial human rights legislation. That section came into effect three years after the *Constitution Act, 1982* to allow all provinces time to effect legislative changes in accordance with guaranteed rights and freedoms under the Charter. *The Charter of Rights Amendment Act, 1985* was omnibus provincial legislation enacted to amend legislation, clear on its face, violating without justification rights guaranteed in the Charter.

298. Apart from noting the Charter provisions relevant to each article under the Covenant, the implications of Charter provisions will not be addressed as such provisions apply equally to the governments of every province and territory of Canada and to the Government of Canada. Charter rights are only limited to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

### Article 2

299. In 1979, *The Newfoundland Human Rights Code* provided that no person or class of persons was to be denied admission to or enjoyment of accommodations, services or facilities available in any place to which the public is customarily admitted by reason only of the race, religion, religious creed, political opinion, sex, marital status, colour or ethnic, national or social origin of such person or class of persons. Amendments in 1981 and 1984 added as prohibited grounds of discrimination "physical disability" and "mental disability" respectively. The Charter also adds to such protection by enumerating "age" as a prohibited ground of discrimination.

300. *The Blind Persons Rights Act*, enacted in 1981, ensured that blind persons would not be discriminated against in relation to public places or housing because of their blindness or accompaniment by guide dogs. This Act binds the Crown and provides for prosecution of offences and penalties by fine or imprisonment upon conviction of offences under the Act. In 1979, *The Human Rights Anti-Discrimination Act* was passed to remove anomalies in provincial legislation relating to sex discrimination.

### Article 3

301. In 1979, *The Matrimonial Property Act* was enacted for the purpose of recognizing contributions made by each spouse in a marriage and to provide for equal sharing of the matrimonial home and deferred sharing of most other property acquired during marriage. This Act was designed to recognize all contributions of each spouse to the marriage, financial or otherwise.

302. Section 28 of the Charter also provides that rights and freedoms are guaranteed equally to male and female persons.

#### Article 9

303. *The Family Courts Act* was repealed in 1984. Sections 8-11 of the Charter prohibit unreasonable search and seizure, arbitrary detention and unlawful actions by law enforcement agencies. *The Charter of Rights Amendment Act, 1985* amended a significant number of statutes to prevent unjustified searches being made and to ensure compliance with Charter rights.

#### Article 10

304. In 1984, the *Young Offenders Act* was enacted by the Parliament of Canada. That Act deals with youth charged with under *Criminal Code* offences under the jurisdiction of the federal government. About the same time, in relation to provincial offences, *The Young Persons Offences Act* was enacted providing extensively for special treatment for young offenders appropriate to their age and legal status. The needs of young persons and the interests of their families are of prime importance under the Act. The Act provides that youth detained prior to trial or committed to custody shall be held separate and apart from adults.

305. In relation to section 2(a) of the Article, prison regulations under *The Prisons Act* provide that prisoners awaiting trial shall so far as practicable be separated from, and kept apart from, convicted prisoners and that they shall not be subject to restrictive provisions of regulations relating to visitation and correspondence.

#### Article 12

306. Newfoundland law complies with this Article. Section 6 of the Charter provides that every citizen may enter, remain in and leave Canada or any province and take up residence in any province in pursuit of gaining of a livelihood therein.

#### Article 14

307. Newfoundland law complies with this Article. In particular, provisions in paragraph 1 of this Article are carried out in relation to the exclusion of the public from all or parts of a trial, at the discretion of the presiding judge. *The Charter of Rights Amendment Act, 1985* also repealed reverse onus legislative provisions thereby ensuring the right to be presumed innocent until proven guilty.

#### Article 17

308. In 1983, Newfoundland enacted *The Privacy Act* dealing specifically with an individual's right to privacy. That Act makes the invasion of privacy actionable without proof of damage in the case where a person willfully and without claim of right violates the privacy of an individual. This Act binds the Crown. The basic defences to such an action under that Act are that matters are of public interest or that actions complained of represent fair comment on a matter of public interest.



309. As well, in 1983, *The Defamation Act* was enacted dealing with defamation (libel or slander) in publications for public benefit, namely newspapers or broadcasts. The Act codifies the right of civil action and common law defences, as well as methods by which damages may be mitigated.

310. *The Unified Family Court Act*, *The Children of Unmarried Parents Act*, *The Child Welfare Act* and *The Young Persons Offences Act* provide that a judge may exclude any person other than counsel and a witness from the proceedings if the judge deems that person unnecessary to the conduct of the proceedings. Section 20(1) of *The Young Persons Offences Act* provides that no report will be made public in which the name of the youth appears and section 22 of that Act provides that records of the Youth Court shall not be disclosed unless disclosure is desirable in the proper administration of justice.

### Article 23

311. As outlined in comments under Article 3, *The Matrimonial Property Act* enacted in 1979 recognizes all contributions to marriage, financial or otherwise and provides for equal sharing in the matrimonial home and most other property acquired during marriage.

312. Section 3 of *The Young Persons Offences Act* sets out a declaration of principles to be considered relating to disposition of offences committed by youth. Section 3(8) provides that parents have responsibility for the care and supervision of their children and, for that reason, young persons should be removed from parental supervision either partly or entirely only when measures providing for continuing parental supervision are inappropriate. The dissolution of marriage by divorce under federal jurisdiction provides as well for equality of rights and responsibilities for children for both parents.

### Article 24

313. *The Maintenance Act* provides that orders for financial support may be made against either parent to provide for their children. *The Children of Unmarried Parents Act* also provides a method whereby an affiliation order may be made against the putative father of a child and he may be ordered to pay, on behalf of the mother or child or both, expenses incurred relating to the birth of the child and financial support for a child until the age of 17 or later in limited circumstances.

314. *The Young Persons Offences Act* provides for discretionary alternative measures to be used in relation to offences committed by youth and provides for mandatory alternative measures in relation to children under the age of 12.

### Article 25

315. *The Freedom of Information Act* was enacted in 1981 and guarantees the right of access by the public to information in records of government departments subject only to specific and limited exceptions necessary for the operation of the departments and the protection of personal privacy.

316. In relation to the right to vote, *The Elections Act*, *The St. John's Municipal Elections Act* and *The Municipalities Act* were amended in 1985 to repeal the disqualification of persons held in custody awaiting trial from voting. Section 3 of the Charter provides that

every citizen of Canada has the right to vote in an election of members of the House of Commons or the legislative assembly and to be qualified for membership therein.

#### Article 26

317. Section 15 of the Charter provides for equality before and under the law and equal protection and benefit of the law without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. The Covenant prohibits discrimination also on the basis of political or other opinion. *The Newfoundland Human Rights Code* supplements the Charter in this area and conforms with the Covenant as political opinion is an enumerated ground of prohibited discrimination in the Code. With the possible exception of very limited circumstances relating to minors, incompetents or illegitimate children, provincial legislation does not infringe the Covenant or unenumerated prohibited grounds such as property, birth or other status.

#### Article 27

318. Section 27 of the Charter provides that it shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canada. It also guarantees in section 23 protection for minority language educational rights. There is no infringement of the Covenant in relation to the rights of ethnic, religious or linguistic minorities to enjoy their own culture, to profess and practice their own religion or to use their own language in community with other members of their group, found in any provincial legislation.

## 6. NOVA SCOTIA

### Article 2

319. The *Nova Scotia Human Rights Act*, S.N.S. 1969, c. 11, as amended, now includes protection against discrimination because of mental or physical disability in all facets of public activity, and because of source of income in housing.

### Article 3

320. The *Matrimonial Property Act*, S.N.S. 1980, c. 9, is based on the principle that marriage is a partnership of equals and that all matrimonial property acquired before or during the marriage by either or both spouses shall be divided equally between them when the marriage ends.

321. Section 5(4) of the *Family Benefits Act*, S.N.S. 1977, c. 8, providing for assistance to mothers (but not fathers) whose dependent child was born out of wedlock, was struck down by the Appeal Division of the Supreme Court of Nova Scotia in 1986 as unconstitutional. Since then, regulations have been adopted which allow unmarried mothers or fathers to apply for this assistance.

322. *An Act to Provide Pay Equity*, Bill 55, passed the 3rd reading on May 16, 1988. This Act, expected to come into effect on September 1, 1988, will ensure that the public sector employees receive equal pay for work of equal value. This legislation will help in closing the gap between the wages of men and women in the workplace.

323. The *Vital Statistics Act*, R.S.N.S. 1967, c. 330, was revised in 1985 to allow a child to be registered with the surname of either the mother or father.

### Article 4

324. There have been no changes or amendments to the *Emergency Measures Act*, S.N.S. 1967, c. 87. However, a Select Committee on Emergency Measures was established in April 1982 to consider and report with respect to the repeal, revision or amendment of any part of the Act or the regulations thereunder. This Committee presented an interim report in April 1984. The recommended changes will emphasize municipal participation in emergency measures.

### Article 7

325. Nova Scotia issued a policy statement on December 10, 1985 on the U.N. *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*. The Government of Nova Scotia called upon all individuals to make a conscious commitment to the true meaning of this Convention. (A copy of the Policy Statement is attached herewith).

### Article 8

326. Section 13 of the *Court and Penal Institutions Act*, R.S.N.S. 1967, which permitted hard labour, has now been repealed.

#### Article 9

327. Donald Marshall, Jr. a Mic Mac Indian who was wrongfully convicted for murder and imprisoned for 11 years was released in 1982 and was given compensation in the sum of \$270,000. The Province has appointed a Royal Commission of Inquiry to investigate the tragic circumstances of his conviction as well as the criminal justice system in Nova Scotia. This inquiry commenced September 9, 1987, and is continuing to date.

#### Article 10

328. The *Corrections Act*, S.N.S. 1986, c. 6, provides for the safe custody and security and the rehabilitation of offenders and for the integration of offenders into the community while at the same time providing adequate safeguards for the public. Regulations under this Act provide that all persons deprived of their liberty shall be treated with respect for human dignity.

329. The administration of the *Young Offenders Act* (which is federal legislation) is the responsibility of the provinces. Under this Act, young offenders are segregated from adults and treated appropriately to their age and legal status. In Nova Scotia, young offenders aged 12-15 are dealt with through the Department of Social Services while 16-17 year old offenders are dealt with through the Department of the Attorney General.

#### Article 14

330. The *Young Persons Summary Proceedings Act*, S.N.S. 1985, c. 11, establishes the procedures for dealing with juvenile offenders aged 12-17 who break provincial and municipal laws. It provides for warnings, charges or an Alternative Measures Program similar to the Alternative Measures programs under the *Young Offenders Act*. Alternative Measures include rendering community service, writing letters of apology to the victims, researching and writing articles on crime and punishment, etc.

331. The Government of Nova Scotia appointed, in September 1987, the first bilingual Provincial Court judge. This will enable French-speaking Nova Scotians to have cases against them conducted entirely in French.

#### Article 22

332. In 1981, all provincial government employees who previously were members of the Government Employees Association secured the right to form the Nova Scotia Government Employees Union.

333. The *Trade Union Act*, S.N.S. 1972, c. 19, has been amended whereby an employer claiming to be engaged in manufacturing and carrying on its operation at two or more interdependent locations within the province may make an application to the Labour Relations Board of Nova Scotia for determination that the unit appropriate for collective bargaining is the unit consisting of all employees at all such locations.

#### Article 23

334. The *Solemnization of Marriage Act*, R.S.N.S. 1976, c. 287, now recognizes 19 as the marriageable age. A person under 19 but over the age of 16 may marry with parental

consent. Marriages of persons under the age of 16 shall not be solemnized without special application to a judge of the Family Court who must make the determination that it is expedient and in the interests of the parties to authorize solemnization of the marriage.

335. The *Family Maintenance Act*, S.N.S. 1980, c. 6, provides that the mother and father are joint guardians and are equally entitled to the care and custody of the child. The Act further requires that in any proceeding under this Act concerning care and custody or access and visiting privileges in relation to a child, the court shall apply the principle that the welfare of the child is the paramount consideration.

#### Article 24

336. Under the *Children's Services Act*, S.N.S. 1976, c. 8, an agent, where there is reasonable and probable grounds to believe that a child is in need of protection, or is likely to become a child in need of protection, can apprehend that child without notice.

337. An agent under this Act shall appear before a family court judge within 21 days to give reasons for the removal of the child allegedly in need of protection. The court shall apply the principle that the welfare of the child is the paramount consideration in any action taken under this Act.

338. Any person who has reasonable and probable grounds to believe and believes that a child is in need of protection shall forthwith report the matter to child welfare authorities. A person who fails to do so is guilty of an offence under this Act.

#### Article 25

339. The *House of Assembly Act*, R.S.N.S. 1967, c. 128, was amended in 1986. According to the amendment, when a member of the Legislative Assembly is convicted of an indictable offence that is punishable by imprisonment for a maximum of more than five years, the member forthwith ceases to be a member of the Assembly. The amendment also provided that such a person cannot be nominated as a candidate or be elected as a member of the House for a period of five years from the date of conviction. This legislation was challenged by a member of the Legislative Assembly who had pleaded guilty, before the enactment of the amendment, to an offence punishable by imprisonment for more than five years. The Supreme Court of Nova Scotia held that it is a serious matter to take away a democratic right retroactively and held that the prohibition is not demonstrably justified in a free and democratic society. Accordingly the expelled member was eligible to be nominated as a candidate and at the by-election was returned to the Legislative Assembly.

340. The *Civil Service Act*, S.N.S. 1980, c. 3, was amended in 1986 to allow employees to be candidates at federal or provincial elections, to engage in partisan work in connection with such elections and to contribute money for a candidate or a political party.

#### Article 27

341. The *Education Act*, R.S.N.S. 1967, c. 81, was amended in 1981 to provide for the designation of schools as Acadian where the number of French-speaking students attending the school warrants such action. In areas where there is a sufficient number of children whose first language learned and understood is French, public funds are to be provided for instruction to be carried out in the French language.



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GOVERNMENT OF NOVA SCOTIA POLICY STATEMENT

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ON THE UNITED NATIONS CONVENTION

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AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR

---

DEGRADING TREATMENT OR PUNISHMENT

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**T**he Government of Nova Scotia considers that recognition of the equal rights of all members of the human family is the foundation of freedom, justice and peace in the world.

The Government of Nova Scotia is committed to the promotion of universal respect for, and observance of, human rights and fundamental freedoms. Both Article 5 of the Universal Declaration of Human Rights and Article 7 of the International Covenant on Civil and Political Rights state that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

The Government of Nova Scotia is desirous of making more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world. All Nova Scotians recognize with pride the invaluable role of Amnesty International in the vanguard of this epic struggle in all parts of the globe.

The Government of Nova Scotia asks that each and every individual of our province make a conscious commitment to the true meaning of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

A handwritten signature in dark ink, appearing to read "John M. Buchanan".

Hon. John M. Buchanan, P.C., Q.C.,  
Premier of Nova Scotia.



## 7. ONTARIO

342. This report sets out the measures adopted and changes which have occurred since the preparation of Canada's first Report on Implementation of the Provisions of the *International Covenant on Civil and Political Rights* (March 1979). This information serves to update the material found in Ontario's portion of Canada's first Report and Canada's 1983 Supplementary Report.

### Article 2

#### Equality Rights Statute Law Amendment Act, 1986

343. The *Equality Rights Statute Law Amendment Act, 1986*, S.O. 1986, c. 64, amends 69 statutory provisions in order to bring them into conformity with section 15, the equality rights provision, of the *Canadian Charter of Rights and Freedoms*, and the (Ontario) *Human Rights Code, 1981*, S.O. 1981, c. 53, as amended.

344. The major changes to the *Human Rights Code* are: adding sexual orientation to the list of prohibited grounds of discrimination; clarifying that the right to equal treatment because of sex includes the right to equal treatment because a woman is or may become pregnant; repealing the exemption which permitted discrimination on the basis of sex in athletics; amending the constructive discrimination provisions to provide that a reasonable and *bona fide* requirement will only be found where the needs of the group of which the person is a member cannot be accommodated without undue hardship on the person responsible for accommodating those needs. Cost, outside sources of funding, and health and safety requirements are to be considered in making this determination.

345. Changes made to other Ontario statutes remove discrimination on the basis of age, sex, marital status, religion and physical and mental disability.

### Article 3

#### Pay Equity Act, 1987

346. Bill 154, *An Act to provide for Pay Equity*, received Royal Assent on June 29, 1987. The *Pay Equity Act* applies to the government, all public sector employers and those employers in the private sector employing ten or more employees. Each employer must ensure that workers in predominantly female occupations receive pay equal to that enjoyed by workers in predominantly male occupations in the employer's establishment, where the work is of comparable value, based upon a composite of skill, effort, responsibility and working conditions.

347. A pay equity plan, setting out the comparisons and the necessary wage adjustments, must be prepared where the employer has 100 or more employees. If the establishment is unionized, the employer and the bargaining agent are required to negotiate the plan.

348. Once a pay equity plan has been prepared, the employer must post it in the workplace for employees to see. All parties to the plan are given an opportunity to file objections to it with the Pay Equity Commission. In addition, any party may complain to the Commission with respect to violations of the pay equity plan, its continued

appropriateness and any other contraventions of the Act. Objections and complaints will be investigated by a pay equity review officer who will attempt to resolve them by settlement or order. The review officer's order may be appealed to a Hearings Tribunal.

#### Article 4

##### The Emergency Plans Act

349. *The Emergency Plans Act*, S.O. 1983, c. 30, provides for the formulation and implementation of emergency plans. "Emergency" is defined as a situation caused by the forces of nature, an accident, an intentional act or otherwise that constitutes a danger of major proportions to life or property. An emergency may be declared by the head of the Council of a municipality or by the Premier of Ontario.

350. The Act empowers the Premier or the head of a municipality, following the declaration of an emergency, to take such actions as she or he considers necessary and are not contrary to law to implement the emergency plans and to protect property and the health, safety and welfare of the public.

#### Article 6

351. The Ontario Health Insurance Plan (OHIP) is a comprehensive provincial government-sponsored plan of health insurance for Ontario residents. It provides a wide range of benefits for medical, hospital and certain other health practitioners' services. All residents of Ontario - regardless of age, state of health, or financial means - are entitled to free service under OHIP for a small monthly premium. *The Health Care Accessibility Act*, which became law in 1986, prohibits doctors from charging patients more than the amount payable under the Plan.

352. *The Ontario Drug Benefit Act, 1986*, S.O. 1986, c. 27, provides that the Ministry will pay for the purchase of specified drugs to eligible classes of persons requiring drugs. The listed drug products are designated under the Regulation to the Act. Those eligible to receive drugs benefits are persons who are eligible for pensions under the *Old Age Security Act (Canada)*, persons who are 65 years of age and resident in Ontario for at least 12 months, persons receiving extended care or home care services that are insured under OHIP and persons who are eligible for drug products under the *Family Benefits Act*, R.S.O. 1980, c. 151.

#### Article 7

##### Mental Health Act

353. Under the *Ontario Mental Health Act*, R.S.O. 1980, c. 262, as amended to date, any patient, including an involuntary patient, has the absolute right to refuse any psychiatric treatment unless a finding of incompetency to consent to treatment is made. A patient who is found not competent to make treatment decisions can apply to the review board to challenge the doctor's finding. This decision can be appealed to the court. In addition, a patient who is over 16 and competent to do so has the right to appoint a representative who can make treatment decisions on his or her behalf.



354. An involuntary patient, or the authorized substitute decision maker where a patient is considered incompetent, cannot consent to psychosurgery. Further, a competent patient, or a patient's proxy, can absolutely refuse electroconvulsive therapy. This refusal cannot be overridden.

#### Human Tissue Gift Act

355. The *Human Tissue Gift Act*, R.S.O. 1980, c. 210, regulates inter-vivos gifts of human tissue for transplants and post-mortem gifts for transplants and other purposes. A consent form has been attached to each Ontario driver's licence since 1975. Where a deceased has made no prior arrangements, or when a person is, in the opinion of a physician, incapable of giving a consent by reason of injury or disease and his or her death is imminent, a consent may be obtained from the next-of-kin for the donation of organs after death. A physician who took part in the determination of the fact of death of the donor cannot participate in any way in the transplant procedures. The Act makes it unlawful to buy, sell, or deal in bodies, tissue or body parts.

#### Child and Family Services Act, 1984

356. The paramount objective of the *Child and Family Services Act, 1984*, S.O. 1984, c. 55, is "to promote the best interests, protection and well-being of children". Section 96 of the Act prohibits the detention of children in locked premises when services are being provided to them, unless a child has been committed by a court order to a secure treatment program under Part VI (Extraordinary Measures) of the Act.

357. The use of intrusive procedures and the administration of psychotropic drugs will be subject to the criteria and procedures (including consent) contained in Part VI. Provision is made for a review team to approve the use of an intrusive procedure in respect of a child and review the use of psychotropic drugs.

### Article 9

#### Mental Health Act

358. Procedures concerning involuntary committal to a psychiatric facility in Ontario are outlined in the *Mental Health Act*, as amended.

359. In order to be involuntarily detained as a patient in a psychiatric facility in Ontario, there must be the written opinion of at least one physician in a psychiatric facility that the committal criteria have been met. Those criteria are that the attending physician must be of the opinion both:

- (a) that the patient is suffering from mental disorder of a nature or quality that likely will result in,
  - (i) serious bodily harm to the patient,
  - (ii) serious bodily harm to another person, or
  - (iii) imminent and serious physical impairment of the patient,

unless the patient remains in the custody of a psychiatric facility; and

- (b) that the patient is not suitable for admission or continuance as an informal or voluntary patient.

360. Once a person is involuntarily committed, that person must receive written notice of this fact, the reasons therefor, and be informed of the right to retain and instruct counsel without delay. The local director of the Legal Aid programme is also notified. Further, the document also notifies the patient of his or her right to a hearing before the Review Board to ensure that the committal criteria have been properly met. The legal onus at such a hearing is on the attending physician and/or the psychiatric facility.

361. Once the Review Board receives notice of the request for a hearing, the hearing must begin within 7 days, unless adjourned with the consent of all parties. Within one day after the hearing is completed, a decision must be issued. Within two days of making the decision, the Review Board must provide written reasons for its decision to all parties, including the patient. Because of the regular time intervals which limit the life of certificates of involuntary committal and renewal certificates, a patient civilly committed in Ontario has the right to such a hearing reviewing his or her involuntary status four times in the initial 6 1/2 months period of detention. Thereafter, a patient or someone on his behalf, can initiate a review every three months. The Act also has a scheme whereby automatic status reviews are held at certain legislated intervals. These automatic reviews cannot be waived.

362. Each time a subsequent certificate of involuntary committal is executed, a psychiatric examination of the person must take place.

363. The Review Board is composed of at least one lawyer, one psychiatrist and one person who is not a member of either of those professions.

364. The patient has a right to appeal the decision of the Review Board confirming a certificate of involuntary committal (or a renewal certificate) to the District Court of Ontario. A further right of appeal lies to the Ontario Court of Appeal.

365. A child who is 12 years of age or older but less than 16 and who is an informal patient in a psychiatric facility may apply to the Review Board to consider whether that child needs treatment in the facility.

366. Notices are sent to the local legal aid office and duty counsel sent out to advise the patient of his or her rights in the following circumstances:

1. when a certificate of involuntary admission or renewal is completed;
2. when a physician decides that a patient is not mentally competent to consent to treatment, to examine or authorize disclosure of a clinical record or to manage his or her estate;
3. when, at 3 month intervals, a child aged 12 to 15 is being treated as an informal patient in a psychiatric hospital; and
4. when a physician applies to a Review Board for an order authorizing the giving of specific psychiatric or other medical treatment to a patient.

## Article 10

### Ministry of Correctional Services Act

367. In Ontario, young offenders are kept separate and apart from adults as required by section 7 of the federal *Young Offenders Act*, S.C. 1980-81-82, c. 110, as amended.

368. In general, Ontario separates convicted and accused persons. The Ministry of Correctional Services operates three types of adult detention facilities. These are jails, detention centres, and correctional centres. Generally, those persons awaiting trial are held in local jails and detention centres. Once sentenced, prisoners are then transferred to correctional centres to serve their period of incarceration.

369. While there are no remanded prisoners in correctional centres, there are, however, sentenced prisoners in jails and detention centres. These would include, for example:

1. sentenced prisoners awaiting transfer to correctional centres or penitentiaries;
2. inmates serving sentences while on remand at the same time;
3. sentenced inmates being held under judges' orders to appear as witnesses at various types of proceedings;
4. parole and mandatory supervision violators awaiting hearing before the Ontario or National Parole Board;
5. persons serving very short sentences.

## Article 17

### Freedom of Information and Protection of Privacy Act, 1987

370. Bill 34, which received Royal Assent on June 29, 1987, provides a right of access to information under the control of a Ministry of the Government of Ontario or other bodies designated as institutions, and protects the privacy of individuals with respect to personal information held by those institutions. Part I allows for the appointment of an Information and Privacy Commissioner. Part II provides for a right of access to government records subject to a variety of specified exemptions. It also deals with the procedure in seeking and providing access as well as setting out time limits imposed on institutions for answering requests and providing information. There are provisions protecting third parties whose privacy might be affected by the release of information, as well as provisions requiring government institutions to assist the public by providing information on the workings of the institutions and how to request information under the Act.

371. Part III regulates the collection, use and disposal of personal information towards protecting individual privacy. Personal information is to be organized into indexed data banks accessible to individuals who may request correction of personal information. Part IV sets out an appeal procedure from certain decisions under the Act by a person who requested access to a record or personal information. There is a provision for mediation authorized by the Commissioner, failing which the Commissioner must conduct an inquiry,

at which the onus is on the government institution to prove that the information is exempt from release.

372. The most crucial aspect of the legislation is that the independent Information and Privacy Commissioner, not the Government, will make the final determination with respect to disputes arising under the Act.

#### Mental Health Act

373. The *Mental Health Act*, R.S.O. 1980, c. 262, as amended, stipulates as a general proposition that no communication written by a patient or sent to a patient shall be opened, examined or withheld, and its delivery should not in any way be obstructed or delayed.

374. There are permissible exceptions to the above stated general proposition. Where the officer in charge (or a person acting under his authority) has reasonable and probable cause to believe that the contents of a communication written by a patient would be unreasonably offensive to the addressee or prejudice the best interests of the patient, such communication may be opened, examined, and withheld.

375. With reference to communications sent to a patient, the officer in charge (or a person acting under his authority) may open and examine the contents of a communication if he or she has reasonable and probable cause to believe that the contents of the communication would either interfere with the treatment of the patient or cause the patient unnecessary distress.

376. In no situation can a communication written by a patient to, or appearing to be sent to a patient by, a barrister or solicitor, a member of the mental health review board, or a member of the legislative assembly be opened, examined or withheld from delivery.

377. A patient who is 16 years of age or more and is mentally competent is entitled to examine and copy the clinical record relating to that patient.

### Article 18

#### Education Act

378. The *Education Act*, R.S.O. 1980, c. 129, provides for two publicly funded systems, one of which is a public system, and one a Roman Catholic system.

379. No pupil shall be required to take part in religious exercises or instruction in public schools where the parent or the pupil, if an adult, objects. Teachers may also claim exemption from teaching religious education, and the Minister may grant a school board an exemption from the teaching of religious education in any classroom or school.

### Article 23

#### Family Law Act, 1986

380. The *Family Law Act*, 1986, S.O. 1986, c. 4, acknowledges that marriage is an economic as well as a social and emotional partnership. As a consequence, the Act entitles spouses to an equal division of property and assets acquired during the marriage.

381. The special provisions governing the matrimonial home stipulate that each spouse is equally entitled to its possession; therefore the legal owner cannot force the other to leave. Similarly, neither spouse can sell, lease, mortgage or encumber the home without the other's consent.

382. The support provisions, unlike those dealing with property, extend to common law spouses, who have lived together for three or more years or who are in a relationship of some permanence and have a child. Either spouse may ask for support from the other based on their respective need and ability. Both parents are obligated to contribute toward their children's upbringing to the extent that they are able to do so.

383. In addition, the Act provides that a person may apply to a court to have a spouse or former spouse restrained from annoying, harassing or molesting the other.

#### Support and Custody Orders Enforcement Act, 1985

384. The *Support and Custody Orders Enforcement Act, 1985*, S.O. 1985, c. 6, established the Support and Custody Orders Enforcement Office which enforces support provisions contained in court orders, separation agreements, marriage contracts and cohabitation agreements. The Office also enforces custody provisions contained in court orders and separation agreements. The Office has a large staff with regional offices throughout the province which provide the enforcement services free of charge to any person entitled to support.

#### Article 24

385. The protection provisions of the *Child and Family Services Act, 1984*, S.O. 1984, c. 55, apply to all children without discrimination and, in addition, a child's Band or Native community has been given new rights under the legislation with respect to children who are Indian or Native people.

#### Article 27

386. The *French Language Services Act, 1986*, S.O. 1986, c. 45, sets out the requirement that government services be available to the public in French. It applies to head and central offices of government agencies, as well as to local offices in areas designated in the Schedule to the Act, and is to be phased in over a period of three years. The Act also applies to public service agencies as designated by regulation, but does not apply to municipalities or local boards.

387. Other major features of this Act are: a requirement that all public Bills in the Legislature be introduced and enacted in both French and English after January 1, 1991; a requirement that the public general statutes of Ontario be translated into French by the end of 1991; the translation of regulations as determined by the Attorney-General; the establishment for a three year period of the Ontario French Language Services Commission whose functions, upon dissolution, are to be performed by the Office of Francophone Affairs; and the appointment of a French Language services co-ordinator for each government Ministry.

## 8. PRINCE EDWARD ISLAND

### Part I - General Update

388. Further advances in this province in the area of civil and political rights include: special legislation to deal with young offenders; amendments to labour legislation to guarantee strikers the right to return to their jobs; and a new statute to protect privacy and property rights by creating a provincial offence of trespass to property.

389. In 1982, many of the rights contained in the Covenant were entrenched in the Canadian Constitution with the enactment of the *Canadian Charter of Rights and Freedoms*. Pursuant to the Charter, the provinces may enact legislation which is to operate notwithstanding several of the Charter's provisions; as noted herein, the Province of Prince Edward Island upholds the rights in question by not exercising its over-ride powers.

### Part II - Detailed Annotations

#### Articles 2 and 3 - Enforcement of equality rights

390. The *Human Rights Act*, R.S.P.E.I. 1974, c. H-12.2, and the Commission established pursuant thereto, continue to protect and uphold the principle of equality between and among individuals.

391. A 1985 amendment to the Act extends the prohibition of employment discrimination from "physical handicap" to include "physical *or mental* handicap", and defines this term as

A previous or existing disability, infirmity, malformation or disfigurement, whether of a physical or mental nature, that is caused by injury, birth defect or illness, and includes but is not limited to epilepsy, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guidedog, wheelchair or other remedial device.

392. Another example of a recent legislative amendment aimed at further promoting equality - in this case, equality of the sexes - is the changing of the *Vital Statistics Act*, R.S.P.E.I. 1974, c. V-6, to permit a married couple to register their child in the name of either spouse (S.P.E.I. 1986, c. 20). Previously, a child born to a married couple had to take the father's surname, regardless of the wishes of the couple. The only restriction on this is that all children born to a married couple must be registered in the same surname.

#### Article 6 - The right to life

393. Recent legislative actions which further evidence this province's protection of this right (insofar as it is within provincial jurisdiction to do so) are:

- (i) The addition of the disease AIDS and its causative antibody "HIV positive" to the list of diseases which must be reported, upon detection, to the Chief Health Officer (pursuant to the *Public Health Act*, R.S.P.E.I. 1974, c. P-29, and Regulations thereto, enacted in 1985 and 1987, respectively);

- (ii) The enactment of the *Drug Cost Assistance Act*, S.P.E.I. 1986, c. 10, which subsidizes prescription drugs for senior citizens;
- (iii) The enactment of the *Community Care Facilities and Nursing Homes Act*, S.P.E.I. 1985, c. 9, which regulates a standard of care for persons whose physical or mental faculties are diminished to the degree that they require care;
- (iv) The enactment of the *Occupational Health and Safety Act*, S.P.E.I. 1985, c. 36, which establishes health and safety standards in the workplace;
- (v) The enactment of the *Dangerous Goods Transportation Act*, S.P.E.I. 1981, c. 9, which regulates the transport of, *inter alia*, explosives, gases, flammable and combustible liquids and solids, and oxidizing, poisonous, infectious, radioactive, or corrosive materials. The Act creates offences and prescribes heavy fines for breach of its requirements.

**Article 7 - Right not to be subjected to cruel treatment, punishment, etc.**

394. The *Canadian Charter of Rights and Freedoms*, section 12, provides:

Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

This right applies to all governmental actions within the province, unless the Province specifically exempts certain statutes or statutory provisions from its effect, and this Province has taken no action to exempt any of its legislation from being subject to this or any other Charter right.

**Article 9 - Right to liberty and security of the person and rights upon arrest or detention, etc.**

395. Again, these are rights which have been entrenched in Canada's constitutional Charter.

396. Sections 7, 9, and 10 of the Charter protect the rights set out in ss. 1, 2, 3, and 4 of Article 9, and s. 24(1) of the Charter could afford the remedy specified in ss. 5 of Article 9.

397. The Legislature of Prince Edward Island upholds these rights by not exercising its constitutional prerogative to enact legislation exempt from their application.

**Article 10 - Treatment of prisoners, segregation of juveniles and unconvicted persons, etc.**

398. There have been significant developments with respect to the treatment of juvenile offenders.

399. In 1984, the federal government enacted the *Young Offenders Act*, which provides a distinct procedure for prosecuting persons between the ages of 12 and 17 inclusive, and requires that incarcerated young offenders be segregated from adult offenders. This statute

applies to the prosecution of offences created by the federal government (such as *Criminal Code* offences).

400. The Province of Prince Edward Island, in keeping with the policy objectives of both Article 10 and the federal *Young Offenders Act*, has, in 1985, enacted a provincial statute with analogous provisions, applicable to the prosecution of offences created by the provincial government.

401. Section 13 of this provincial statute provides:

A young person who is charged with an offence and detained prior to trial or committed to a place of custody under this Act shall be held separate and apart from any adult who is charged with or convicted of an offence under an Act of the Parliament of Canada or (a provincial) enactment.

402. The provision contained in ss. 3 of Article 10 that juveniles be accorded treatment appropriate to their age and legal status, is advanced by several sections of the provincial *Young Offenders Act*, namely:

- s. 10(2) which enables a young offender's fine to be commuted to community service work;
- s. 11(3) which permits inclusion in a probation order of such terms as requiring the young offender to make reasonable efforts to obtain and maintain suitable employment, to attend school or another place of learning, training or recreation; and
- s. 14 which permits a young person committed to custody to be released for up to ten days, with or without escort, for "medical, compassionate or humanitarian reasons or for the purpose of rehabilitation," or to be released for specific periods to allow the young person to "better carry out employment or improve his education or training".

**Article 14 - Right to equal treatment, to fair and public hearing, in criminal matters, to private hearings in appropriate cases, to presumption of innocence, to certain rights when charged with an offence, and to appropriate procedures for juvenile offenders; etc.**

403. Most of these are also rights which have been entrenched nation-wide, by the *Canadian Charter of Rights and Freedoms* in 1982 (e.g. ss. 11, 13, and 15).

404. As noted *supra*, the right to a separate procedure for juvenile offenders, aimed at rehabilitation, has been protected by recent federal and provincial young offenders acts.

405. The principle, in Article 14(1), regarding exclusion of the public from certain hearings, and the ban on publication of judgements in cases involving juveniles, or matrimonial or guardianship disputes, is upheld by the following provincial statutes:

- (i) The *Human Rights Act*, R.S.P.E.I. 1974, c. H-12.2, which allows a Board of Inquiry in a human rights complaint to conduct its inquiry *in camera* where the Minister considers it not in the public interest to hold a public inquiry (s. 25(1.1));



- (ii) The *Young Offenders Act*, which allows a youth court to bar the public from a hearing where the judge considers it necessary for the proper administration of order or justice, or in the best interests of the accused young person or a young person who is a witness. This Act also makes it an offence to publish the name of a young offender;
- (iii) The *Family Law Reform Act*, R.S.P.E.I. 1974, c. F-2.1, which permits the court to exclude the public from hearings under the Act, and to prohibit publication of evidence. (Such hearings would usually involve applications for spousal or child maintenance, or for division of matrimonial property);
- (iv) The *Adoption Act*, R.S.P.E.I. 1974, c. A-1, which provides that all proceedings under the Act relating to the adoption of a child shall be *in camera* (s. 25);
- (v) The *Custody Jurisdiction and Enforcement Act*, R.S.P.E.I. 1974, c. C-32, which permits the court to exclude the public and prohibit publication of evidence from child custody hearings.

#### **Article 15 - Right to be protected from retroactive criminal legislation and/or penalties**

406. Again, this is within federal jurisdiction, and has been appropriately addressed in the *Canadian Charter of Rights and Freedoms* (s. 11(g) and (i)).

#### **Article 17 - Rights protecting privacy, family, home, reputation, etc.**

407. The new *Trespass to Property Act*, S.P.E.I. 1984, c. 37, establishes statutory protections for property owners and occupiers and creates offences for violations of its provisions.

408. Some other examples of legislative protection of the right to privacy are found in the *Addiction Services Act*, R.S.P.E.I. 1974, c. A-01.1 (as amended in 1985), which restricts employees of treatment facilities from divulgence of information regarding persons treated, and the *Family and Child Services Act*, S.P.E.I. 1981, c. 12, which likewise restricts employees of the public service from communication of information obtained in the performance of their duties.

#### **Articles 18 and 19 - Rights of freedom of thought, religion, opinion, expression**

409. Since 1982, these rights, too, are part of the Constitution of Canada (s. 2 of the Charter) and are honoured by this jurisdiction. (The Province has not exercised its power to enact legislation which in any way overrides these rights).

#### **Article 22 - Freedom of association, including trade union association**

410. Recent amendments to the *Labour Act*, R.S.P.E.I. 1974, c. L-1, further uphold the right to associate within a trade union by providing that employees legally striking or locked out are entitled to be reinstated in their jobs when the strike or lockout is over, and by further providing that the employment of replacement workers is, without notice, deemed to be terminated (S.P.E.I. 1987, c. 39).

411. The right of freedom of association is now guaranteed in the "fundamental freedoms" section of the Charter (s. 2) and is honoured in this jurisdiction.

**Article 23 - Protection of family unit, right to marry and to found a family, equality of spouses, and provision for protection of children of dissolved marriages**

412. This Province continues to enact and improve various remedial legislation aimed at spousal equality and protection of children of separated spouses.

413. As noted *supra*, the *Vital Statistics Act* has recently been amended to no longer require spouses to give their children the surname of the husband.

414. The *Family Law Reform Act*, S.P.E.I. 1978, c. 6, provides that separated spouses have a *prima facie* equal entitlement to family assets. It also permits a spouse to recover money or money's worth contributed to a business asset solely owned by the other spouse, and makes both separated spouses responsible for the support of each other, in accordance with need, and for the support of their children.

415. The *Custody Jurisdiction and Enforcement Act*, passed in 1984, makes both parents joint guardians of a child, and equally entitled to custody, unless otherwise ordered by the court. The Act contains additional provisions for the stated purpose of:

- ensuring that all child custody and access matters are determined on the basis of "the best interest of the child";
- recognizing and avoiding concurrent exercise of jurisdiction by several provincial tribunals in respect of custody of the same child;
- discouraging the abduction of children as an alternative to having custody rights determined by due process; and
- providing for the more effective recognition and enforcement of custody and access orders made in this or another jurisdiction.

416. Similar provisions for the enforcement of extra-provincial support orders were established by the *Reciprocal Enforcement of Maintenance Orders Act*, in 1983 (c. 39).

417. The protection and encouragement of the family unit are upheld in an amendment to the *Labour Act*, which provides for maternity leave for all employees and prohibits dismissal or suspension of an employee for reason of pregnancy (S.P.E.I. 1982, c. 16).

**Article 24 - Children's right to protection without discrimination, right to a name, and right to acquire a nationality**

418. The right to freedom from discrimination based on social origin or birth is upheld by the *Child Status Act*, S.P.E.I. 1987, c. 8, which abolishes any distinction between legitimate and illegitimate children, and which makes a child who is *en ventre sa mère* (i.e. gestating) at the time of its father's death, eligible as a claimant under the *Dependants of a Deceased Person Relief Act*, R.S.P.E.I. 1974, c. D-6.

419. A gestating child's right to freedom from discrimination is similarly protected in the intestate succession provisions of the *Probate Act*, R.S.P.E.I. 1974, c. P-19. It provides that children who, under the Act, are heirs to an estate do not have to have been born by the date of the deceased's death; children in the womb inherit equally with children already born.

**Article 25 - Right to take part in public affairs, to vote,  
to have access to public service, etc.**

420. The previously-existing rights in this areas have been supplemented by the enactment of the *Election Expenses Act*, S.P.E.I. 1983, c. 12, which sets limits on the expenditures of a candidate and a party for a provincial election campaign, thereby diminishing the impact of financial resources on the accessibility of public office.

**Article 26 - Right to equality before the law, to equal protection of the law,  
and to freedom from discrimination ...**

421. The rights upheld in this Article are now guaranteed in the Canadian Constitution by the *Canadian Charter of Rights and Freedoms*, s. 15, and the Prince Edward Island Government has reviewed and, where necessary, amended, its statutes to ensure full compliance with the Charter's provisions.

422. The *Charter of Rights (Consequential Amendments) Act*, S.P.E.I. 1987, c. 6, deletes potentially discriminatory language or provisions from several statutes.

**Article 27 - Right of minorities to their own culture, religion,  
language ...**

423. No legislation of this province restricts any of these rights, and a recent legislative amendment in furtherance of Charter requirements promotes the language rights of the primary minority group by requiring the school boards, where sufficient numbers warrant the expenditure of public funds, to provide French language education for children of P.E.I. resident Canadian citizens whose mother tongue is French and who have the right to such instruction pursuant to s. 23 of the Charter (*An Act to amend the School Act*), S.P.E.I. 1985, c. 39).

## 9. QUEBEC

### Introduction

424. The Government of Quebec committed itself to complying with the *International Covenant on Civil and Political Rights* by adopting Order in Council 1438-76 on April 21, 1976.

425. The following report contains information on the measures taken by Quebec to implement the Covenant since the first report, submitted in 1979.

### Part I: General

426. Since 1979, Quebec has contributed to the *Supplementary Report of Canada on the Application of the Provisions of the International Covenant on Civil and Political Rights in Response to Questions Posed by the Human Rights Committee in March 1980*, as well as to eleven other reports to various international bodies, as provided for in the other instruments of the United Nations or of the U.N.'s specialized or related organizations, such as the International Labour Organization.

427. In response to the wish of various United Nations bodies for concise reports, Quebec will provide information in this report on articles 3, 7, 10, 14(6), 22, 23(2) and 25(b) of the Covenant.

### Part II: Information on articles 3, 7, 10, 14(6), 22, 23(2) and 25(b)

#### Article 3: Equal right of men and women to enjoy all civil and political rights

428. In December 1982, the Government of Quebec passed the *Act to amend the Charter of Human Rights and Freedoms*, which added a Part III to the Quebec Charter, authorizing the introduction of affirmative-action programs. In June 1985, by Order in Council 1135-85, the Government proclaimed the 1982 Act in force.

429. Section 86.1 of the Quebec Charter reads as follows:

The object of an affirmative action program is to remedy the situation of persons belonging to groups discriminated against in employment, or in the sector of education or of health services and other services generally available to the public.

An affirmative action program is deemed non-discriminatory if it is established in conformity with the Charter.

430. In 1985, the Quebec Human Rights Commission established an Affirmative Action Branch. The staff of this branch, which consisted of 18 persons, was divided into two sections: Analysis and Standardization, and Development and Implementation.

431. The Analysis and Standardization Section is responsible for establishing data banks on the labour market and on the situation of groups that are discriminated against; it also prepares statistical models supporting data analyses that might result in the development of a program. The section is also responsible for carrying out analyses of availability.

432. The Development and Implementation Section is the focal point of the Affirmative Action Branch, since it is responsible for advising companies and organizations on the development and implementation of programs. The section devises instruments (guides, manuals, forms), policies and procedures, and provides assistance to persons interested in developing and implementing an affirmative-action program.

433. In September 1987, the Government of Quebec announced its intention of implementing an affirmative-action program for women in the civil service. Its goal is to increase the number of women from 179 to 300 among senior managers (12% of the total), from 2,708 to 3,563 among professionals and teachers (27.5%), from 115 to 162 among government security guards (7.5%) and from 45 to 124 among labourers (3%).

434. The Government of Quebec also plans to require companies doing business with it to demonstrate that they provide equal opportunities for women, Native people, and visible minorities. The details of this program are the subject of a study that will result in a statement of government policy.

435. Once this measure is implemented, private employers in Quebec and the Government, both as an employer and as a client of industry, will become partners in achieving equality for women, Native people and visible minorities in the field of employment.

**Article 7: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment**

436. Quebec has already committed itself before the international community not to subject anyone to torture or cruel, inhuman or degrading punishment or treatment, first, when, in April 1976, it undertook to comply with the provisions of the *International Covenant on Civil and Political Rights*.

437. On June 20, 1979, the Government of Quebec strengthened that commitment by adopting an order in council supporting the U.N. General Assembly's 1975 Declaration on the Protection of All Persons from Being Subjected to Torture.

438. More recently, on June 10, 1987, the Government of Quebec reaffirmed the importance of measures to eliminate torture by declaring itself bound by the provisions of the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.

**Article 10: All persons deprived of their liberty shall be treated with humanity**

439. The question of provisions to protect children and young people charged with violating acts or regulations in force in Quebec, as well as measures relating to juvenile delinquency, will be dealt with in Quebec's section of the second report of Canada on articles 10-15 of the *International Covenant on Economic, Social and Cultural Rights*.

**Article 14(6): Compensation of victims of a miscarriage of justice**

440. In 1980, the Government of Quebec set up a task force to look into the question of compensation of victims of a miscarriage of justice. The task force studied the various technical aspects, with a view to proposing a formula for implementing the obligation laid

down by the Covenant. At the same time, Quebec participated actively in a federal-provincial-territorial task force on this subject, which submitted a report and made recommendations.

441. Quebec plans to take a legislative approach to this question, and the Minister of Justice intends to table a bill soon in the National Assembly on compensation of victims of a miscarriage of justice.

#### Article 22: Freedom of association

442. Provisions applicable to public utilities, and especially with regard to the maintenance of essential services, were added to the *Labour Code* in 1982. This question was dealt with in paragraphs 462-463 of the second report of Canada, Quebec's section, on articles 6-9 of the *International Covenant on Economic, Social and Cultural Rights*.

#### Article 23(2): Right to marry and to found a family

443. Quebec has adopted new provisions regarding the minimum age for marriage, setting it at 18. However, for constitutional reasons, these provisions have not been proclaimed. In fact, constitutional case law has established that the age requirement for marriage comes under section 91.26 of the *Constitution Act, 1867* (30 & 31 Vict, C.3) and is therefore a federal matter since it constitutes a basic condition of marriage.

444. During federal-provincial negotiations, consideration was given to a proposal to transfer the law respecting marriage from federal jurisdiction to provincial jurisdiction. However, these negotiations have not yet reached a successful conclusion.

#### Article 25(b): Right to vote and to be elected

445. The *Referendum Act* (R.S.Q., c. C-64.1), assented to on June 23, 1978, allows persons incarcerated in houses of detention in Quebec to exercise their right to vote in a referendum.

446. This right was expanded by the *Election Act* of December 13, 1979 (R.S.Q., c. E-3.1), which was superseded by the *Election Act* of 1984 (c. E-3.2), allowing such persons to vote in general elections in Quebec.

## 10. SASKATCHEWAN

447. Saskatchewan's submission to Canada's second report under the Covenant will update to August 1987 the information contained in its previous submission.

### Articles 2 and 26

448. In 1979, *The Saskatchewan Human Rights Code*, S.S. 1979, c. S-24.1, was proclaimed. It prohibits discrimination in respect of specified rights on the basis of race, creed, religion, colour, sex, nationality, ancestry, marital status, physical disability, age (18-64) and place of origin. *The Bill of Rights Act*, *The Fair Accommodation Practices Act* and *The Fair Employment Practices Act* were consequently repealed. Provisions of *The Bill of Rights* relevant to Articles 5, 9, 18, 19, 21, 22 and 25 referred to in the first report are now found in *The Human Rights Code*.

449. Between January 1983 and July 1987, the Human Rights Commission received 760 formal complaints and numerous miscellaneous inquiries. Of the formal complaints, 36% alleged discrimination based on sex, 21% on race or colour, 2% on nationality, 2% on religion, 20% on physical disability, 5% on marital status, 7% on age, 7% other. Of these, 96% were settled by the Commission without a formal inquiry.

450. *The Community Legal Services (Saskatchewan) Act* was repealed in 1983 and replaced by *The Legal Aid Act*, S.S. 1983, c. L-9.1. The Legal Aid Commission recently introduced new guidelines for client contributions towards defraying the cost of legal services.

### Article 3

451. The distinctions between widow and widower in *The Dependents Relief Act* and between dependent husband and wife in *The Automobile Accident Insurance Act* have been eliminated.

### Article 7

452. *The Mental Health Services Act*, S.S. 1984-85-86, c. M-13.1, which replaces *The Mental Health Act*, prohibits the administration of psycho-surgery or experimental treatment to an involuntary patient.

453. To clarify the statement in the first report that imprisonment under *The Corrections Act* may include treatment as is considered appropriate for the prisoner's rehabilitation, the treatment referred to includes programs such as attendance at drug and alcohol education sessions and use of the family visiting unit.

### Article 9

454. *The Mental Health Services Act* provides that a mentally disordered person may be detained involuntarily if two physicians have examined the person and have found that he/she is in need of treatment, care or supervision which can only be provided in an in-patient facility, he/she is unable to make an informed decision regarding the need for treatment, care or supervision, and is likely to cause harm to himself/herself or others or to

suffer substantial mental or physical deterioration if not detained. The person has the right to be informed of the reason for his/her detention, to be assisted by an official representative, and to appeal to a review panel and subsequently to the courts against his/her detention.

#### Article 10

455. *The Corrections Act* cited in the first report applies only to adults. Pursuant to the requirements of the *Young Offenders Act*, adults and young offenders (aged 12-18) are held in completely separate facilities. However, young offenders on remand are not completely segregated from convicted youths because this would deny them access to programming aimed at education and rehabilitation. Youths serving remand or custodial time for provincial offences are detained in "open custody" facilities as designated under the *Young Offenders Act*.

#### Articles 13, 14, 15

456. Proceedings against young offenders are held in open court but youths are protected by restrictions on publication under section 38 of the *Young Offenders Act*. Young offenders who request it are assured legal representation even if parents or the Legal Aid Commission refuse to pay. *The Summary Offences Procedures Act* requires that, where a youth (aged 12-15) has been charged with a provincial or municipal offence, the peace officer shall make reasonable efforts to serve a copy of the Information on the youth's parents.

457. Proceedings under *The Children of Unmarried Parents Act* and *The Family Services Act* in respect of child protection matters are held in closed court.

#### Article 16

458. Under *The Mentally Disordered Persons Act*, persons may lose their right to manage their financial affairs if they are found by a court to be incapable of managing their financial affairs, and found by a physician to be incompetent and certified incompetent by a Chief Psychiatrist of a mental health facility. Appeals against certificates of incompetence may be made to a review panel.

#### Article 17

459. Provisions of *The Vital Statistics Act*, *The Mental Health Services Act* and *The Venereal Disease Prevention Act* restrict disclosure of any information acquired pursuant to the Act.

#### Article 18

460. An amendment to *The Infants Act*, S.S. 1983, c. I-80, has repealed the section which provided that nothing in the Act changes the law as to the authority of the father in respect of the religious faith in which his child shall be educated. The amendment also removed the court's authority to order that a child be brought up in the religion specified by the non-custodial parent.



#### Article 19

461. *The Film and Video Classification Act*, which replaces *The Theatres and Cinematographs Act*, gives the Saskatchewan Film Classification Board powers to approve or disapprove films and videos intended for exhibition in Saskatchewan. Grounds for withholding approval include the presence of graphic or prolonged violence and sexual abuse. Decisions of the Board may be appealed to an independent committee.

#### Articles 21 and 22

462. Sections 25.1 and 36.1 of *The Trade Union Act* were enacted in 1983. They limit the power of trade unions to place restrictions on employees they represent who do not agree with their actions. Employees have the right to fair representation by their union and cannot unreasonably be denied membership in a trade union.

#### Article 23

463. The prohibition against marriage by a person who is mentally retarded, mentally ill or has a communicable disease has been removed.

464. Rights and responsibilities of spouses during and at the dissolution of marriage are covered by a number of statutes, some provincial and some federal. *The Divorce Act, 1985* deals with divorce, maintenance and custody of and access to children. Provincially, *The Infants Act*, *The Deserted Spouses' and Children's Maintenance Act*, *The Children of Unmarried Parents Act*, *The Queen's Bench Act*, *The Enforcement of Maintenance Orders Act*, and *The Reciprocal Enforcement of Maintenance Orders Act* deal with custody and support. *The Matrimonial Property Act* is the primary provincial vehicle for the division of matrimonial property on marriage dissolution. Pursuant to that Act, there is a presumption of equal sharing of all matrimonial property.

#### Article 24

465. Maintenance is now available to children and either spouse under *The Deserted Spouses' and Children's Maintenance Act*. *The Enforcement of Maintenance Orders Act* and *The Reciprocal Enforcement of Maintenance Orders Act* ensure that orders for maintenance can be enforced.

#### Article 25

466. The provision under *The Election Act* disqualifying mentally incompetent persons and members of the Local Government Board from voting has been repealed.

467. Section 80 of *The Labour Standards Act* provides for a leave of absence for an employee who wishes to run for public office, and, if elected, for the term of office.

#### Article 27

468. *The Department of Parks, Recreation and Culture Act* has replaced *The Department of Culture and Youth Act*.

## C. TERRITORIAL GOVERNMENTS

### 1. NORTHWEST TERRITORIES

469. There have been some changes made to legislation in the Northwest Territories since the first report, and this submission contains comments on such changes. *The Interpretation Act*, R.S.N.W.T. 1974, c. I-3, was amended in 1985 so that the territorial legislative enactments previously called "ordinances" are now called "acts".

470. Significant changes have occurred concerning the respective roles of the Commissioner and the Territorial Council. While *The Northwest Territories Act* has not been amended in this regard, the practice has changed so that the Commissioner's role is now much more similar to that of the Lieutenant Governor, and the elected Territorial Council, now called Legislative Assembly, and its Executive Council fill roles comparable to those of a provincial legislature and cabinet.

#### Article 2

471. The current procedure under *The Fair Practices Act*, R.S.N.W.T. 1974, c. F-2, is that an individual may make a complaint to an officer appointed by the Minister (of Justice). The officer inquires into the complaint and endeavors to effect a settlement. If no settlement is effected, the officer submits a report and recommendations to the Minister and the Minister makes whatever order he sees fit.

#### Article 3

472. To clarify the statement in the first report that the Northwest Territories has no provision in its *Fair Practices Act* to prohibit discrimination on the basis of sex with respect to appointments to the Territorial Public Service, the *Canadian Human Rights Act* applies to the Territorial Public Service, and therefore no such provision is necessary.

#### Article 5

473. *The Fair Practices Act* was amended in 1981 to add the following additional grounds of discrimination: handicap, age, family, and conviction for which a pardon has been granted.

#### Article 7

474. *The Mental Health Act*, S.N.W.T. 1985(2), c. 6, which replaces the old *Mental Health Act*, prohibits the administration of psycho-surgery or electro-convulsive shock without consent, and also prohibits experimental treatment of an involuntary patient.

#### Article 8

475. *The Forest Protection Act*, R.S.N.W.T. 1974, c. F-8, as amended in 1982, allows female as well as male persons to be called up for fire fighting service.

## Article 9

476. Pursuant to the provisions of *The Mental Health Act*, a mentally disordered person may be detained involuntarily for psychiatric assessment, and if a medical practitioner, after examining that person is of the opinion that he/she is likely to cause harm to himself/herself or to others, or suffer serious bodily impairment if he/she is not detained, the person can be admitted as an involuntary patient. Whether a person is a voluntary or an involuntary patient, he/she must be informed of his/her rights. Involuntary patients have the right to counsel, to apply to the Supreme Court for a review, and to appeal the decision of the Supreme Court. They also have the right to an independent medical opinion regarding their mental disorder or the treatment they are receiving for it.

## Article 10

477. The *Magistrate's Court Ordinance* has been continued under the name, *The Territorial Court Act*, S.N.W.T. 1978(2), c. 16. This Act no longer provides for the detention of children. Instead, the Act provides that "The rules of court for the Youth Court shall be the same as those for the Youth Court established under the *Young Offenders Act* (Canada), with such modification as the circumstances require." *The Young Offenders Act*, S.N.W.T. 1984(1), c. 4, was brought into force on April 2, 1984. Section 28(3) of the Act requires that a young person in custody be held separate and apart from an adult who is charged with or convicted of an offence.

## Article 14

478. Section 3(5) of *The Justices of the Peace Act*, R.S.N.W.T. 1974, c. J-3, which provided for a three year term, subject to renewal by the Commissioner, was found to be unconstitutional because it interfered with the independence of these judicial officers, (*Walton v. Hebb, the Attorney General of Canada and the Commissioner of the Northwest Territories* [1984] N.W.T.R. 353). The result is that the tenure of all justices of the peace is now unlimited.

479. *The Legal Services Act*, S.N.W.T. 1979(1), c. 18, was proclaimed in force on November 1, 1979 and is the legal aid legislation for the Northwest Territories.

480. To clarify the statement in the first report, that the accused can be compelled to testify against himself, this section, although it has not been amended, would now be overridden by the *Canadian Charter of Rights and Freedoms*.

481. *The Young Offenders Act* of the Northwest Territories makes it an offence to publish the name of a young offender, or any information serving to identify the young offender. This Act also allows a Youth Court to exclude the public from a hearing where the judge considers it in the best interests of the accused young person, a young person who is a witness, or a young person who is a victim, or where he considers it necessary for the administration of justice, for the maintenance of order, or in the interest of public morals.

482. In clarification of this section of the first report, the position of Territorial Secretary no longer exists. In addition, sections 14(1)(b) and 14(1)(i) of *The Child Welfare Act*, R.S.N.W.T. 1974, c. C-3, have been amended to read as follows:

- (b) the individual in whose charge he is has delivered him to the Superintendent for adoption;
- (i) he is, or, in the absence of evidence to the contrary, appears to be under the age of twelve years and behaves in a way which, in the case of any other person, would be an offence created by an Act of Parliament or by any regulation, rule, order, by-law or ordinance made thereunder or an enactment or municipal by-law;

Also, section 14(1)(h) of the Act has been repealed. That section allowed proceedings aimed at the protection of any child under the age of 16 to be instituted when, with the consent or connivance of the person in whose charge he/she was, the child committed any act that rendered him/her liable to a penalty under any Ordinance, Act of the Parliament of Canada or municipal by-law.

#### Article 17

483. The Landlord and Tenant Ordinance has been replaced by *The Residential Tenancies Act*, S.N.W.T. 1987(1), c. 28.

#### Article 22

484. The provisions of *The Public Service Act*, R.S.N.W.T. 1974, c. P-13, which provide that the Territorial Government need recognize only one public service union (other than for teachers) were challenged under the Charter of Rights. That challenge was successful in the Supreme Court of the Northwest Territories. The case has been argued in the Court of Appeal, but no decision has been rendered as yet.

#### Article 23

485. Sections 16, 17, and 22 of *The Domestic Relations Act*, R.S.N.W.T. 1974, c. D-9, were amended when all Northwest Territories legislation was examined for compliance with the *Canadian Charter of Rights and Freedoms*. The dichotomy between the rights of the wife as compared to the rights of the husband no longer exists since these provisions now refer to "a spouse".

486. The *Legitimation Ordinance* no longer exists since the distinction between legitimate and illegitimate children has been removed in law in the Northwest Territories. This was done by way of *The Statute Law (Canadian Charter of Rights and Freedoms) Amendment Act*, S.N.W.T. 1987(1), c. 31, when all necessary amendments were made to Northwest Territories legislation in order to comply with the *Canadian Charter of Rights and Freedoms*.

487. The provisions of *The Public Service Act* relating to political activity on the part of public servants have been broadened to permit a greater range of activities. In addition, it is now the Minister who makes appointments to the public service, and not the Commissioner.

## 2. YUKON

### Introduction

488. Since Canada's initial report of 1979, many new statutes, policies and programs have been introduced by the Government of Yukon. The Government and the Yukon Human Rights Commission have had preliminary discussions regarding the development of an ongoing mechanism for ensuring that Yukon statutes, regulations and policies are in compliance with international instruments and human rights legislation. This report reviews the substantial changes in compliance with the following articles, 1-3, 6-7, 10, 14, 17-27.

### Article 1

489. In 1870, the Yukon region became part of Canada and in 1898 the Yukon became a separate Territory.

490. Except for the areas covered by Treaty #11 of 1921, which includes the southeast portion of the Yukon, and the Inuvialuit Final Agreement of 1984, which includes the northern coast of the Yukon, no land ceding treaty or comprehensive land claim settlement dealing with aboriginal title apply in the Yukon.

491. Currently, the Council for Yukon Indians, the federal government and the Yukon government are negotiating a comprehensive land claim settlement.

### Article 2

492. The Yukon *Human Rights Act* was assented to February 12, 1987, and proclaimed as law July 1, 1987, replacing the *Fair Practices Act*. It prohibits discrimination on the grounds of ancestry, national origin, ethnic or linguistic background, religion or creed, age, sex, sexual orientation, physical or mental disability, criminal charges or record, marital or family status and political belief, political association or political activity.

493. The *Human Rights Act* applies to the areas of employment, accommodation, public services and membership in trade unions or occupational/professional associations.

494. The Act established a Human Rights Commission, independent from the Yukon Government and accountable to the Yukon Legislature. Included in the Commission's duties is the mandate to promote research and education designed to eliminate discrimination.

495. A person who believes that he/she has been discriminated against under the prohibited grounds contained in this Act may file a complaint with the Human Rights Commission. After investigation by the Commission, complaints may be dismissed, resolved through mediation or heard by a board of adjudication. The adjudicators have the power to rule on a case and order the respondent to stop the discrimination, pay damages and/or rectify any condition that caused the discrimination. These orders may be filed with and enforced by the Yukon Supreme Court.

496. The *Human Rights Act* outlines an appeal procedure for appealing any decision made by a board of adjudication to the Yukon Supreme Court.

497. The *Human Rights Act* supersedes all other Yukon statutes.

498. Within its first year of operation, the Human Rights Commission responded to 121 community inquiries and accepted 8 formal complaints for investigation.

### Article 3

499. As outlined in article 2, the Yukon *Human Rights Act* prohibits discrimination on the basis of sex, including pregnancy and pregnancy related conditions and marital or family status. The Act also provides for equal pay for work of equal value (pay equity) in the public sector and requires the Human Rights Commission to conduct research and education on the principle of pay equity in the private sector.

500. Sexual harassment is prohibited by the Yukon *Human Rights Act*. Affirmative action programs and special programs designed to reduce disadvantages resulting from discrimination are not seen as discriminatory. The definition of discrimination outlined in the Act includes systemic discrimination.

501. The Women's Directorate was established by the Yukon Cabinet in 1985 as a free-standing, central agency within Government, reporting directly to the Minister Responsible for the Status of Women. The Directorate's objective is to integrate issues of concern to women into the mainstream of government policy-making and program development.

502. The *Change of Name Act* was amended in 1985 to change the sections that did not comply with the equality rights set out under section 15 of the *Canadian Charter of Rights and Freedoms*. A new *Change of Name Act* was enacted in December 1987 and treats women and men equally as to the provisions laid out for obtaining a change of name.

503. The *Interpretation Act* was amended in 1985 to give female and male persons equality of status and obligations under enactments, unless the enactment expressly excludes the operation of this section (section 7).

504. A new *Vital Statistics Act*, 1986, provides for the registration of a newborn child in the surname of the mother, the person shown on the registration as the father, or a hyphenated combination of the two surnames.

505. Language in most Yukon statutes passed since 1985 has been made gender neutral.

### Article 6

506. As mentioned in Canada's initial report, the Yukon Government provides a number of programs and services aimed at lending positive assistance to the promotion and maintenance of life for all Yukoners. Since 1979, new programs such as the *Homecare Program*, the *Victim/Witness Program*, a *Pharmacare Program* for seniors, and the *Chronic Disease Program* covering drug costs have been established. As well, the Yukon Government offers a variety of programs and services aimed at the prevention and treatment of alcohol and drug abuse. Various territorial government departments are involved in the creation and delivery of programs aimed at prevention, treatment, law enforcement and education on family violence.

507. Through financial help from the Yukon Government, three safehomes for victims of family violence have been established in Yukon communities. The Whitehorse Transition Home also receives support from the territorial government.

508. In addition, various acts dealing with safety regulations have been enacted. These include the *Dangerous Goods Transportation Act*, 1985, the *Agricultural Products Act*, 1985, the *Gas Burning Devices Act*, 1987, and the *Occupational Health and Safety Act*, 1984. The latter sets out standards for health and safety in the workplace.

#### Article 7

509. The *Torture Prohibition Act*, January 1988, states that any person who inflicts torture on another person commits a tort and is liable to pay damages to the victim of the torture.

510. The *Human Tissue Gift Act* outlines requirements for consent to *inter vivos* transplants.

#### Article 10

511. Under section 137(4)c) of the *Children's Act*, 1984, the Director of Family and Children's Services has a duty to provide for the child's physical and emotional needs between the time the child is taken into care and a custody order is made.

512. Accused juvenile persons are treated separately in accordance with the federal *Young Offenders Act*, 1984 and the *Young Persons Offences Act*, 1987. A "secure" custody facility is presently under construction in the Yukon. Currently no such facility exists and young offenders requiring closed custody are sent out of the territory.

#### Article 14

513. The Yukon *Languages Act*, 1988, provides for the use of French or English in court proceedings starting December 31, 1992.

514. The federal *Young Offenders Act* and the Yukon *Young Persons Offences Act*, 1987, both include specific procedures in recognition of juveniles' age and the desirability of promoting their rehabilitation.

#### Article 17

515. The Yukon *Human Rights Act* states that every individual has the right to the peaceful enjoyment and free disposition of his or her property subject to the conditions set out by law. The Act also protects the honour and reputation of respondents in that complaints of a "frivolous or vexatious" nature will be dismissed by the Commission.

516. The *Children's Act* provides for privacy of court proceedings and access to personal information from the director of family and children's services (sections 172, 176).

517. Under the *Young Offenders Act* and the *Young Persons Offences Act*, publication of young persons' names, be they the accused or a witness, is prohibited.

#### Articles 18, 19, 20, 21, 22

518. The Yukon *Human Rights Act* states that every individual has the right to freedom of expression, freedom of religion and of conscience, freedom of assembly and of association and the right to enjoyment and disposition of property, all in accordance with the law.

519. Persons detained in a Yukon correctional institution have access to religious ceremonies and members of the clergy. There are provisions for Native spiritual practices such as sweet grass ceremonies in the Whitehorse Correctional Centre.

520. Section 132 of the *Children's Act* outlines how a court order may be authorized which gives a director of family and children's services power to consent to emergency medical treatment of a child. To date, challenges to such provisions in other jurisdictions on the basis of section 2(a) of the *Canadian Charter of Rights and Freedoms* (freedom of religion) have been unsuccessful. (See federal section, article 18).

521. The *Access to Information Act*, 1983, provides a mechanism whereby any person may obtain information in records of Yukon government departments subject to limitations necessary for the effective operation of departments in the public interest. A denial of information under this Act may be appealed to the Yukon Supreme Court.

#### Article 23

522. The Yukon *Human Rights Act* prohibits discrimination on the basis of family or marital status.

523. The *Children's Act* expresses that the policy of the legislation is "to supply services as far as reasonably practicable to promote family units and to diminish the need to take children into care or to keep them in care" (section 105). The director is required to take reasonable steps "to promote family conditions that lead to good parenting".

524. In 1985, the *Marriage Act* was amended to repeal the sections which stated that no person could perform a marriage ceremony when they were aware that either contracting party was mentally disordered or suffering from a communicable disease.

525. The *Family Property and Support Act*, 1979, expresses "that child care, household management and financial provision are the joint responsibilities of the spouses and that inherent in the marital relationship there is joint contribution, whether financial or otherwise, by the spouses to the assumption of these responsibilities" (section 5). The Act sets out provisions for division of family assets upon marriage breakdown, support payments and domestic contracts.

#### Article 24

526. The Yukon *Human Rights Act* prohibits discrimination on the basis of age and family status.

527. The *Children's Act* states that, in its application, the best interests of the child affected by the proceeding shall be the paramount consideration. The protection for children under the new Act has expanded to include sexual abuse.



528. Requirements to report cases of child abuse or neglect in the *Child Welfare Act* (repealed 1984) were replaced with a non-compulsory provision in section 115 of the *Children's Act*.

529. Section 107 of the *Children's Act* states that in child protection cases, where practicable, a child will be placed with a family of the child's own cultural background and lifestyle, preferably in his or her home community.

530. In adoption cases, policy exists in the Yukon that gives primary consideration to the placement of an Indian child with approved Indian adopters.

531. Various sections of the *Children's Act* set out alternatives to taking a child into custody (sections 32, 118, 140).

532. The *Maintenance and Custody Orders Enforcement Act*, 1986, establishes a clear legal basis for the Yukon Government to automatically enforce maintenance and custody orders on behalf of the beneficiaries of those orders.

533. The Yukon *Day Care Act* was enacted in 1979. It provides for licensing and regulation of day care centres and family day-homes. In 1986, new regulations were introduced which improved the quality of day care available in the territory. Subsidies are available for families that meet the requirements set out in the *Day Care Subsidy Program*. In 1986, the Yukon Government initiated a program of direct grants to licensed Yukon day care centres.

#### Article 25

534. The *Languages Act*, 1988, confirms the right to use French, English or an Aboriginal language in debates of the Legislative Assembly. The Act also provides for the provision of services in French in the Yukon Territory. These provisions come into effect by December 31, 1992.

535. A 12-month residency requirement for voting in territorial elections (*Elections Act*, s. 18(1)c)) was challenged in court as an infringement of the right to vote under section 3 of the *Canadian Charter of Rights and Freedoms* (*Hedstrom v. Commissioner of the Yukon Territory and the Council for Yukon Indians, Intervenor*, 1985). A Yukon Supreme Court decision which rendered the residency requirement unconstitutional was overturned in a higher Court of Appeal decision in 1986.

536. The Yukon *Corrections Act* was amended in 1983 to allow accused persons on remand to vote in territorial and federal elections.

537. All persons detained in Yukon correctional institutions may vote in municipal and local/band elections where they meet the voting requirements under the *Municipal Act* and *Indian Act* respectively.

538. Convicted detained persons may vote in federal and territorial elections only if they have freedom of movement through programs such as the Work Release Program (*Elections Act*, s. 5). Access to polling stations for convicted persons would be a "reasonable" restriction under this article.

#### Article 26

539. The Yukon *Human Rights Act* prohibits discrimination on the basis of age. The *Territorial Court Act*, section 41(1)a), was amended in 1988 to eliminate the mandatory retirement age.

540. The Yukon *Human Rights Act* sets out duty to make reasonable provisions in connection with employment, accommodations and services for the special needs of physically disabled people.

541. In 1986, the Yukon Government created the Positive Employment Program. This affirmative action program is designed to increase representation of Native people, women and disabled persons throughout all job categories within the Yukon Government.

542. See also articles 2 and 3.

#### Article 27

543. The Yukon *Human Rights Act* recognizes the multicultural heritage of the residents of the Yukon. Provisions under the Act do not affect rights pertaining to Aboriginal peoples established by the Constitution of Canada or by a land claims agreement.

544. The *Languages Act*, 1988, provides for certain services to be available in French or English, as of December 31, 1992 and, subject to the establishment or regulations by the Commissioner in Executive Council, in one or more of the Aboriginal languages.

545. Native language programming has been established in over half of the schools in the Yukon. French language instruction is available in most Yukon schools.