



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States Parties due in 1988

Addendum

CANADA

[16 January 1989]

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INTRODUCTION

1. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was adopted by the United Nations General Assembly on 10 December 1984, and came into effect on 26 June 1987. On 24 June 1987 Canada ratified the Convention.

2. This report, which will mainly cover the period from 24 July 1987 to 31 March 1988, is submitted in accordance with article 17 of the Convention. Part I places the Convention in the context of the Canadian constitutional system and Part II outlines measures in force at the federal, provincial and territorial levels to give effect to the provisions of the Convention.

PART I: INFORMATION OF A GENERAL NATURE

3. Canada is a federal State made up of 10 provinces and two territories. Within the Canadian Confederation, legislative powers are exercised by the Parliament of Canada and by provincial legislatures according to the distribution of legislative powers set forth in the Constitution Act, 1867 (formerly known as the British North America Act, 1867) and the amendments thereto. Pursuant to a delegation of powers to the territories by the federal Parliament, the two territorial assemblies also exercise legislative authority on certain issues.

4. In Canada, international treaty law is not automatically part of the law of the land. The provisions of a treaty can be incorporated into domestic law either by enactment of a statute giving the treaty the force of law, or by amendment of the domestic law, where necessary, to make it consistent with the treaty. The implementation of a treaty whose provisions come under the jurisdiction of one, or the other, or both levels of government, requires the intervention of the Canadian Parliament, the provincial legislatures and, unless Parliament decides otherwise, the territorial legislative assemblies for those parts of the treaty that fall within the jurisdiction of each. Because Parliament does not have the legislative power to give effect to all the obligations which Canada assumed towards the international community by ratifying the Convention, extended consultations were required between the federal and provincial governments, in which the latter undertook to ensure compliance with those provisions of the Convention falling within their exclusive legislative authority.

5. An individual who alleges a violation of a provision of the Convention has recourse to remedies provided for in Canadian law or the Canadian Charter of Rights and Freedoms (the "Charter") (attached as Appendix 1). 1/ The Charter was incorporated into the Canadian Constitution on 17 April 1982, by virtue of the Constitution Act, 1982 (Constitution Act, 1982, c. 11 (United Kingdom)). It guarantees certain fundamental freedoms and legal rights, including the right of everyone "not to be subjected to any cruel and unusual treatment or punishment" (s. 12). The Charter, pursuant to section 32, guarantees the rights of private persons in relation to federal and provincial legislatures and governments. This section 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.). 2/

6. Section 1 of the Charter provides that the rights and freedoms contained therein may be limited to the extent that such a limit is prescribed by law and demonstrably justified in a free and democratic society. The Supreme Court of Canada has indicated that in order for a limit to meet the requirements of section 1, the limit must serve a sufficiently significant objective and employ proportionate means to attain that objective (R. v. Oakes, Appendix 2). Section 33 of the Charter permits a clause to be inserted in legislation, so that it may operate notwithstanding sections 2 or 7 to 15 of the Charter. In order to do so, a federal or provincial government must insert a clause declaring specifically that it is passing the law notwithstanding specified provisions of the Charter and in addition, the declaration ceases to have effect after five years, unless it is re-enacted. In Alliance des Professeurs de Montréal et al. v. A.G. Québec, the Quebec Court of Appeal stated that a provision which invokes section 33 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 overridden. More generally, the Court indicated that section 33 must be strictly construed because of its impact on fundamental rights. In effect, this section cannot be employed without great political debate and publicity.

7. Canada is also a party to the International Covenant on Civil and Political Rights which provides in article 7 that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". The Optional Protocol to the Covenant, to which Canada is also a party, permits an individual to file a communication with the United Nations Human Rights Committee, alleging a violation of any of the provisions of the Covenant. As well, on 17 December 1982, pursuant to resolution 32/64 of the General Assembly, the Canadian Government made a unilateral declaration against torture, in support of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

PART II: INFORMATION IN RELATION TO THE ARTICLES
IN PART I OF THE CONVENTION

A. MEASURES ADOPTED BY THE GOVERNMENT OF CANADA

Article 2

Canadian Charter of Rights and Freedoms

8. Several provisions of the Canadian Charter of Rights and Freedoms are relevant for the purpose of preventing acts of torture. Section 12 guarantees that "[e]veryone has the right not to be subjected to any cruel and unusual treatment or punishment". Additionally, section 7 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. As well, section 9 guarantees the right not to be arbitrarily detained or imprisoned.

9. Anyone whose Charter rights have been infringed may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just within the circumstances (s. 24(1)). Where evidence has been obtained in a manner that infringes or denies a Charter right, it will not be admitted in judicial proceedings if, having regard to all of the

circumstances, its admission would bring the administration of justice into disrepute (s. 24(2)). Moreover, where a law is inconsistent with the provisions of the Charter, a court must declare the law to be, to the extent of the inconsistency, of no force or effect (s. 52).

Legislative provisions

10. In order to ensure compliance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Parliament amended the Criminal Code to create a specific offence of torture (s. 245.4) (see Canada Gazette, Part III, Vol. 10, No. 2, c. 13, attached as Appendix 3). This amendment prohibits acts of torture committed by officials, such as peace officers, public officers and members of the military forces, or by persons acting at the instigation of, or with the consent or acquiescence of, such persons. It is no defence to a torture charge that the accused was ordered to perform the act in question by a superior or public authority, nor can the act be justified by exceptional circumstances, including a state of war, threat of war, political instability or any other public emergency.

11. Additionally, the Canadian Bill of Rights of 1960 and various other Criminal Code provisions prohibit conduct that could constitute torture or cruel, inhuman or degrading treatment or punishment. For example, the Criminal Code prohibits such practices as assault, both with or without bodily harm (s. 245), causing bodily harm with intent to wound a person or to endanger life (s. 228), administering a noxious thing (s. 229), extortion (s. 305) and intimidation (s. 381) (Appendix 4).

Legal provisions governing police and security forces

12. In addition to the above Criminal Code and constitutional provisions, 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 Code of Conduct for Law Enforcement Officials.

13. Any member of the Royal Canadian Mounted Police (the "RCMP") 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)) (Appendix 9). As well, the RCMP is currently reviewing its internal directives to ensure that they conform with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It should be noted that, subject to Ontario and Quebec, the federal Government contracts out to the provinces and territories the policing services of the RCMP. Consequently, the provisions discussed in the federal portion of this report governing the RCMP are equally applicable to these other regions of Canada.

14. There also exist special provisions governing the Correctional Service of Canada to protect against abuses. These provisions include the following measures:

(a) Section 3.1 of the Penitentiary Service Regulations, promulgated on 17 March 1988, 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 (Appendix 6).

(b) Policies aimed at controlling the use of force by personnel require that staff refrain from abusive conduct towards inmates, including the infliction of corporal punishment and personal injury. Whenever force is permitted to be used in order to handle inmates, it may not be used as punishment or for disciplinary purposes (see Commissioner's Directive ("CD") No. 605, Appendix 6).

(c) Staff may be held criminally and civilly liable for any excessive use of force. In addition, the Code of Discipline requires staff to follow the legislation, regulations and policies of the Correctional Service, and enforces this requirement by means of a system of service offences. Any employee of the Correctional Service who disobeys these requirements may be subject to disciplinary action ranging from a reprimand to dismissal (see CD No. 060, Appendix 6), in addition to any other criminal or civil liability.

(d) Other policies of the Correctional Service of Canada require the placement of community observers in institutions following a serious incident that involves violence against staff. Additionally, the policies of the Correctional Service ensure the offender's right to accept or refuse any medical treatment (see CD No. 600 and 803, Appendix 6).

Article 3

15. In Schmidt v. The Queen, the Supreme Court of Canada held that "the treaty, the extradition hearing in [Canada] and the exercise of the executive discretion to surrender a fugitive must all conform to the requirements of the Charter". The Court also stated that "in some circumstances the manner in which the foreign state will deal with the fugitive on surrender, whether that course of conduct is justifiable or not under the law of that country, may be such that it would violate the principles of fundamental justice to surrender an accused under those circumstances" ([1987] 1 R.S.C., pages 20-21, 22).

Article 4

16. By virtue of s. 24 of the Criminal Code (Appendix 4), it is an offence to attempt to commit any of the offences contained in the Code. This would, of course, include the offence of torture, discussed under article 2 of this report. Anyone convicted of torture is liable to a term of imprisonment not exceeding 14 years (s. 245(1), Appendix 3). Anyone convicted of an attempt to commit torture is liable to a term of imprisonment not exceeding seven years (s. 421(b), Appendix 4).

Article 5

17. On 1 June 1987, s. 6 of the Criminal Code was amended to give Canadian Courts jurisdiction over the prosecution of an offence of torture where: (i) the act or omission is committed on board a ship or aircraft registered in Canada; (ii) the person who commits the act or omission, or the complainant, is a Canadian citizen; or (iii) the person is present in Canada after committing the act or omission (Appendix 3).

Article 6

18. A peace officer who has reasonable grounds to believe that a person has committed an indictable offence, such as torture, may arrest that person without a warrant for the purpose of criminal proceedings. In addition, all extradition treaties entered into by Canada provide that a provisional warrant of arrest may be obtained to secure the physical custody of a fugitive. A person arrested for the purpose of extradition will be set at liberty if proper supporting documentation is not received within a certain period of time, normally 45 days.

19. The Operational Manual of the RCMP provides that any arrested person who is not a Canadian citizen or landed immigrant shall be allowed to communicate immediately with a representative of his or her country (Appendix 5). As regards stateless persons, Canada is in the process of including a reference to such persons in its police manuals across the country. As well, Canada is taking steps to ensure that proper notices are given to States referred to in article 5, paragraph 1 of the Convention.

Article 7

20. Canada has jurisdiction to prosecute an accused for an offence of torture in all circumstances contemplated by article 5. The standard of evidence in Canadian criminal law (i.e. proof beyond a reasonable doubt) is the same for all offences, whether committed on Canadian territory or abroad. Furthermore, the provisions of the Canadian Charter of Rights and Freedoms aimed at ensuring legal rights (see, in particular, ss. 7-14 of Appendix 1) are applicable to anyone subject to criminal proceedings in Canada.

Article 8

21. A multilateral agreement providing for the extradition of individuals for certain offences may be regarded by Canada as a binding arrangement for the purposes of the Extradition Act, R.S.C. 1970, c. E-21. This would apply regardless of whether there is a treaty in force or not between Canada and the other State party. For the purposes of Canadian extradition law and practice, an offence of torture would be treated as if it had been committed not only in the place in which it occurred but also in the territory of Canada.

Article 9

22. The extradition treaties entered into by Canada provide for varying degrees of mutual judicial assistance between States parties. For example, the treaty between the Netherlands and Canada provides a procedure in criminal matters for taking evidence of a witness located in the other country (Article XVII, Appendix 7). Similarly, s. 43 of the Canada Evidence Act, R.S.C. 1970, c. E-10, permits the examination of a witness located in Canada for the purpose of assisting a foreign court in any civil, commercial or criminal matter (Appendix 8).

Article 10

23. The Correctional Officers Recruitment Program, as well as refresher training courses on the duties and obligations of correctional officers, deal with the prohibition of torture and similar acts, and include instructions on

how to determine an appropriate degree of force. As well, Correctional Service employees are trained in the interpretation and application of the relevant provisions of the Criminal Code, internal directives and guidelines that relate to the use of force (see CD 605, Appendix 6).

24. Every recruit to the RCMP is required to take courses on the "Handling of Prisoners", "Interrogation Techniques" and "Criminal Law". These courses include instruction on the use of force, statements, admissions and confessions.

Article 11

25. As regards the Correctional Service of Canada, the Inspector General conducts periodic reviews of compliance by institutions with the administrative policies and practices of the Correctional Service, as well as the governing regulations and legislation. The Enforcement Services Directorate of the RCMP also conducts a complete review, twice yearly, of the Operational Manual, which contains specific provisions on interrogation and custody of persons.

Article 12

26. The Royal Canadian Mounted Police Act requires officers to perform all duties that are assigned to them "in relation to the preservation of the peace, the prevention of crime, and of offences against the laws of Canada ..." (s. 18). The Act also requires that every member of the RCMP shall, before entering upon the duties of the office, take an oath of allegiance and an oath of office whereby the member swears to "faithfully, diligently and impartially execute and perform the duties required" and "obey and perform all lawful orders and instructions" received "without fear, favour or affection of or toward any person" (s. 15, Appendix 5).

Article 13

General

27. The policy document of the Government of Canada that sets out the purpose and principles of the criminal law, The Criminal Law in Canadian Society (Government of Canada, Ottawa, 1982), states that "any person alleging illegal or improper treatment by an official of the criminal justice system should have ready access to a fair investigative and remedial procedure". In fulfilment of this principle, Canadian law permits the filing of a complaint by any person with the police. Furthermore, the person may initiate criminal charges and proceedings before a justice under s. 455 of the Criminal Code (Appendix 4), and may personally prosecute the offence subject to the right of the Attorney General to intervene and take carriage of the prosecution. As well, protection for complainants and witnesses is routinely provided in Canada, where necessary, as part of the general responsibilities of the State to protect its citizens.

Complaints mechanisms

28. An Act to amend the Royal Canadian Mounted Police Act, S.C. 1986, c. 11, was recently proclaimed in force. It establishes a procedure by which any member of the public, whether personally affected or not, may submit a

complaint regarding the on-duty conduct of RCMP members. Complaints that cannot be disposed of informally will be investigated by the Force, and if the complainant is still not satisfied, the matter will be reviewed by the Public Complaints Commission. In exceptional circumstances, the Commission will be able to investigate a complaint or institute a hearing without the matter first being examined by the RCMP. The Commission would then forward its recommendations to the Commissioner of the RCMP and to the Solicitor General of Canada (Appendix 9).

29. There is also a complaints procedure for inmates within the Correctional Service of Canada. Details of this procedure are contained at pages 10-11 of Appendix 10, "Inmate Rights and Responsibilities".

Article 14

30. As discussed under article 2, acts of torture may violate several sections of the Canadian Charter of Rights and Freedoms. Section 24(1) of the Charter entitles a person whose rights or freedoms have been infringed or denied to apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances. This could provide to a victim of torture a constitutional remedy for obtaining compensation and redress of acts violative of the Charter.

31. Redress is also available in the civil courts at common law, in respect of acts amounting to the tort of assault or battery. Such redress is available notwithstanding that the same acts may constitute a criminal offence and the accused was convicted or acquitted at trial.

32. The Crown Liability Act and the common law also permit persons to sue police officers, including members of the RCMP. The Government is responsible for any liability, compensation or damages assessed on account of the improper and unreasonable acts of its employees. Restitution may also be ordered under the Criminal Code in respect of property loss where the loss is readily ascertainable (s. 653-655, Appendix 4). Finally, amendments have recently been proposed to the Criminal Code which, if passed, will make the criminal trial and sentencing process more responsive and sensitive to the needs of victims. Highlights of these amendments are contained in Appendix 11.

Article 15

33. On 1 June 1987, a provision was added to the Criminal Code declaring that in proceedings over which Parliament has jurisdiction, any statement obtained as a result of torture is inadmissible in evidence except as proof that the statement was so obtained (Appendix 3, s. 245.4(4)). Additionally, in Canada, the common law confession rule has always prohibited the admission into judicial proceedings of statements obtained as a result of threats, fear or promise of hope or reward, except as proof that the statement was so made.

Article 16

34. Reference should be made to the discussion under article 2 of this report regarding constitutional and legislative provisions that prohibit acts of cruel, inhuman or degrading treatment or punishment. In the context of s. 12

of the Charter (i.e. the right not to be subjected to any cruel and unusual treatment or punishment), the Supreme Court of Canada stated in Smith v. R. 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 seven-year term for importing narcotics was grossly disproportionate where it could be applied regardless of the relative gravity of the offence. The Court also noted that punishments or treatments such as corporal punishment, lobotomization and castration (which do not exist in Canadian law) will always be grossly disproportionate and outrage standards of decency.

35. In Lyons v. R., the Supreme Court of Canada held that the imposition of a sentence of indeterminate 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 behavioural restraint, so that future violent acts can be expected.

B. MEASURES ADOPTED BY THE GOVERNMENTS OF THE PROVINCES

CHAPTER 1: ALBERTA

Article 2

36. The Alberta Attorney General's Department administers, through Crown prosecution, the federal Criminal Code. The Code includes offences against the person, which covers acts, and attempted acts, of torture.

37. The Alberta Solicitor General's Department administers the Corrections Act, R.S.A. 1980, c. C-26, which governs probation and community corrections services in Alberta.

Articles 6 and 7

38. A person alleged to have committed any offence referred to in Article 4 is subject to due process of law, including prosecution under the Criminal Code, and the civil remedies available to the victim through the civil courts.

Article 10

39. The Correctional Institution Regulations under the Corrections Act, R.S.A. 1980, c. C-26, require that employees be informed of prohibitions against torture and delineate staff practices respecting the use of force. As part of current revisions under consideration to the Act and the Regulations, it has been proposed that Section 53 of the Regulations be deleted to conform with acceptable standards prohibiting torture.

Article 11

40. A systematic review of the treatment of persons under detention with a view to preventing any cases of torture is not included in legislation, nor is legislation proposed. The spirit of this article will be addressed in the proposed revision to the Correctional Institution Regulations.

Article 12

41. The Fatality Inquiries Act, R.S.A. 1980, c. F-6, provides for public investigation into allegations of torture or cruel, inhuman or degrading treatment or punishment. A Fatality Review Board provides for investigations of suspicious deaths of persons under any form of custody. Medical examiners appointed under the Act have extensive investigative powers.

42. This Act, together with the Public Inquiries Act, R.S.A. 1980, c. P-29, empowers the Attorney General to order judicial inquiries to be held and compels disclosure of relevant information by witnesses.

Article 13

43. The Corrections Act provides for compliance with the Ombudsman Act and policy requires that "outgoing mail to the Provincial Ombudsman cannot be opened under any circumstances" excepting where the Minister may exempt a correctional facility from complying with the Act in those circumstances involving a suspicious package that could create a situation of a life threatening nature.

44. It is further stated in policy that mail should not normally be opened when addressed to the Solicitor General of Alberta, the Deputy Minister, Assistant Deputy Minister, Regional Directors, Members of the Legislative Assembly of Alberta, Members of the Parliament of Canada, or the federal Correctional Investigator. In the event a Centre Director authorizes the opening of mail, then a written report giving the reasons why it was deemed necessary is to be provided to the Regional Director.

45. Further, in terms of an audience to a complaint, an inmate may request an interview with the Centre Director, and, if not satisfied with the response, nothing will preclude the inmate's ability to pursue the complaint in accordance with the Ombudsman Act.

(See also Response under Article 12)

Article 14

46. The Criminal Injuries Compensation Act, R.S.A. 1980, c. C-33, as amended, sets up a Crimes Compensation Board which provides compensation to victims, as well as to dependants of the victim and persons responsible for the maintenance of the victim, of Criminal Code offences against the person.

47. Victims or dependants may also obtain redress under the civil law. Also, a dependant of a victim, as well as other members of the family of a victim, may be entitled to compensation under the Fatal Accidents Act, R.S.A. 1980, c. F-5. A civil right to sue is implied in the Proceedings Against the Crown Act, R.S.A. 1980, c. P-18, which makes the Crown liable for torts committed by any of its officers or agents.

Article 16

48. The Child Welfare Act, S.A. 1984, c. C-8.1, authorizes the Government to provide protective intervention on behalf of children when there is evidence that a child is exposed to physical, sexual or emotional abuse, or the

substantial risk thereof. It may be significant to note that the Alberta Department of Social Services' legislation and programme policies do not prohibit corporal punishment, for disciplinary purposes, of children who are in foster homes under the protective guardianship of the Department.

(See also Response under Article 2)

CHAPTER 2: BRITISH COLUMBIA

49. The Attorney General of British Columbia has registered his strong support for the ratification of this Convention as a means of registering abhorrence against the practice of torture (letter to the Secretary of State for External Affairs, 19 September 1986).

Introduction: The role of the provincial Ombudsman

50. As well as specific legislative and administrative measures carried out by individual ministries, the intent of this convention is addressed in a comprehensive manner through the Office of the Ombudsman. Under the terms of the Ombudsman Act, R.S.B.C. 1979, c. 306, this agency investigates complaints by members of the public against public officials. To facilitate access to the office by inmates of correctional or mental institutions, regular visits are made to these institutions.

51. The Ombudsman also carries out studies of particular areas of the provincial government to ensure that procedures are organized to effectively respond to public concerns. A study was completed in 1986 with regard to police complaint procedures to clarify who should investigate and rule on public complaints against police officers. Until such time as revisions to the Police Act can be enacted, the Ombudsman has made interim arrangements with the B.C. Police Commission as to how complaints against police officers shall be handled (see articles 12 and 13).

52. The Office of the Ombudsman in 1986 dealt with 792 complaints from adult and youth correctional centres which were concerned with a variety of administrative matters, treatment of inmates, programmes and medical issues, including a small number of complaints of maltreatment of inmates. In the same year, 277 complaints were investigated and completed from adult and youth mental treatment centres. The attached 3/ extract from the Ombudsman's annual report documents a number of cases related to alleged inmate or client abuse.

Article 2: Legislative ... or other measures

53. The Ministry of Attorney General is responsible for enforcement of statutory provisions and prosecution of offences under the Criminal Code of Canada. No provision in B.C. law or policy may be invoked as a justification for torture or other inhuman treatment. Specific legislation, policies and procedures are referenced below by programme area:

(a) For police officers, standards of conduct are regulated by the Police Act, R.S.B.C. 1979, c. 331, as well as by a Disciplinary Code, included in the regulations to that Act. Section 7(b) of the Code lists the following action as being subject to discipline: "any unnecessary violence to any prisoner or other person with whom he may be brought into contact in the execution of his duty".

(b) For correction officers charged with custody of offenders, conduct is regulated by: the Correction Act, R.S.B.C. 1979, c. 70; a mission document entitled Beliefs, Goals and Strategies (B.C. Corrections Branch, Ministry of Attorney General, rev. May 1986); and specific procedures set out in the Correctional Centre Rules and Regulations 1986. The latter Rules and Regulations specify in section 11 that physical restraint may only be used to prevent the inmate from injuring himself or others, in transporting inmates, or in preventing escapes, and use of restraining devices other than handcuffs or leg irons must be reported to superiors. Section 22 requires that searches are to be conducted with a minimum of force. Sections 35, 36, 37 and 38 outline rules related to use of segregation cells, including an inmate's right to meals, exercise, and medical supervision.

(c) The province's major mental institution, Riverview Hospital, has a number of policies and procedures relating to the reporting and investigation of patient abuse. Policy No. A-42 outlines the reporting and investigation procedure for incidents of patient abuse, and policy No. A-71 outlines the right of the provincial Ombudsman to investigate charges of abuse and gain access to any records needed in the course of such an investigation.

(d) Under the Coroner's Act, R.S.B.C. 1979, c. 68, a coroner is directed in section 10 to investigate all deaths which take place in a penitentiary, prison or while in custody of a peace officer. Under section 52, a coroner may authorize a post mortem of any death in a hospital or institution at the request of the board of directors of that institution.

Article 10: Training of public officials

54. Training of police and correction officers is delivered by the Justice Institute in Vancouver, which reports to the Ministry of Attorney General. To supplement its core curriculum, the Institute has established a family assault and sexual violence training centre which focuses on the criminal justice aspects of this type of violence, with an emphasis on intervention and prevention. To promote compliance with the Convention, a review of training for police, corrections officers, staff at mental institutions, and wildlife officers (who are empowered as peace officers under the Wildlife Act) will be undertaken to ensure inclusion of the concept of prohibition of abuse by staff.

Article 11: Interrogation rules and custody arrangements

55. Adequate protection for inmates of correctional centres is mandated by Part 2 of the document Beliefs, Goals and Strategies. It states in section 1 that "All persons must have their rights respected and be treated with dignity", and in section 12 that "Offenders are members of society and are to be treated with respect and dignity and are not to be subjected to cruel and unusual forms of treatment". More detailed rules regarding treatment of inmates are provided in the Correctional Centre Rules and Regulations which are revised regularly, most recently in 1985.

Articles 12 and 13: Complaints and investigation

56. For inmates of a provincial correctional centre, a grievance procedure is provided in section 40 of the Correctional Centre Rules and Regulations. Inmates can complain to specified officials, and also to the provincial Ombudsman. All such correspondence is considered to be private.

57. For mental patients, a complaint can be made to any staff member or to a representative of the provincial ombudsman's office, who visits the facility on a weekly basis. An investigation must take place immediately, with a report completed within 48 hours. All significant allegations of abuse are to be referred by the Executive Director of the facility to an independent panel of inquiry appointed by the Minister of Health for possible further investigation. If the complaint is made directly to the Ombudsman's representative, that individual is to have access to all records required to make a full investigation. A volunteer support person can be made available to the patient who suffered the alleged abuse.

58. For members of the public, a complaint of abuse against a police officer can be made to the Chief Constable of the particular police force. Amendments to the Police Act introduced in May 1988 would create an additional avenue of complaint, to a new Complaints Commissioner, who will be employed by the B.C. Police Commission.

59. A case currently under investigation will illustrate the complaint process. A young man suffered serious injury to his knee while in custody of Vancouver city police. His complaint to the Chief Constable resulted in an internal inquiry, the results of which were not satisfactory to the complainant. It then went to the Vancouver Police Board for investigation. The Board held an inquiry and hearing, but due to the circumstances of the case it did not issue a decision, rather requested that the case be referred to the B.C. Police Commission. The Police Commission directed that a three-person commission of inquiry look into the matter. This commission issued its report in mid-August 1988. It concluded that police officers involved in the case lied under oath at all stages of the inquiry, and that they violated their oath of office by either active participation in the assault or by standing silent. The commission's report resulted in the appointment by the Attorney General of a special Crown Counsel who will review the earlier decision not to lay criminal charges, and will also review initial discipline charges and procedures. Another area of investigation will be the general ethics of police officers and how it is taught.

Article 14: Redress for victim

60. The Ministry of Attorney General is responsible for the Criminal Injury Compensation Act, R.S.B.C. 1979, which provides for compensation to victims or, where the victim has been killed, to the dependants of the victim, for a variety of criminal offences. The Schedule to the Act provides a list of these offences, which include assault, assault with a weapon causing bodily harm, aggravated assault, unlawfully causing bodily harm, kidnapping, illegal confinement, and intimidation. In compliance with the Convention, this Schedule was reviewed to ensure that it covers all forms of abuse contemplated by the Convention. Adjudication of claims under the Act is carried out by the Workers' Compensation Board. In 1986, a total of 1,659 claims were filed, and over \$4 million was paid out.

61. One example of compensation with regard to abuse by a public official is a case which was examined by the Ombudsman in 1984. A complaint of abuse against a patient of the Forensic Psychiatric Institute was substantiated and the staff member was dismissed. The patient sought compensation for mental trauma related to the event. He was awarded an ex gratia payment of \$200 for the relatively minor trauma which he experienced.

62. Civil remedies are also available to victims. In the case cited under article 13, the City of Vancouver reached an out-of-court settlement of \$52,500 with the complainant.

Article 15: Admissibility of evidence

63. The inadmissibility of evidence obtained by coercion or made as a result of torture is established by case law pursuant to the Evidence Act, R.S.B.C. 1979, c. 116.

Article 16: Other acts of cruel, inhuman or degrading treatment

64. The sexual harassment of an employee is not acceptable in British Columbia. Complaints of this nature are accepted under the Human Rights Act, S.B.C. 1984, c. 22. Many of the individual ministries of the British Columbia Government also have specific policies prohibiting such harassment of employees by other staff members.

65. Approximately 20 per cent of cases accepted by the B.C. Council of Human Rights in the fiscal year 1986/87 concerned sexual harassment. In a number of cases, the Council has ordered payment to the complainant of the maximum \$2,000 for humiliation, embarrassment, and injury to self esteem.

66. In recent years, there has been considerable public concern about incidents of sexual abuse of children by teachers, social workers and other individuals in positions of the trust of children. This concern has resulted in the following initiative:

Criminal records screening is now undertaken for all individuals applying for positions in the provincial government and/or publicly funded agencies where they would be working with children. The intent of the screening is to identify those who may have abused children previously, and prohibit them from taking such positions. This process has been reviewed by the Office of the Ombudsman which released a report in April 1987 entitled "Use of Criminal Checks to Screen Individuals Working With Vulnerable People". The Ombudsman was concerned with balancing the rights of vulnerable people (children, elderly, handicapped, and those in institutions) with those of prospective employees and employers. Recommendations in the report have been incorporated into the relevant ministry procedures.

67. In 1987, the Ministry of Attorney General established a new Victim Assistance Program to provide services to victims of crime. The services provided include practical assistance at the scene of the crime, help with filling out forms, emotional support, transportation to and from court, and basic information about the progress of their case, recovery of their property and other administrative details. A toll-free information line is available as well as a victim reparation programme. The programme is delivered by civilian staff and volunteers attached to local police forces, as well as by staff in sexual assault support centres.

68. A new Victim's Rights and Services Act (Bill 31) has recently been introduced by the Attorney General. Among the features of the bill would be: a victim's right to information on all stages of investigation and prosecution of an offence; the right to make representation on the impact of a crime; and the right to restitution from an offender.

CHAPTER 3: MANITOBA

Article 2

69. The Manitoba Attorney General's Department is responsible for administering the provisions of the Criminal Code in Manitoba, including prosecutions for offences against the person, and the specific offence of torture under section 245.4 of the Criminal Code.

70. With respect to probation and correction services in Manitoba, section 59 of The Corrections Act, C.C.S.M., c. C230, provides that the superintendent may establish rules and orders respecting the conduct and duties of the officers and employees of correctional institutions. In addition, section 61 of the Act provides that regulations may be made respecting the conduct and duties of officers and employees of correctional institutions, and the training of staff and personnel.

Article 10

71. Established under The Provincial Police Act, R.S.M. 1987, c. P150, the Manitoba Police Commission promotes the prevention of crime, efficiency of police services and police-community relationships in the province, and, for the attainment of these purposes, it may make recommendations respecting the training of police officers in the province. To ensure that obligations under the Convention are met, all police departments in Manitoba have been asked to amend training manuals, include the topic in training sessions, review interrogation and custody practices, and ensure all officers were made aware of the Convention and its requirements. All police departments in Manitoba are considered to have complied with the basic requirements of the Convention.

72. Psychiatric facilities have been made aware of their obligations under the Convention.

Article 12

73. Inquests are required under section 9(3) of The Fatality Inquiries Act, R.S.M. 1987, c. F52, in circumstances where there is reasonable cause to suspect that a person who died in a correctional institution, gaol or prison, or while that person was an involuntary resident of any institution of the province, died by violence, undue means or culpable negligence, or in an unexpected or unexplained manner, or suddenly of unknown cause, or died by reason of some act of a police officer performed in the course of his duties as a police officer.

Article 13

74. Under section 6(1) of The Law Enforcement Review Act, R.S.M. 1987, c. L75, persons who feel aggrieved by a disciplinary default allegedly committed by any member of a police department may file a complaint with the Commissioner under the Act. The definition of disciplinary default includes abuse of authority, including making an arrest without reasonable or probable grounds, or using unnecessary violence or excessive force. The penalties that may be imposed under the Act range from admonition to dismissal. In addition,

where organizational or administrative practices of a police department may have caused or contributed to an alleged disciplinary default, the Commissioner may recommend changes.

75. Section 15 of The Ombudsman Act, R.S.M., c. 045, permits the Ombudsman to investigate any act done or omitted related to a matter of administration by a department or agency of government. This would permit persons in provincial gaols and provincial institutions to make complaints. However, the remedial powers of the Ombudsman are limited, and investigation is discretionary.

76. Under The Mental Health Act, R.S.M., c. M110, a person admitted to psychiatric facilities must be provided with a written communication outlining the functions of the board and the manner in which a matter could be referred to the board, and the right to communicate with members of Cabinet and the Legislative Assembly, inspectors of psychiatric facilities, and his or her attorney.

Article 14

77. Victims would generally be entitled to bring a civil suit for compensation for the torts of battery or assault. If the victim has died, his or her dependents are entitled under The Fatal Accidents Act, R.S.M., c. F50, to receive the compensation the victim would have received.

78. The Criminal Injuries Compensation Act, R.S.M. 1987, c. C305, allows for compensation for injuries or death arising from certain criminal offences, which include murder, manslaughter, and assault causing bodily harm.

Article 16

79. Under The Mental Health Act, the director is empowered to remove mental retardates, imprisoned for an offence in any prison or place of detention, other than a penitentiary, or held in safe custody and charged with an offence, to an institution until the person is fit to be returned to prison, or discharged, as the case may be.

80. With respect to mentally disordered offenders involved in the criminal law, the Lieutenant Governor's Advisory Board of Review meets regularly to review and make recommendations to the Lieutenant Governor in the best interests of these persons, but not contrary to the public interest, with a view to subjects receiving medical treatment if possible.

81. It is an offence under The Mental Health Act for any officer, nurse, attendant, servant, or person employed in a psychiatric institution, or any other person having charge, care, control or supervision of a mentally disordered person, to ill-treat or wilfully neglect a mentally disordered person.

CHAPTER 4: NEW BRUNSWICK

82. This report outlines the legislation, regulations, policies and programmes which are relevant to the implementation of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in New Brunswick.

83. Nothing whatsoever in the laws and policies of New Brunswick justifies the use of torture. No official or agency of New Brunswick is entitled or authorized to use torture or to justify its use.

Article 2

84. The New Brunswick Department of Justice enforces the provisions of the federal Criminal Code in New Brunswick.

Articles 6 and 7

85. The Habeas Corpus Act, R.S.N.B. 1973, c. H-1, provides for an application to a judge of the Court of Queen's Bench for the purposes of determining if imprisonment is legal. The judge may order an immediate discharge from prison if he/she determines the detention is not lawful.

86. Persons alleged to have committed any offence referred to in Article 4 are subject to due process of law. This includes prosecution under the Criminal Code and remedies available through the civil courts.

Article 10

87. The Police Act, R.S.N.B. 1973, c. P-9.2, provides for the establishment of the New Brunswick Police Commission, which has existed since 1977. The Police Commission has a variety of duties and responsibilities but, in reference to this article, it audits and inspects the files and procedures of police forces, promotes and assists in the development of police education, and establishes programmes and methods designed to create public understanding of police functions.

88. The Police Commission has a number of guidelines on the ways in which officers can act. These are detailed in the New Brunswick Police Commission Policy and Procedures Manual.

Article 11

89. Under New Brunswick's system of law, only a very small percentage of accused persons are remanded pending trial. The Corrections Act, R.S.N.B. 1973, c. C-26, provides that every correctional institution is a lawful place for confinement and treatment of persons being detained for trial or under sentence. The Act allows for adequate and appropriate treatment for persons being detained or under sentence.

Article 12

90. A complaints and discipline procedure is outlined in Section 22 of the Police Act. It deals with the actions of police officers that are alleged to contradict the limits of their authority.

91. Remedies are also available through criminal and civil procedures in the province or through the Office of the Ombudsman.

Article 13

92. Chapter 31 of the New Brunswick Police Commission Policy and Procedures Manual requires that a suspect must be given the "police warning". The warning is as follows:

"You need not say anything. You have nothing to hope from any promise or favour and nothing to fear from any threat whether or not you say anything. Anything you do say may be used as evidence."

Article 14

93. The Compensation for Victims of Crime Act, R.S.N.B. 1973, c. C-14, allows for a court to award compensation for "pain and suffering".

Article 15

94. Chapter 31 of the New Brunswick Police Commission Policy and Procedures Manual states that the purpose of the police warning is to remove any apprehension that a suspect may feel at having been arrested, and to inform him of his right to remain silent.

Article 16

95. Section 18 of the Corrections Act provides that treatment for the rehabilitation of a person may include hard labour, even if it is not specifically stated in the sentence.

96. The Corrections Act states that adequate segregation and appropriate treatment will be provided for inmates.

CHAPTER 5: NEWFOUNDLAND

97. Prior to Canada's ratification of the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment on 24 June 1987, the Department of Justice for Newfoundland had reviewed all provincial legislation and found it to be in compliance with the Convention. This report outlines the legislation and regulations in place as of 1 June 1988, which are relevant to the implementation of the Convention in Newfoundland.

Article 2

98. The Department of Justice, through Crown prosecution, enforces the provisions of the Criminal Code of Canada. The Summary Proceedings Act, S.N. 1979, c. 35 adopts the Criminal Code for provincial offences as it applies to summary conviction offences.

99. The Department of Justice administers the Adult Corrections Act, 1975, S.N. 1975, c. 12, which governs probation and community correction services in Newfoundland. The Department of Social Services administers provisions of the federal Young Offenders Act and the Young Person Offences Act, S.N. 1984, c. 2, which relate to youth correction services in the Province.

Articles 6-7

100. A person alleged to have committed, or charged with, an offence referred to in article 4 is subject to due process of law, including prosecution under the Criminal Code. Also civil remedies are preserved and available to the victims of such offences through the civil courts.

Article 10

101. All persons described in article 10 are instructed regarding the determination of an appropriate degree of force and potential liability resulting from cruel or abusive treatment of persons in their charge. The Royal Newfoundland Constabulary Act, R.S.N., 1970, c. 58, establishes the Royal Newfoundland Constabulary in the Province and prohibits cruelty or the use of excessive force by staff officers. This prohibition applies also to prison officers under the Prison Regulations, 1985, made pursuant to the Prisons Act, R.S.N., 1970, c. 305. These Acts also provide for disciplinary procedures and specific offences for abuse or mistreatment of prisoners or other persons.

Article 11

102. The Prisons Act provides for the safe custody and security of prisoners. The regulations made thereunder provide that prisoners shall be treated with due regard to the decency and dignity of the person, and that staff officers shall act impartially and without favour to all inmates. Like provisions are found in the Royal Newfoundland Constabulary Act.

Article 12

103. The Summary Proceedings Act provides that a judicial inquiry is to be held into the death of persons where there is reasonable cause to suspect that death resulted from violence, negligence, misconduct or by unfair means, where the deceased person was in custody or in other circumstances where there are suspicious circumstances surrounding the death.

Article 13

104. The federal Royal Canadian Mounted Police Act, the Royal Newfoundland Constabulary Act and the Prisons Act set out procedures for the investigation of complaints against officers in breach of legislation or regulations in contravention of the Convention. Inmates in provincial institutions have access to internal grievance procedures and, like all other citizens, have access to redress through the legal system by way of criminal prosecution and/or civil remedies.

105. The Prison Regulations, 1985 provide for the protection of prisoners' rights such as receipt and mailing of correspondence, visitors, etc. and as well, the Parliamentary Commissioner (Ombudsman) Act, R.S.N. 1970, c. 285, provides that all persons in custody or patients in designated mental institutions shall have the right to correspond uncensored with the Ombudsman.

Article 14

106. Victims or dependents of victims of offences relating to torture have a civil remedy under the civil law. A civil right to sue is outlined in the Proceedings Against the Crown Act, S.N., 1973, c. 59, which makes the Crown liable for torts committed by any of its officers or agents. In the case of death of the victim, an action for damages can be brought under the Fatal Accidents Act, R.S.N. 1970, c. 126, for the benefit of the wife, husband, parent and child of the victim. "Parent" and "child" are broadly defined.

107. The Criminal Injuries Compensation Act, R.S.N. 1970, c. 68, established a Compensation Board for the administration of compensation to victims, the dependants of victims, or persons who were responsible for the maintenance of the victims, for Criminal Code offences against the person. The Act was amended in 1988 to add the criminal offence relating to torture as compensable ground under the Act in compliance with the Convention.

Article 16

108. The Child Welfare Act, R.S.N. 1970, C. 37, authorizes the Government to provide protective intervention on behalf of children where there is evidence of neglect, physical, sexual or emotional abuse.

CHAPTER 6: NOVA SCOTIA

109. Canada ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 24 June 1987. Nova Scotia had earlier, on 10 December 1984, issued a policy statement on the said Convention. 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.) 4/

Article 2

110. The Department of the Attorney General enforces the provisions of the Criminal Code of Canada.

111. The Nova Scotia Summary Proceedings Act, S.N.S. 1972, c. 18, adopts the Criminal Code of Canada legislation as it applies to summary conviction offences.

Articles 6 and 7

112. The Liberty of Subject Act, R.S.N.S. 1967, c. 164, is the provincial Habeas Corpus legislation. It guarantees that there shall be no abrogation or abridgement of the remedy by the writ of habeas corpus at common law and guarantees that the remedy exists in full force and is the undoubted right of the people of this province. In addition to the habeas corpus remedy, the civil remedy is also preserved.

Article 10

113. The Police Act, S.N.S. 1974, c. 9, provides for the establishment of the Nova Scotia Police Commission, which has been in existence since 1974. The Police Commission develops and approves training programmes designed to create between the public and police a mutual understanding of police functions,

duties and responsibilities, and to promote police relationships with the community. The Attorney General may direct the Commission to inquire into and report to him upon any matter relating to complaints respecting the conduct and actions of police officers.

Article 11

114. The Corrections Act, S.N.S. 1986, c. 6, provides for the safe custody and security of offenders. Regulations under this Act ensure that all persons deprived of their liberty shall be treated with respect and dignity.

Article 12

115. Under the Fatality Inquiries Act, R.S.N.S. 1967, c. 101, where there is reasonable cause to suspect that a person died by violence, undue means or culpable negligence or in prison or under circumstances requiring an inquest under any other legislation or under undetermined cause, the provincial chief medical examiner shall make diligent inquiry respecting the cause and manner of death of the person and submit a report to the Attorney General who may direct further inquiry if necessary.

Article 14

116. The Compensation for Victims of Crime Act, S.N.S. 1975, c. 8, established the Criminal Injuries Compensation Board. This Board has the power to order compensation not only to the victim of the crime but also to a person who is responsible for the maintenance of the victim, and to the victim's dependents where the death of the victim has resulted.

CHAPTER 7: ONTARIO

117. The Government of Ontario reviewed its legislation, programmes and policies prior to Canada's ratification of the Convention in June 1987 and keeps them under review. The Government is satisfied its policies, programmes and practices are in compliance with the provisions of the Convention.

Article 2

118. Section 7 of the Regulation under the Ministry of Correctional Services Act prohibits any employee of the Ministry from using force against an inmate except in specific limited circumstances, such as in defence of an employee or inmate from assault, or to control a rebellious or disturbed inmate. The regulations require any employee who uses force to file a written report concerning the incident; all reports are reviewed by senior ministry staff.

Article 10

119. Correctional staff are specifically instructed in the use of force and the proper treatment of offenders during their basic training. The basic training programme includes instruction on the United Nations conventions, the recent amendments to the Criminal Code with respect to torture and the Canadian Charter of Rights and Freedoms. Refresher courses are conducted periodically to ensure that they remain current in correctional practices and procedures.

120. Ontario, through training programmes offered at the Ontario Police College, has been in the practice of disseminating such information since well before the Convention was signed.

121. Specifically, the basic course which is compulsory for all police recruits in the province covers arrest procedures, the use of force, and the criminal and civil responsibility of officers who use excessive force. Twenty per cent of the course time is spent on practical exercises in which the officer's response to simulated occurrences is monitored and discussed. The Advanced Training Course for senior officers reviews the case law on the relevant principles embodied in the Canadian Charter of Rights and Freedoms. Similarly, at an even higher level, the Criminal Investigation Course for detectives covers this material as well.

Article 11

122. The Ministry of the Solicitor General is continually reviewing policies and procedures relating to incarceration and interrogation and, where necessary, administrative and policy directives to police officers are up-dated accordingly.

123. While most provincial custody situations are within the purview of the Ministry of Correctional Services, law enforcement agencies do detain persons in lock-up facilities as well. Various checks and balances are employed to ensure that torture and other forms of abuse are prevented. For example, cameras are generally present in holding cells and are monitored regularly. Individuals who are detained have the right to legal counsel and those who cannot afford to retain their own lawyer can get assistance through legal aid. In addition, the Public Institutions Inspection Act, administered by the Ministry of the Attorney General, provides for the inspection of lock-up facilities by a panel of independent inspectors which then reports on whether or not any persons are being held improperly or for an unreasonable length of time. This is all in addition to judicial supervision of detention, as provided in the Criminal Code.

124. At the basic, advanced and criminal investigation levels of training, law enforcement personnel are also briefed on evidentiary issues, including recommended interrogation procedures and the law which requires that statements must be voluntarily given or they will not be admissible in court proceedings.

125. The Ministry of Community and Social Services provides custody and predispositional detention facilities for young people arrested and detained under the Young Offenders Act. These residential programmes are subject to licensing procedures and close monitoring by the Ministry.

126. A Custody Review Board reviews applications by young people committed to custody or detention facilities for a review of the following: a decision to hold a young person in, or transfer that person to, a maximum security place of custody; the particular place where the young person is held or to which that person has been transferred; a refusal to authorize the young person's temporary release; and the young person's transfer from a place of open custody to a place of secure custody.

Article 12

127. Any employee of the Ministry of Correctional Services who uses force is required to file a written report concerning the incident. All such reports are reviewed by senior ministry officials. When force is used against an inmate, the inmate must receive a prompt medical examination and any necessary treatment.

Article 13

128. Any inmate of a correctional institution who feels that he or she has been the subject of an improper use of force may do any of the following:

- (a) File a complaint with the superintendent of the institution;
- (b) Request an interview with a representative of the local police force to determine whether criminal proceedings are warranted;
- (c) File a complaint with the office of the Ombudsman;
- (d) Request an interview with a Justice of the Peace to determine whether the circumstances warrant the laying of an information under the Criminal Code.

129. In 1981, the provincial government passed legislation which enables citizens who have complaints against officers employed by the Municipality of Metropolitan Toronto to file a complaint to a civilian agency.

130. Under this system, complaints are generally investigated by the police under the supervision of the civilian agency, and are reviewed by that agency. Complaints can range from minor matters to serious allegations such as assault. At the conclusion of the investigation, the officer may face a public hearing by a Board composed of civilians which has the power to dismiss him or her from the police force.

131. Members of the public who have complaints about offices outside of Metropolitan Toronto, can complain to the local police force and the Ontario Police Commission. Legislation has been introduced which, if passed, would permit the extension of the complaints procedure which now exists in Metropolitan Toronto to other parts of the province.

132. Every residential programme caring for children is required to have a complaints procedure in place. Unsatisfied complainants may be directed to the Minister of Community and Social Services. An Office of Child and Family Service Advocacy has been established to co-ordinate and administer a system of advocacy on behalf of children and their families who receive services under the Child and Family Services Act.

133. Every children's aid society is required to have a clear review process for complaints with respect to the society's services. Unsatisfied complaints may be directed to a Director, an employee of the Ministry of Community and Social Services.

Article 14

134. Any victim of a crime of violence under the Criminal Code, a person responsible for the maintenance of the victim, or the dependants of the victim where the death of the victim has resulted from the violence may apply to the Criminal Injuries Compensation Board for compensation.

135. Compensation which may be awarded includes expenses incurred as a result of the injury or death, pecuniary loss, and compensation for pain and suffering. An application to the Board does not prevent a person from recovering damages by way of civil proceedings.

Article 15

136. The common law rule of evidence applies so that admissions obtained as a result of torture would not be admissible.

Article 16

137. Under the Ontario Mental Health Act, any patient has the absolute right to refuse any psychiatric treatment unless a finding of incompetency to consent to treatment is made. The patient who is found not competent to make treatment decisions may apply to a review board to challenge the doctor's findings; the board's decisions can be appealed to the court. A patient who is over 16 and competent to do so has the right to appoint a representative to make treatment decision on his or her behalf. An involuntary patient, or authorized substitute decision-maker where the patient is considered incompetent, cannot consent to psychosurgery. A competent patient or patient's proxy can absolutely refuse electroconvulsive therapy.

138. Two specific provisions in the Child and Family Services Act act as a check on the abuse of State power during the child protection hearing process: legal representation of a child, at all stages of the child protection hearing (section 38); and media presence at the hearing (section 41).

139. Section 96 of the Child and Family Services Act prohibits the locking up of children, except in very limited circumstances that are governed either by a court order (Young Offenders or Secure Treatment) or a carefully regulated administrative process.

140. Section 97 of the Act prohibits corporal punishment of any child receiving services under the Act and applies not only to services provided by the Ministry of Community and Social Services but also to any agency funded or licensed by the Ministry.

141. Part VI of the Act regulates and carefully limits the use of intrusive treatment procedures and the use of psychotropic drugs. Part IX deals with residential programmes caring for children, and prohibits the use of deliberate harsh or degrading measures which humiliate a resident and the depriving of a resident of basic needs including food, shelter, clothing and bedding.

CHAPTER 8: PRINCE EDWARD ISLAND

142. The legislation, policies, and programmes of Prince Edward Island appear to be in compliance with the provisions of the Convention.

143. This report will address the articles of the Convention which deal with matters which are within provincial constitutional jurisdiction and which have been directly or indirectly addressed by legislation in this province.

Article 2 (1)

144. Measures to prevent acts of torture in this jurisdiction include:

(a) Enactment and enforcement of the Family and Child Services Act, R.S.P.E.I. 1974, c. F-2.01, which authorizes the apprehension of children who, inter alia, have been physically abused, neglected, or sexually exploited, or who are in danger of consistently threatening behaviour, and which requires every person who has knowledge or reasonable and probable cause to believe that a child had been abused to report the case to the proper authority.

(b) Recent enactment of the Adult Protection Act (1988), which provides for government assistance or intervention to protect an adult who is unable to protect himself against neglect or abuse (the latter of which is defined as including offensive mistreatment, whether physical, sexual, mental, or emotional, or any combination that causes or is reasonably likely to cause the victim, inter alia, psychological harm). The Act provides for the reporting of cases of persons in need of assistance or protection, and authorizes the court to make a protective intervention order.

(c) Enactment and enforcement of Regulations to the Jails Act, R.S.P.E.I. 1974, c. J-1, which provide for humane treatment of prisoners, and which prohibit correctional officers from using any form of violence on a prisoner except where absolutely necessary for self-defence or defence of another prisoner or jail employee or where necessary to control a rebellious or disturbed prisoner. In such cases, only the minimum of force necessary may be used, and a written report of the incident must be submitted immediately to the Superintendent of the facility. These Regulations also limit the penalties which may be imposed on prisoners who violate behaviour regulations. The penalties are limited to withdrawal of privileges, close confinement for up to no more than four days without approval of the Director, and forfeiture of statutory remission of sentence.

Article 7

145. This article is complied with by provincial enforcement of the federal Criminal Code's prohibition of torture (s. 245.4), and of the Charter of Rights prohibition of cruel or inhuman treatment or punishment (s. 12).

Article 11

146. The objective of this article, which is to prevent cases of torture of persons arrested, detained, or imprisoned, are met by this province's Jails Act Regulations, which are set out under article 2.

Article 12

147. Suspected incidents of torture would be subject to police investigation as part of enforcement of the Criminal Code provisions.

148. In addition, two provincial laws, the Coroners Act, S.P.E.I. 1957, c. 10, and the Vital Statistics Act, R.S.P.E.I. 1974, c. V-6, require special investigations where a person appears to have died as a result of "violence", "misadventure", "unlawful means", "misconduct", or in other suspicious or sudden circumstances. (The Vital Statistics Act requires an investigation before a burial permit may be issued.)

149. The Coroners Act also requires every person who has reason to believe that a deceased person has died in any of the above circumstances to immediately notify the Coroner, and requires a jail superintendent or keeper to immediately notify the Coroner in any case of death of a prisoner in a jail, reformatory, or lock-up.

Article 14

150. Prince Edward Island has recently enacted a Victims of Crime Act (1988), which provides for public compensation for persons who have suffered harm, including physical or mental injury, emotional suffering, or economic loss by reason of acts which are in violation of criminal laws. This will, of course, include victims of torture under s. 245.4 of the Criminal Code.

Article 16

151. The provisions of the Jails Act Regulations (as noted under art. 2) would appear to address the objectives of this article.

CHAPTER 9: QUEBEC

152. Quebec has undertaken to comply with the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, with the adoption, on 10 June 1987, of decree No. 912-87, in accordance with its internal law.

Legislative, administrative and judicial measures giving effect to articles 2, 6, 7 and 10 to 16 of the Convention

153. In June 1975, the Government of Quebec adopted the Charter of Human Rights and Freedoms, which states that "Every human being has a right to life, and to personal security, inviolability and freedom". The Charter further stipulates that "Every person arrested or detained must be treated with humanity and with the respect due to the human person. [That person] has a right to immediately advise his next of kin thereof and to have recourse to the assistance of an advocate. He has a right to be informed promptly of those rights".

154. The Charter guards against virtually all abuses of the human rights protected by the Convention. However, administrative measures and special mechanisms have been put in place to ensure compliance with the provisions of the Convention.

Legislation

155. The Government of Quebec carried out a review of all Quebec legislation to ensure that it contains no provisions that might be considered inconsistent with the fundamental rights enshrined in the Convention. The findings of this review suggest that Quebec's legislation does not contravene the provisions of the Convention.

156. In penal matters, Quebec amended its Code of Penal Procedures (art. 61) in order to incorporate "the rules of evidence in criminal matters, including the Canada Evidence Act". In civil matters, the Government of Quebec plans to table in the National Assembly an amendment to the Civil Code of Quebec on the admissibility of evidence. This amendment would disallow any evidence obtained in violation of fundamental rights and freedoms.

Corrections

157. The Government of Quebec has adopted procedures guaranteeing respect for human dignity and governing the actions of correctional officers:

Directive on the interrogation of incarcerated persons (February 1985);

Directive on the admission of foreign nationals to provincial detention facilities (September 1986);

Directive on the reception of incarcerated persons in detention facilities (January 1987);

Directive on the admission of incarcerated persons to detention facilities (January 1987);

Directive on disciplinary infractions by incarcerated persons (January 1987).

158. Quebec has also adopted a number of policies to guide its actions:

Policy on the custody of prisoners (March 1984);

Policy on the reception of incarcerated persons (November 1986);

Policy on temporary absences (November 1986);

Policy on pastoral services in detention facilities (November 1986);

Policy on the custody of accused persons (February 1987).

159. Furthermore, incarcerated persons may apply to the Public Protector and to the Quebec Human Rights Commission, whose members and investigators may visit detention facilities at any time. Correspondence and meetings with incarcerated persons then constitute an exception to the usual examination. Thus any complaint of torture or other cruel, inhuman or degrading treatment can be dealt with immediately, and corrective action can be taken promptly.

160. Finally, the training and information given to employees are geared to respect for human rights and the reintegration of incarcerated persons into society.

Police ,

161. Directives and communications issued to police officers clearly reflect the principles set forth in the Convention.

162. Police training falls under the jurisdiction of the Government, which is committed to the fundamental values of a free and democratic society as well as respect for the rights and freedoms of each individual.

163. Quebec police officers are governed by a code of ethics which promotes the maintenance of discipline and ethical conduct, as well as respect for human rights, and condemns reprehensible actions.

164. A quasi-judicial government body, the Quebec Police Commission, may intervene and investigate cases of police wrongdoing that are submitted to it. This body also makes recommendations to Quebec police forces.

165. Furthermore, every resident of Quebec has free access to the courts, both criminal and civil, to enforce his rights against any police action that he considers improper.

CHAPTER 10: SASKATCHEWAN

166. This report outlines the legislation, regulation, policies and programmes in place as of 29 February 1988, which are relevant to the implementation of the Convention in Saskatchewan.

Article 6 (3)

167. It is the policy in Saskatchewan adult correctional institutions to facilitate visits, phone calls and written communications by and to inmates. This includes contact with immigration authorities, national ambassadors, and so forth.

Article 10

168. Persons involved with the custody, interrogation or treatment of individuals subject to arrest, detention or imprisonment are provided with general information regarding obligations and potential liability resulting from their treatment of persons in their charge.

169. In addition, with respect to police officers, criminal law courses at the Royal Canadian Mounted Police Academy and at the Saskatchewan Police College include several hours of instruction on arrest and detention, and potential implications of the provisions of the Canadian Charter of Rights and Freedoms. This instruction is consistent with the spirit of the Convention.

170. In the case of adult correctional centres, an important objective is to provide and maintain safe and humane custody, control and care for persons sentenced or remanded by the courts. Therefore, a divisional directive on the

use of force indicates that all staff are to be trained in the use of force as a means of inmate control. Training is consistent with the intent of Article 10. For example, the policy manual clearly indicates that physical restraint cannot be used as a form of punishment, disciplinary sanction or treatment for mental disorder.

171. In the context of young offenders, staff receive basic human rights training related to the Saskatchewan Human Rights Code, R.S.S. 1978, c. S-24.1, and the Canadian Charter of Rights and Freedoms. Limitations on the use of physical force and restraint as applied to young offenders held in custody is set out in departmental policy, and is reinforced at the introductory training session provided to all new staff.

172. In the provincial health care system, staff are educated concerning their obligations, and patients are advised of their rights. Staff of all professional disciplines employed in mental health facilities are apprised of appropriate professional and ethical standards to be applied in the treatment of patients.

173. Regarding the mentally retarded, staff receive training with respect to Department of Social Services policies and procedures relevant to the appropriate treatment of patients.

Article 11

174. In the context of young offenders, departmental policy specifically prohibits assault by staff members.

175. As regards police officers, the Royal Canadian Mounted Police Act, R.S.C. 1970, c. R-9, and the Police Act, R.S.S. 1978, c. P-15, provide specific offences for abuse of prisoners or other persons.

Article 12

176. The Royal Canadian Mounted Police Act and the Police Act require that complaints of police brutality be thoroughly investigated.

177. The Department of Social Services' policy with respect to young offenders outlines the procedures to be followed during an investigation of an apparent or alleged assault. The Directive Respecting Incidents Involving the Possibility of Assaults of a Resident by a Staff Member outlines the role of the facility director in terms of conducting an investigation into an alleged assault. Where an allegation of abuse has been made, the police may be included in the investigation, depending upon the wishes of the client and the evidence which is available during the departmental review.

Article 13

178. The Royal Canadian Mounted Police Act and the Police Act set out procedures for the investigation of complaints brought by members of the public against the police.

179. Inmates in provincial adult correctional centers have access to an internal grievance procedure. They may also seek redress through the legal system or through the Office of the Ombudsman.

Article 14

180. A victim of torture in Saskatchewan could bring a civil suit to claim compensation from the torturer. If the victim dies, an action for compensation can be brought under the Fatal Accidents Act, R.S.S. 1978, c. F-11, in favour of the spouse, parent and child of the victim. "Parent" and "child" are defined very broadly.

Article 16

181. The use of physical force against young offenders is not permitted except when necessary to restrain a young person who is in danger of harming himself or another to prevent property damage, or to maintain security and order. It may not be employed as a means of punishment. Physical restraint is permitted only for safety or security reasons and is not to be used when other feasible alternatives are available. When physical force is used, only authorized measures may be employed, the degree of force must be the minimum amount required, and the force must be discontinued at the earliest opportunity.

182. Based on Department of Health legislation, regulation and policies, voluntary patients in health care facilities may only be subjected to treatment to which they consent. Involuntary patients in mental health facilities who are not considered competent to consent to treatment may be treated without consent, subject to three conditions: (a) the doctor must explain the treatment and consider the patient's views; (b) electroconvulsive therapy requires an examination and endorsement of certificates by two psychiatrists; and (c) psychosurgery and experimental treatment are prohibited. Where electroconvulsive therapy is ordered, prior to commencement of the treatment, the Official Representative is notified and an appeal may be taken to the Review Panel. Patients are advised of their rights by means of brochure.

183. In the context of the mentally retarded, Social Services policy prohibits treatment which could be termed cruel or unusual. Specific guidelines regarding acceptable and inappropriate treatment are set out in departmental policy.

C. MEASURES ADOPTED BY THE GOVERNMENTS OF THE TERRITORIES

CHAPTER 1: NORTHWEST TERRITORIES

Article 2

184. A review of Northwest Territories legislation was conducted in 1987. No provisions which could permit torture were identified, and therefore no amendments were necessary to make our legislation comply with article 2 of the Convention.

185. Nothing whatsoever in Northwest Territories law or policy may be invoked as a justification for torture.

186. No Northwest Territories officer or agency is entitled or authorized to order torture, or to justify its use.

Article 14

187. An amendment was made to the Northwest Territories Criminal Injuries Compensation Act to include the new torture provision from the Criminal Code in the Schedule of Offences for which victims, dependants of the victims and persons responsible for the maintenance of the victims may be compensated. It would also be open for a victim of torture, or his dependants, to pursue a civil action against the perpetrator of the torture.

CHAPTER 2: YUKON

Introduction

188. The Government of Yukon has enacted legislation against torture, the Torture Prohibition Act, which came into effect 8 January 1988. The legislation was adopted as a means of implementing the Convention in areas of jurisdiction of the Yukon Territory. The Preamble to the Act states:

"Recognizing that Canada is a party to the United Nations Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment.

The Commissioner of the Yukon Territory, by and with the advice and consent of the Legislative Assembly, enacts as follows."

189. The provisions of the Act follow closely the language of the relevant provisions of the Convention.

190. The Torture Prohibition Act deals primarily with the civil aspects of acts of torture (the criminal aspects are covered by the Criminal Code of Canada, as explained in the federal section), rendering the person who commits torture liable to pay damages to the victim of the torture. The provisions of the Act apply mainly to articles 1, 2, 14 and 15 of the Convention.

191. The Act applies to public officials and to every person acting at the instigation of or with the consent or acquiescence of a public official. "Public official" includes a peace officer and any person in the public service of the Yukon (a) who is authorized to do or enforce the doing of any act or thing or to exercise any power, or (b) upon whom any duty is imposed by or under any act.

Article 1

192. The definition of "torture" in the Torture Prohibition Act is very similar to the definition adopted in article 1 of the Convention and reads as follows:

"torture" means any act or omission by which severe pain or severe suffering, whether physical or mental, is intentionally inflicted on a person

(a) For a purpose including:

- (i) Obtaining from the person or from a third person information or a statement;
- (ii) Punishing the person for an act that the person or a third person has committed or is suspected of having committed;
- (iii) intimidating or coercing the person or a third person or

(b) For any reason based on discrimination of any kind;

but does not include any act or omission arising from, inherent in, or incidental to lawful sanctions.

Article 2

193. Section 3 (1) of the Torture Prohibition Act provides that, in an action under section 1 of the Act, it is no defence that the defendant was ordered by a superior or a public authority to perform the act or omission that forms the subject-matter of the action, nor that the act or omission is alleged to have been justified by exceptional circumstances such as a state of war, a threat of war, internal political instability or any other public emergency.

Article 14

194. Section 1 of the Torture Prohibition Act establishes liability for acts of torture by stating that every public official, and every person acting at the instigation of or with the consent or acquiescence of a public official, who inflicts torture on any other person commits a tort and is liable and renders his or her employer liable to pay damages to the victim of the torture.

195. Section 2 provides guidance for the calculation of damages to be awarded to the victims of torture. It states that, in an action under section 1, the court shall calculate the damages according to the principles applicable in cases of battery, assault, intimidation, negligence, or whichever other tort seems most closely analogous to the torture that was inflicted.

196. Compensation is also available, under the Compensation for the Victims of Crime Act, R.S.Y.T. 1986, c. 27, for the victim of a crime, a person responsible for the maintenance of the victim, and the victim's dependants, and, under the Fatal Accidents Act, R.S.Y.T. 1986, c. 64, for members of the family of the deceased person, where the death is caused by wrongful act, neglect or default.

Article 15

197. Section 4 of the Torture Prohibition Act provides that, in any proceedings over which the Yukon Legislature has jurisdiction, any statement obtained as a result of torture is inadmissible in evidence except as evidence that the statement was obtained by torture.

Notes

1/ The appendices referred to in this report are submitted separately. The list is provided in Annex 1.

2/ Copies of the cases referred to in this part and in the federal portion of this report are contained in Appendix 2.

3/ See note 1.

4/ See note 1.

ANNEX 1: LIST OF DOCUMENTS SUBMITTED WITH THE PRESENT REPORT */

CANADA

- Appendix 1 Canadian Charter of Rights and Freedoms
- Appendix 2 Court cases referred to in the report
- Appendix 3 An Act to amend the Criminal Code (Torture)
- Appendix 4 Canadian Bill of Rights
Relevant sections of the Criminal Code
- Appendix 5 Relevant sections of the Royal Canadian Mounted Police Act and of the Operational Manual
- Appendix 6 Correctional Service of Canada materials
- Appendix 7 Canada-Netherlands Treaty, Article XVII
- Appendix 8 Canada Evidence Act, s. 43
- Appendix 9 An Act to amend the Royal Canadian Mounted Police Act
- Appendix 10 Inmate Rights and Responsibilities - An information handbook for inmates of federal correctional institutions
- Appendix 11 Federal Government proposals to assist victims of crime

ALBERTA

- 1. Corrections Act
- 2. The Correctional Institution Regulations (Alberta Regulation No. 138/77)
- 3. Fatality Inquiries Act
- 4. Public Inquiries Act
- 5. Ombudsman Act
- 6. Criminal Injuries Compensation Act
- 7. Fatal Accidents Act
- 8. Proceedings Against the Crown Act
- 9. Child Welfare Act

*/ The documents listed below are available for consultation in the files of the Centre for Human Rights of the United Nations, as received from the Government of Canada in English and French.

BRITISH COLUMBIA

1. Ombudsman 1986 Annual Report, extracts
2. Riverview Hospital - Policies and Procedures - Policy A-42: Patient Abuse
3. Beliefs, Goals and Strategies, B.C. Corrections Branch, Ministry of Attorney General
4. Correctional Centre Rules and Regulations 1986, Corrections Branch, Ministry of Attorney General

MANITOBA

The Corrections Act, C.C.S.M., C. C230

The Criminal Injuries Compensation Act, R.S.M. 1987, c. C305

The Fatality Inquiries Act, R.S.M. 1987, c. F52

The Law Enforcement Review Act, R.S.M. 1987, c. L75

The Mental Health Act, R.S.M. 1987, c. M110

The Ombudsman Act, R.S.M. 1987, c. 045

The Provincial Police Act, R.S.M. 1987, c. P150

NOVA SCOTIA

Government of Nova Scotia Policy Statement on the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

YUKON

Torture Prohibition Act
