

Federal and Ontario Component of
Canada's Initial Report
Committee on the Rights of the Child

CRC/C/11/Add.3

28 July 1994

UNITED
NATIONS

CRC



Convention on the
Rights of the Child

Distr.

GENERAL

CRC/C/11/Add.3
28 July 1994

Original: ENGLISH

***Initial reports of States parties due in 1994 : Canada. 07/28/1994.
CRC/C/11/Add.3. (State Party Report)***

Convention Abbreviation: CRC

and FRENCH

COMMITTEE ON THE RIGHTS OF THE CHILD

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 44 OF THE CONVENTION

Initial reports of States parties due in 1994

Addendum

CANADA

[15 June 1994]

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Introduction

Background

1. Canada ratified the *Convention on the Rights of the Child* on 13 December 1991. In Canada, responsibility for implementing the rights set forth in the *Convention on the Rights of the Child* is shared by the Government of Canada, the provincial governments and, following a delegation of authority by the Parliament of Canada, the territorial governments. Therefore, consultations were conducted with all jurisdictions before ratification took place. Furthermore, all jurisdictions have participated in the preparation of the present report.

Organization of the Report

2. The present report outlines measures adopted before 31 December 1992 by all governments in Canada to implement the Convention, and relevant case law (with occasional references to developments of special interest adopted since that time). Each jurisdiction has either prepared its own portion of the report or extensively reviewed the section which concerns it.

3. Information is also provided, where available, on such other matters as factors and difficulties encountered in implementing Convention rights and priorities and goals for the future regarding them, in accordance with the general guidelines on regarding the form and content of initial reports for the Committee on the Rights of the Child (CRC/C/5). A separate annex provides the statistical information requested in the guidelines.

4. The report is organized in accordance with the guidelines. Thus, articles are grouped under the following eight themes: general measures of implementation (arts. 4, 42 and 44); definition of a child (art. 1); general principles (arts. 2, 3, 6, and 12); civil rights and freedoms (arts. 7, 8, 13 to 17 and 37 (a)); family environment and alternative care (arts. 3, 12, 5, 18 (1) and (2), 9, 10, 27 (4), 20, 21, 11, 19 and 25); basic health and welfare (arts. 6 (2), 23, 24, 18 (3), 26 and 27 (1 to 3)); education, leisure and cultural activities (arts. 28, 29 and 31); special protection measures, including children in situations of emergency (arts. 22 and 38), children in conflict with the law (arts. 37 and 40); children in exploitation (arts. 32 to 36); recovery and reintegration (art. 39); and children in minorities and indigenous children (art. 30).

5. Throughout the report, references to Aboriginal children include children with Indian status under the *Indian Act*, non-status Indian children, and Métis and Inuit children. The phrase "Aboriginal children" is used rather than "indigenous children", because the Constitution of Canada refers to the Aboriginal peoples of Canada.

Consultations with non-governmental and Aboriginal organizations

6. In 1993, the Government of Canada conducted consultations with the Canadian Coalition for the Rights of Children regarding the preparation of the federal portion of Canada's initial report. The Canadian Coalition for the Rights of Children is an umbrella group consisting of more than 45 non-governmental organizations with domestic and international perspectives on children's issues, which has an ongoing interest in raising awareness of the Convention within its constituency.

7. The Government of Canada met with national Aboriginal organizations and a further consultation session was attended by the Assembly of First Nations, the Native Women's Association of Canada, the Native Council of Canada and the Métis National Council.

8. The Government of Canada has, to the extent possible, made use of Aboriginal and non-governmental input in the "Factors, Difficulties and Progress" and "Priorities and Goals" portions of the report. Furthermore, the submissions of Aboriginal and non-governmental organizations have been distributed to more than 40 federal governmental departments and agencies, for their consideration in future policy formulation.

A vision for the future

9. In September 1990, at the World Summit for Children held at the United Nations, 71 world leaders spoke of actions to better the lives of children in countries throughout the world.

10. Canada's active involvement in the World Summit for Children and the development of the United Nations *Convention on the Rights of the Child* served as a catalyst for increased federal efforts on behalf of children in Canada and around the world.

11. In the past few years, children became more prominent in Canadian society in terms of issues being raised to meet their needs for protection, prosperity, equality and tolerance. The present report comes at a time when, even though the country's material and financial resources are becoming scarcer, the House of Commons has seen the passing of all-party resolutions to support the allocation of significant resources towards children.

12. The growing body of research on child development has also contributed to changing the focus of Canadian social policy for children from one of attempting to solve problems once they have disrupted a child's life to one of anticipating and preventing them through timely intervention.

13. In recent years Canada has taken a series of steps toward achieving a better tomorrow for Canada's children. The first step was taken in December 1991, with the ratification of the United Nations *Convention on the Rights of the Child*. The Convention provides us with a set of standards that confirms the respect that our society gives its youngest and most vulnerable members.

14. The second step, the *Child Tax Benefit*, was announced in the February 1992 budget and came into effect in January 1993. The *Child Tax Benefit* consolidates Family Allowances, the refundable Child Tax Credit and the non-refundable Dependent Child Tax Credit into a single monthly payment. It includes an additional amount for low-income working families, builds on existing federal programmes for children and families, and complements the role of provincial and territorial governments and other organizations. The *Child Tax Benefit* represents an increase of \$2.1 billion in federal government support for children and families over the next five years.

15. Third, Canada tabled its Action Plan for Children, entitled Brighter Futures, in May of 1992. Brighter Futures is a multi-departmental initiative that includes over 30 different steps and programmes to address the well-being of children, particularly young children at risk and their families. Through it, the Government of Canada calls on all sectors — families, other governments, non-governmental organizations, business, labour and others — to join these efforts to meet the challenges that our children and families will face in the years to come. The Government of Canada also created the Children's Bureau to coordinate this very comprehensive programme.

16. Finally, the Child Development Initiative was introduced in May 1992 as part of the follow-up to Brighter Futures. This initiative is a group of long-term programmes designed to address conditions of risk during the earliest years in a child's life. The programmes operate on four guiding principles: prevention, promotion, protection and partnership.

17. The Prevention Component of the Child Development Initiative is intended to obtain better information on causes of childhood illness, injury and death.

18. The Promotion Programmes are designed to improve the health and well-being of children by providing information on the care and nurturing of children and by promoting the value of children and parenting to society as a whole.

19. The Protection Programme complements existing federal initiatives to protect children from threats to their well-being. Examples of these initiatives include helping other governments develop more effective methods of ensuring that family support payments are upheld, expanding the Missing Children's Registry, and proposing amendments to the *Criminal Code* with respect to child pornography. Bill C-128, an *Act to amend the Criminal Code and Customs Tariff* (child pornography and corrupting morals) was proclaimed in force in August 1993. Bill C-128 protects children from pornography, sexual exploitation and harm.

20. The Partnership Programme includes two major components. The Community Action Programme funds programmes and projects that benefit children in high-risk communities across Canada, and the First Nations and Inuit Communities Programme focuses on community mental health and child development and the prevention of solvent abuse among Aboriginal children.

21. Canada values its children and is directing its efforts particularly towards alleviating conditions of risk, which one in five Canadian children now face, and which have particularly unfortunate results: poor school performance, low self-esteem, developmental disabilities, involvement with the criminal justice system and chronic unemployment.

22. By developing national child and youth health goals through discussion and consensus-building, many partners can create a common vision of what makes children and youth healthy. Child and youth health goals will help guide integrated programme and policy planning and will focus public and professional awareness on child and youth health challenges.

23. The present Convention provides useful guidance to parents, non-governmental organizations and governments about the appropriate standards to ensure that Canadian children grow up in an environment conducive to the full and harmonious development of their personalities, and are fully prepared to live an individual life in a free and democratic society, as envisioned in the preamble to the present Convention.

General measures of implementation

24. At a federal-provincial-territorial Conference on Human Rights held in December 1975, the federal and provincial governments reached an agreement on procedures and mechanisms for implementing international human rights instruments to which Canada is a party, and set up a federal-provincial-territorial Continuing Committee of Officials on Human Rights. The Committee meets twice a year and studies particular questions concerning the implementation of human rights instruments. This body has proven to be an effective instrument of liaison and exchange among the federal, provincial and territorial governments on international human rights issues.

25. The Continuing Committee facilitates the preparation of reports to United Nations Committees on the implementation in Canada of its international human rights obligations. The Continuing Committee encourages research on human rights conventions that Canada has ratified, to assist in the understanding of its obligations under them.

26. As with other human rights instruments, the Continuing Committee will keep provincial and territorial governments apprised of any comments that the Committee on the Rights of the Child may make on the scope of the rights guaranteed by the present Convention.

Part One

MEASURES ADOPTED BY THE GOVERNMENT OF CANADA

I. GENERAL MEASURES OF IMPLEMENTATION

A. Implementation by States: article 4

1. Measures in force

27. The Government of Canada has taken measures of a constitutional, legislative, administrative and other nature to implement the rights set forth in the *Convention on the Rights of the Child*. In regard to constitutional measures, the *Canadian Charter of Rights and Freedoms*, which applies to all governments in Canada, assists in protecting many of the rights set forth in the present Convention. Canada has also ratified a number of international instruments which contribute to implementation of the Convention in Canada. More detailed information on the Charter and relevant international conventions is provided under specific articles.

28. International human rights conventions that Canada has ratified do not automatically become part of the domestic law of Canada so as to enable individuals to go to court when they are breached. Canadian courts, however, frequently refer to them in interpreting and applying domestic law, and in particular the *Canadian Charter of Rights and Freedoms*. It is expected that the present Convention will be taken into account in determining the ambit of children's rights in Canada, whether found in the Charter, the common law or relevant legislation.

2. Institutions and mechanisms

29. In 1991 the Minister of Health and Welfare Canada announced the creation of the Children's Bureau. The main function of the Children's Bureau is to enable the Government of Canada to keep a close watch on children's issues and to follow up on the commitments made by the Prime Minister at the World Summit for Children in 1990. The Children's Bureau ensures consistency and coordination for all federal programmes and policies for children.

30. In 1992 the Government of Canada published Brighter Futures: Canada's Action Plan for Children, which is its response to the World Summit for Children. The Action Plan calls on all sectors of society — business, labour, communities, other governments, non-government organizations, families and individuals — to work together to improve the lives of children. It supports a broad range of initiatives focused on preventing problems and difficulties of children, particularly for those up to 8 years of age, and involves an allocation of \$459 million over five years.

3. Factors, difficulties and progress

31. The federal nature of Canada is a complicating factor in implementing the *Convention* in Canada, particularly in circumstances where the exact division of responsibilities between federal, provincial and territorial governments over matters affecting children may involve an element of uncertainty. This is certainly the case in areas involving Aboriginal children, as expressed at the consultations which the Government of Canada conducted with Aboriginal groups as part of the preparation of the present report.

32. In 1993 the Federal-Provincial-Territorial Working Group on the Mental Health of Children and Youth published a report entitled Building for the Future: A Framework for Mental Health Services for Children in Canada, which recognizes that "children and youth are entitled to first call on society's resources".

B. Dissemination of the Convention: article 42

33. In 1992 the Government of Canada provided funding to the Human Rights Directorate of Multiculturalism and Citizenship Canada to promote the *Convention on the Rights of the Child*, to increase public awareness of and support for children's issues and to facilitate public participation in children's rights initiatives.

34. The Human Rights Directorate is working with institutions such as schools, health care and youth programmes, human rights commissions, non-government organizations as well as other federal departments to develop and implement a national strategy to increase public awareness and understanding of the Convention, with a view to changing attitudes regarding children's rights and making the Convention an integral part of Canadian life.

35. The Government of Canada hopes that this national strategy will contribute to increased participation in decision-making by youth, develop partnerships for initiatives which promote public awareness, understanding and implementation of the principles of the Convention, and provide a framework for evaluating projects and determining future plans of action. It will be carried out in a manner reflecting Canada's Aboriginal, multicultural and linguistic diversity.

36. The Human Rights Directorate provides financial assistance to non-governmental organizations to develop educational initiatives relating to the Convention. The Open Learning Agency, of British Columbia, has prepared curriculum materials in the form of videos and newspaper articles for national distribution by and for children. The Canadian Rights and Liberties Association and Save the Children International—Canada produced posters and booklets on the Convention for children.

37. Several federal departments collaborated in the production and launching of the National Film Board's "Rights From the Heart", an animated film series for children about their rights, which is based on the Convention.

38. Health and Welfare Canada has established the Partners for Children Fund which will select projects to be undertaken by non-governmental organizations wishing to work internationally in support of children. Promotion of the Convention is one of the priority themes guiding the selection. Funding for this programme is \$16 million over four years.

C. Dissemination of reports: article 44

39. As with all of Canada's reports to the United Nations, Canada's initial report on the *Convention on the Rights of the Child* will be published in both official languages and distributed domestically. Copies will be provided to provincial and territorial authorities and human rights commissions, civil liberties associations and periodicals, a wide variety of non-governmental organizations concerned with children's issues, public libraries and educational institutions, and to other regular subscribers of government publications. The report will also be included in the catalogue of Canadian government publications available to the public free of charge upon request. Non-governmental and Aboriginal organizations will be at liberty to reproduce and distribute copies of the report or portions of it for their own educational purposes.

II. DEFINITION OF A CHILD: ARTICLE 1

40. In federal law there is no general age of majority which applies in all contexts. Rather, each law sets age limits which are appropriate for its purposes. The following are the principal relevant age limits in federal legislation pertaining to children.

41. Pursuant to section 50 of the *Canada Elections Act*, persons who have attained the age of 18 years may vote in federal elections.

42. Pursuant to the *Canada Evidence Act*, when a proposed witness is under the age of 14 years, the court conducts an inquiry to assess whether he or she may give evidence. If the child understands the nature of the oath or a solemn affirmation and is able to communicate evidence, then he or she may testify under oath or solemn affirmation. If the child does not understand the oath or affirmation but is able to communicate evidence, he or she may give evidence upon promising to tell the truth.

43. Employment of persons under 17 years of age is subject to special regulation pursuant to the *Canada Labour Code* to ensure that it does not interfere with their education and is not harmful to them.

44. The *Canada Pension Plan* provides for benefits to the children of disabled or deceased contributors who are 18 years of age or less, or between the ages of 18 and 25 if the child is in full-time attendance at a school or university.

45. According to the *Criminal Code* it is a criminal offence to have sex with someone under the age of 14 years, with an exception where the younger partner is at least 12 years of age, where the age difference between the two partners is less than two years, and where the older youth is not in a position of trust or authority over the younger, nor is the latter his or her dependant.

46. For purposes of the *Divorce Act*, which contains provisions for the making of custody, access and support orders regarding children of the marriage, they are defined as persons under the age of 16 years or who are unable by reason of illness, disability or other cause to withdraw from their parents' charge or obtain necessities of life.

47. The Immigration Regulations define "son" and "daughter" for immigration purposes as a son or daughter under the age of 19 years.

48. There are various income tax benefits and deductions available to persons regarding their dependants. Persons under the age of 18 years are included in the definition of dependant persons in the *Income Tax Act*.

49. Pursuant to the section 6.01 of the Queen's Regulations and Orders for the Canadian Forces, enacted under the *National Defence Act*, persons must be at least 17 years of age to enrol in the Canadian Forces, and, where they are 17 years of age, have obtained parental consent. The following are the exceptions to the above minimum age requirement (where parental consent has been given):

(a) Persons under 17 years of age may enrol as Officer Cadets;

(b) Persons who are 16 years of age may enrol in the Reserve Force;

(c) Persons who are 16 years of age may enrol as apprentices in the Regular Force, except in times of emergency or for overseas service other than in training ships in non-operational waters.

50. The *Tobacco Restraint Act* prohibits the sale of tobacco to persons under the age of 16 years. This age limit is in the process of being raised to 18 years through new legislation, the *Tobacco Sales to Young Persons Act*, which was enacted in 1993 and is expected to come into force in 1994.

51. Pursuant to the *Young Offenders Act* a child is a person who is or, in the absence of evidence to the contrary, appears to be under the age of 12 years; and a young person or adolescent is a person who is or, in the absence of evidence to the contrary, appears to be 12 years of age or more but under 18 years of age. Children cannot be charged with an offence under the *Young Offenders Act*, and young persons are dealt with under its provisions rather than under the *Criminal Code*, subject to the following exception: a person who is 14 years of age or older and accused of an indictable offence may be transferred to an adult court and dealt with under the *Criminal Code*.

52. Young persons who are convicted under the *Young Offenders Act* (that is, who are 12 years of age or more) may be held in custody in a juvenile facility, and those convicted under the *Criminal Code* (that is, who are 14 years of age or more) may be sentenced to imprisonment.

III. GENERAL PRINCIPLES

A. Non-discrimination: article 2

1. Measures in force

(a) Paragraph 1 (non-discrimination and jurisdiction)

Canadian Human Rights Act

53. The *Canadian Human Rights Act* prohibits discrimination at the federal level in employment and the provision of goods and services on the basis of race, national or ethnic origin, colour, religion, age, sex, marital status, family status, disability or conviction for an offence for which a pardon has been granted. The *Act* applies to children as well as adults. In Haig v. the Queen the Court of Appeal for Ontario ordered the Government of Canada to treat the *Act* as including the ground of sexual orientation.

Canadian Charter of Rights and Freedoms

54. Section 15 of the *Canadian Charter of Rights and Freedoms*, which is part of the Constitution of Canada, guarantees every individual the right to equality in the law without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. The *Charter* applies to children as well as adults. Pursuant to section 1 of the *Charter*, rights and freedoms covered by the *Charter*, including the right to equality in section 15, are subject to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

55. Section 15 has been interpreted to preclude discrimination against individuals on the basis of personal characteristics that are analogous to the prohibited grounds of discrimination enumerated in section 15 (Law Society of British Columbia v. Andrews). In particular, an individual may be entitled to the protection of section 15 if he or she belongs to a disadvantaged group that bears such indicia of discrimination as stereotyping or prejudice. In Andrews the Supreme Court of Canada held that distinctions based on citizenship are subject to review pursuant to section 15. There are also some lower court decisions indicating that section 15 precludes discrimination based on illegitimacy (Milne and Milne v. A.G. Alberta; M.(L.M.S.) v. A.G. Alberta).

56. In R v. Hess the Supreme Court of Canada held that section 146 (1) of the *Criminal Code*, which makes it an offence for a male person to have sexual intercourse with a female person under the age of 14 years, does not involve discrimination based on sex contrary to section 15 of the Charter. Wilson J. stated that the offence involves an act that as a matter of biological fact only men are capable of committing, and McLachlin J. emphasized the importance of protecting young girls from sexual abuse and unwanted pregnancy.

57. In R. v. S.(S.) the Supreme Court of Canada held that section 15 was not violated by a provision of the *Young Offenders Act* which gave the provinces a discretion as to whether to establish alternative measures programmes (instead of judicial proceedings) for young persons alleged to have committed criminal offences. The Court stated that differential application of federal law can be a legitimate means of forwarding the values of a federal system.

58. Certain rights in the *Canadian Charter of Rights and Freedoms* (electoral rights in section 3, mobility rights in section 6 and minority educational rights in section 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, including claimants for refugee status (Singh et al. v. Minister of Employment and Immigration).

General

59. The Race Relations and Cross-Cultural Understanding Programme of Multiculturalism and Citizenship Canada supports activities that promote racial and cultural tolerance and understanding amongst Canadians. Some projects facilitate institutional change. Others support public education about racism. For example, the Programme supported a school board in Nova Scotia in developing a comprehensive five-year strategy to address race relations issues at every level of school operations. Teachers, students, parents and administrators were all involved in the development of this plan, which provides a model for other school boards in Canada. The Programme also conducts an annual anti-racism public education campaign, in partnership with the Canadian Association of Broadcasters. More than 15,000 schools participated in activities promoted through the 1992 campaign. Private radio and television broadcasters contributed more than \$10 million in airtime for the anti-racism public service announcements.

60. Multiculturalism and Citizenship Canada has a Community Support and Participation Programme which supports community-based organizations in dealing with racism, including in the school system.

(b) Paragraph 2 (non-discrimination - parents)

Canadian Human Rights Act

61. Family status is included as a prohibited ground of discrimination in the *Canadian Human Rights Act*. Therefore children who suffer discrimination on the basis of their family status could make a complaint under the Act.

62. Other prohibited grounds of discrimination in human rights legislation may also assist in protecting

against discrimination on the basis of family relationship. For example, in Brossard (Town) v. Quebec (Commission des droits de la personne) the Supreme Court of Canada held that a municipal hiring policy disqualifying members of the immediate family of municipal employees from being hired by the town involved discrimination on the basis of civil status contrary to the *Quebec Charter of Human Rights and Freedoms*.

Canadian Charter of Rights and Freedoms

63. The Supreme Court of Canada has not yet considered the question of whether section 15 of the Charter precludes discrimination on the basis of family relationship. Lower court decisions indicate that this will depend on whether the group affected is disadvantaged and whether the distinction in treatment is discriminatory (Leroux v. Co-Operators General Insurance Co.).

2. Factors, difficulties and progress

64. In regard to Aboriginal children, the Aboriginal consultations on implementation of the *Convention* in Canada, conducted in the course of preparing the present report, identified as areas of special concern the treatment of Aboriginal children in the criminal justice and educational systems. Concerns were also expressed about the different treatment of Aboriginal children without Indian status from those with such status.

3. Priorities and goals

65. The Government of Canada recognizes that there is a greater need to ensure the full realization of *Convention* rights for poor children and Aboriginal children. Other groups of children in Canada who may not always fully enjoy their *Convention* rights as a practical matter are those belonging to visible minorities or living in rural or remote communities.

B. Best interests of the child: article 3

1. Measures in force

66. For the most part determinations affecting children are made pursuant to provincial or territorial child welfare or family law legislation. In terms of federal law, according to section 16 (8) of the *Divorce Act*, in making orders regarding the custody of children or access to them, "the court shall take into account only the best interests of the child of the marriage as determined by reference to the condition, means, needs and other circumstances of the child". Subsection 11 (b) provides that in a divorce proceeding, "it is the duty of the court to satisfy itself that reasonable arrangements have been made for the support of any children of the marriage and, if such arrangements have not been made, to stay the granting of the divorce until such arrangements are made".

67. In D.P. v. C.S., which concerned a father who, having visiting rights but not custody, claimed the right to have his daughter participate in his religious activities as a Jehovah's Witness, the Supreme Court of Canada referred to article 3 of the present *Convention* to conclude that the principle of "best interests" in the *Divorce Act* was not void for constitutional vagueness.

68. The Declaration of Principle in the *Young Offenders Act* states in section 3 (c) that "young persons who commit offenses require supervision, discipline and control, but, because of their state of dependency and level of development and maturity, they also have special needs and require guidance and assistance".

2. Measures foreseen

69. As indicated in paragraph 310 below, the *Immigration Act* and the regulations enacted pursuant to it were amended in 1992 to increase protection for prospective immigrants, including children. Further amendments to the regulations are being considered to improve the safeguard of the best interests of the child.

3. Factors, difficulties and progress

70. Aboriginal communities have expressed concern that current adoption and alternative care practices are not consistent with the best interests of children, in those situations involving the placement of Aboriginal children with non-Aboriginal parents. See also paragraph 86.

C. The right to life, survival and development: article 6

1. Measures in force

Canadian Charter of Rights and Freedoms

71. Section 7 of the *Canadian Charter of Rights and Freedoms* guarantees everyone 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.

72. Although the issue has not expressly been decided by the Supreme Court of Canada, it is doubtful that section 7 will be held to apply to children before birth. In Morgentaler v. the Queen the Supreme Court of Canada held that the therapeutic abortion provisions of the *Criminal Code* violated section 7, because they resulted in delays in obtaining abortions and unequal access to them. There is currently no legislation in Canada making abortion a criminal offence, nor is any such legislation contemplated at this time.

73. There are several lower court cases holding that where the exercise of Charter rights of parents would threaten the life of their children, limitations are justifiable within the terms of section 1 of the Charter. For example, it has been consistently held that freedom of religion of parents does not extend to denying their children necessary blood transfusions (B.(R.) v. Children's Aid Society of Metropolitan Toronto).

Criminal Code

74. Section 215 of the *Criminal Code* provides that it is an indictable offence punishable by up to two years punishment for a parent, foster parent, guardian or head of a family not to provide necessaries of life for a child under the age of 16 years.

75. Section 218 of the *Criminal Code* provides that everyone who unlawfully abandons or exposes a child under the age of 10 years, so that his or her life is or is likely to be endangered, or health permanently injured, is guilty of an indictable offence punishable by up to two years' imprisonment.

D. Respect for views of the child: article 12

1. Measures in force

76. See paragraph 66 above on jurisdiction in Canada over matters affecting children. In regard to relevant federal legislation, the Declaration of Principle in section 3 (e) of the *Young Offenders Act* recognizes that young persons have the rights guaranteed in the Charter, and in particular a right to be heard in processes affecting them. Section 11 (e) of the *Canadian Charter of Rights and Freedoms* guarantees every person charged with an offence the right to a fair and public hearing.

77. The *Divorce Act* does not specifically provide children with the right to express their views in custody proceedings. However, as a matter of practice children's views are often expressed through the evidence of a social worker, psychologist or psychiatrist. A meeting between the child and the judge in chambers may take place. Some provincial jurisdictions provide for legal counsel to represent children in court by way of a guardian *ad litem* or an *amicus curiae*.

78. Pursuant to section 29 (4) of the *Immigration Act*, when an inquiry is held by an adjudicator regarding the removal of a person under the age of 18 years from Canada, he or she may be represented by a parent or guardian. Pursuant to section 69 (4) of the *Act*, in proceedings before the Refugee Division regarding claims to refugee status of persons under the age of 18 years, the Division designates someone to represent them.

79. In Re M.(R.A.) v. Children's Aid Society of Winnipeg the Manitoba Court of Appeal held that a 12-year-old boy had the right to a hearing pursuant to section 7 of the *Canadian Charter of Rights and Freedoms* (see para. 71) in an application to have him made a permanent ward of the Children's Aid Society. Matas J. noted that in Canada "[t]he question of child representation in the courts has been receiving greater attention in the last several years by social scientists and the legal profession" (p. 747).

2. Factors, difficulties and progress

80. The Government of Canada recognizes the importance of the perspective of children being brought to bear in all policy decisions affecting them, and regards the creation of the Children's Bureau at Health and Welfare Canada in 1991 as an important step towards achieving this goal.

81. In the view of the Government of Canada there may be a distinction between administrative or judicial decisions that directly affect the child and those which do so only indirectly. Furthermore, the implementation of article 12 in areas other than family law, such as immigration, is expected to be a gradual one in Canada. In the area of family law, increased participation of children in custody proceedings, and in particular the matter of independent legal representation of children in court, raise a number of concerns, including considerations of cost, concerns about a child's ability to instruct counsel and possible damaging effects of asking a child to choose between parents.

3. Priorities and goals

82. The Government of Canada recognizes the very significant effect on children of custody and access orders pursuant to the *Divorce Act*, and is currently reviewing it with a view to determining whether measures could be taken which would better implement article 12 of the Convention.

IV. CIVIL RIGHTS AND FREEDOMS

A. The right to a name, nationality and parental care: article 7

1. Measures in force

Nationality

83. Pursuant to section 3 of the *Citizenship Act* every child born in Canada is a Canadian citizen. Children born outside Canada are citizens of Canada if one of their parents, other than an adoptive parent, is a citizen. A parent who has acquired Canadian citizenship subsequent to the birth of the child may obtain citizenship for the child, if the child is a permanent resident of Canada. See also paragraphs. 163 and 164.

Parental care

84. The Framework of Action in Brighter Futures: Canada's Action Plan for Children includes "support[ing] parents as our children's primary care givers" (see para. 30).

85. The Declaration of Principle in the *Young Offenders Act* recognizes in section 3 (1) (h) 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 that provide for continuing parental supervision are inappropriate".

2. Factors, difficulties and progress

86. In regard to Aboriginal children, currently there are 44 First Nations Child and Family Service (FNCFS) Agencies which provide services to 218 Indian bands (out of a total of over 600 bands) in Canada. Until the early 1980s, child and family services were provided to Indians primarily by provincial and territorial jurisdictions. This earlier approach was less conducive to ensuring that Aboriginal children retained their cultural identity and remained in their parents' care.

3. Priorities and goals

87. In regard to Aboriginal children, the Government of Canada has approved the creation of additional FNCFS Agencies with a view to ensuring that all Indian children and families receive appropriate services within their Aboriginal community. In 1991 a new draft directive on their creation was distributed for comment to Aboriginal groups, and it will continue to be amended from time to time to accommodate their views. In the next two to three years it is expected that another 32 FNCFS agencies serving 183 bands will become operational, with the result that two thirds of all bands will receive services from FNCFS agencies.

B. Preservation of identity: article 8

Measures in force

88. Aboriginal children may be adopted through the mechanisms provided by provincial and territorial jurisdictions. For status Indian children, these adoptions are reported on a confidential basis to the Indian

Registrar for purposes of the Indian registry. A separate list by band of children who have been adopted by either Indian or non-Indians is maintained. Upon request, normally when the child has reached 18 years of age, information will be given to him or her regarding band membership, and a certificate of Indian status provided. As well, some Aboriginal communities practise custom adoption.

89. According to sections 16 (10) and 17 (9) of the *Divorce Act*, in making or varying custody and access orders the court "shall give effect to the principle that a child of the marriage should have as much contact with each parent as is consistent with the best interests of the child".

C. Freedom of expression: article 13
Measures in force

90. Section 2 (b) of the *Canadian Charter of Rights and Freedoms* guarantees every individual the right to freedom of expression. It has been interpreted to protect all activities which convey a meaning (except violent communications) (*Irwin Toy Ltd. v. A.G. Quebec*). It may in certain contexts include a right to information (*International Fund for Animal Welfare et al. v. the Queen*). As with other *Charter* rights, it is subject to limitations in accordance with section 1 of the *Charter*. See also paragraph 325.

91. The *Access to Information Act* and *Extension Order No. 1* pursuant to it provide all individuals present in Canada, including children, with access to any record under the control of a government institution.

D. Access to appropriate information: article 17
1. Measures in force

(a) Paragraph (a) (mass media)

92. Section 3 of the *Broadcasting Act* establishes the broadcasting policy for Canada. It expressly provides that the Canadian broadcasting system (which includes public and private broadcasters) should serve the needs and interests of Canadian children (section 3 (d)), and provide programming for children of all ages (section 3 (i) (i)), including educational programmes (section 3 (i) (iii)).

93. The Canadian Broadcasting Corporation (CBC) is the national public broadcaster in Canada. A condition of the television licence of CBC is that it "maintain a fair and balanced proportion of the programming schedule ... for children and youth". CBC programming for this purpose is divided into children, youth and family categories. The primary purpose of the children's category is to aid children in their development, and of the youth category to respond to the needs of older children to obtain information, share concerns, and address social issues in an entertaining and informative manner. Family programming affirms the importance of the family in the life of children and society.

94. Telefilm Canada is a federal cultural agency with a mandate to foster and promote the development of the feature film and television industries in Canada. Since 1983, it has provided financial support for 140 programmes for children, including such award-winning series as *Anne of Green Gables* and *Degrassi* (a series for and about children in junior high school and high school).

95. The National Film Board (NFB) is a federal cultural agency that produces and distributes films that are to "interpret Canada to Canadians and other nations". Extensive use of NFB films is made in the schools. During 1991-1992 the NFB produced or researched over 100 films for younger children and over 60 films for older children. In addition, the Women's Film Programme of the NFB has produced films designed to empower and support women in their role as care-givers of children.

96. The *Income Tax Act* provides for a Capital Cost Allowance for investors in Canadian film and videotape productions. During 1991-1992, 15 children's productions with budgets totalling \$35.6 million benefited from the Capital Cost Allowance. An example is *Alligator Pie*, a one hour television special based on children's poems by the Canadian author Dennis Lee.

(b) Paragraph (b) (international cooperation)

97. Canada has signed 23 film and television co-production agreements with other States. Canadian children's programming is made available in other countries by a variety of means, including Telefilm

Canada's offices in Paris, London and Los Angeles. The Canadian Commission for UNESCO is a liaison agency which coordinates the UNESCO programme in Canada and advises the Government of Canada on its relations with UNESCO. As part of its programme in support of the World Decade for Cultural Development, the Canadian Commission for UNESCO has officially recognized or provided assistance for several cultural initiatives for children.

(c) Paragraph (c) (dissemination of books)

98. The Government of Canada provides support for the publishing industry. For example, in 1991-1992 the Book Publishing Industry Development Programme of the Department of Communications provided over \$3.2 million for educational publishing, and \$1.5 million for other publishing, including of children's books. It also provides financial assistance to Canadian publishers to support their Canadian publishing programme.

99. The Canada Council administers literary awards which are presented each year by the Governor General to the authors and illustrators of the best English-language and French-language children's literature. It also provides annual grants toward the publication and promotion of children's periodicals in Canada and the annual National Book Festival.

100. The National Library of Canada has an annual promotional campaign called "Read Up On It", which involves sending information kits to 16,000 elementary schools in Canada. It publishes Notable Canadian Children's Books, which contains extensive annotations and indexes on children's literature. The Children's Literature Service of the National Library has a separate collection of books for children aged 16 years and under, including a reference and consultation service.

(d) Paragraph (d) (linguistic needs of minority and indigenous children)

101. According to section 3 (o) of the *Broadcasting Act*, all broadcasters in Canada should provide programming that reflects the Aboriginal cultures of Canada as resources become available. According to section 3 (t), distribution undertakings may, where the Canadian Radio-Television and Telecommunications Commission (CRTC) considers appropriate, originate programming for under-served linguistic and cultural minority communities.

102. In regard to the CBC, the *Broadcasting Act* states that its programming should reflect Canada and its regions (section 3 (m) (ii)), be in English and in French and reflect the different needs and circumstances of the two official language communities (section 3 (m) (iv)), and reflect the multicultural and multiracial nature of Canada (section 3 (m) (viii)).

103. The CRTC supervises and regulates all aspects of the Canadian broadcasting system with a view to implementing the broadcasting policy set out in the *Broadcasting Act*. It requires stations to report on current practises and plans to broadcast ethnic programmes. In 1990 the CRTC adopted a Native Broadcasting Policy on the importance of native programming in fostering the development of Aboriginal cultures and, where possible, the preservation of native languages.

(e) Paragraph (e) (protective guidelines)

General

104. The CRTC requires broadcasters to adhere to regulations concerning advertising of alcoholic beverages; abusive comment or pictorial representations likely to result in hatred or contempt based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability which might have a harmful effect on children; and obscene or profane language or pictorial representations. Adherence to the Broadcast Code for Advertising for Children is a condition for obtaining a broadcast licence.

105. The Canadian Association of Broadcasters, the umbrella group representing the majority of Canadian private broadcasters, has a voluntary code regarding violence in television programming. The CBC also adheres to internal guidelines on this subject. The CRTC has recently published two studies dealing with the

possible harmful effects of television violence.

Charter cases

106. In Irwin Toy, the Supreme Court of Canada held that provincial legislation prohibiting commercial advertising directed at persons under the age of 13 years involved a *prima facie* infringement of section 2 (b) (freedom of expression) of the Charter, but was justifiable within the terms of section 1 because it served the important purpose of protecting a vulnerable group from commercial manipulation.

107. In R. v. Butler, the Supreme Court of Canada held that the prohibition of obscenity in the *Criminal Code* involved a *prima facie* infringement of section 2 (b) of the Charter, but was justifiable because of its purpose of protecting vulnerable groups in society such as women and children.

2. Factors, difficulties and progress

108. Canadians are becoming increasingly concerned about the relation between violence on television and violence in society. In 1992, a 14-year-old girl whose sister had been robbed, raped and murdered, obtained the signatures of 1.3 million Canadians to a petition calling for legislation that would gradually eliminate violence on television within 10 years. Considerable progress has been made in addressing the problem of violence in the media. In 1993, the Action Group on Violence in Television, which includes broadcasters, cable distributors, pay television and specialty programming services, advertisers and producers, announced a General Statement of Principles to be adhered to by all industry sectors as they strengthen their codes on television violence. The Canadian Association of Broadcasters was the first to have their revised code accepted by the Canadian Radio-Television and Telecommunications Commission.

3. Priorities and goals

109. In order to deal with media violence and its contribution to the broader problem of violence in society, the twin goals of the Government of Canada are to reduce media violence through voluntary industry action and to use the media as a positive force to develop long-term attitudinal change, reducing the public's tolerance of aggressive behaviour and violent programming. Measures to achieve these goals will include:

(a) A public service announcement campaign;

(b) A national television classification system to assist viewers in making informed choices about television viewing;

(c) The strengthening of industry codes on violence in television programming; encouraging the production and broadcast of alternative, non-violent programming, particularly for children; and

(d) Monitoring international action on this issue, particularly in countries which are major sources of imported programming.

110. National Film Board priorities for 1990-1995 are to develop film programmes by, for and about women, First Nations People, people of colour and children.

E. Freedom of thought, conscience and religion: article 14

1. Measures in force

111. Section 2 (a) of the *Canadian Charter of Rights and Freedoms* guarantees everyone the right to freedom of conscience and religion. In R. v. Big M Drug Mart Ltd. the Supreme Court of Canada stated that "[t]he essence of the concept of religion is the right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly ... and the right to manifest religious beliefs by worship and practise or by teaching and dissemination". It characterized freedom of religion as "the absence of coercion and restraint ... including indirect forms of control".

112. At this stage of Charter jurisprudence, cases on the ambit of freedom of religion of children relate, for the most part, to the extent to which they are subject to exposure to religion by their parents or teachers. In several cases the courts have held that section 2 (a) is violated by a requirement that public schools conduct religious exercises or give religious instruction, with a preference shown for the Christian religion

(Zylberberg v. Director of Sudbury Board of Education, Canadian Civil Liberties Ass'n et al. v. Ontario). In Zylberberg an exemption was available for objecting students, but the Ontario Court of Appeal stated that "[t]he peer pressure and the classroom norms to which children are acutely sensitive, in our opinion, are real and pervasive and operate to compel members of religious minorities to conform with majority religious practices" (p. 591).

113. There have been several cases on the extent of the right that parents with visiting rights have to expose their children to their religion, where it differs from that of the parent having custody. In Young v. Young the Supreme Court of Canada held that the application of the best interests principle in the *Divorce Act* to a claim by a parent with visiting rights to involve his children in religious activities did not infringe section 2 (a) (freedom of religion) of the Charter.

114. There have not as yet been many court decisions relating to the exercise by children themselves of their freedom of religion. One lower court decision is Re K. (L.D.), where the Ontario Provincial Court (Family Division) declined to make a declaration that a twelve-year-old child with leukaemia was in need of protection, in circumstances where she and her parents (who were Jehovah's Witnesses) objected to the administration of chemotherapy (which involved blood transfusions) on religious grounds. The Court also held that an earlier blood transfusion administered against her wishes constituted discrimination on the basis of religion contrary to section 15 of the Charter, and an infringement of her right to security of the person under section 7 of the Charter.

2. Factors, difficulties and progress

115. The Government of Canada recognizes that care must be taken to ensure that freedom of religion of the parents is not accepted as a justification for subjecting children to practices that disregard their religious preferences, involve discrimination on the basis of sex or are harmful to their health or involve abuse or violence.

F. Freedom of association and peaceful assembly: article 15 **Measures in force**

116. Section 2 (c) and (d) of the *Canadian Charter of Rights and Freedoms* provide for a right to peaceful assembly and association. These rights have been interpreted by the courts to apply primarily to public organizations of persons pursuing common goals rather than in the family context (Re Catholic Children's Aid Society). There have not as yet been any cases involving the right of children to form organizations.

G. Protection of privacy: article 16 **Measures in force**

117. The *Privacy Act* governs the collection, retention, use and disclosure of personal information by federal institutions, including information pertaining to children. Pursuant to section 12 of the Act and its extension orders, individuals present in Canada have a right of access to personal information contained in a federal personal information bank. Pursuant to section 10 of the Privacy Regulations, authorized persons may seek access to a minor's personal information on his or her behalf. According to sections 7 and 8 of the *Act*, personal information may not be made use of or disclosed without the consent of the persons involved, subject to certain limited exceptions in accordance with the Guidelines of the Organization for Economic Cooperation and Development (OECD).

118. The *Privacy Act* does not apply to personal information held by non-governmental organizations. The Government of Canada is encouraging the private sector to develop its own privacy codes.

119. The Supreme Court of Canada has stated that section 8 (search and seizure) of the *Canadian Charter of Rights and Freedoms* includes "our right to be free from unreasonable invasions of our right to privacy" (R. v. Duarte). Section 7 (right to life, liberty and security of the person) of the Charter has also been interpreted to protect the physical and psychological integrity of the individual (R. v. Morgentaler).

120. In R. v. G.(J.M.) the Ontario Court of Appeal considered a situation involving a school principal who was informed that a 14-year-old student had been seen putting drugs in his socks in the school yard. The principal asked the student to come to his office, and then to remove his socks. After a delay, the principal took some tinfoil from the boy's socks which contained drugs. The student was subsequently convicted

under the *Young Offenders Act* of possession of marijuana and fined \$25.00. The Ontario Court of Appeal held that, if the Charter applied to school authorities, there was not an unreasonable search and seizure contrary to section 8. In the view of the Court it would not have been appropriate for the principal to have called in the police at this stage of events, nor for him to have done nothing. Rather, the course of action that he chose was "eminently reasonable" (p. 386). Leave to appeal to the Supreme Court of Canada was denied.

H. Right not to be subjected to torture, etc.: article 37 (a) **Measures in force**

121. Section 12 of the *Canadian Charter of Rights and Freedoms* provides that everyone has the right not to be subjected to cruel and unusual treatment or punishment. In *R. v. Smith* the Supreme Court of Canada stated that section 12 would be violated where treatment or punishment was grossly disproportionate to the offence or the offender, and that a relevant consideration was the personal characteristics of the offender. This would include the circumstance being a child or youth.

122. In *R. v. McC (T.)*, the Ontario Court (Provincial Division) stated that "special consideration must be given to the fact that we are dealing with youths and not adults", in concluding that conditions in youth court holding cells contravened section 12 of the Charter. In this case the cells, where youths were held for up to seven hours pending court appearances, were dirty, crowded and hot, and without adequate supervision.

V. FAMILY ENVIRONMENT AND ALTERNATIVE CARE

123. For the most part family law, the regulation of social welfare agencies and the administration of the courts come within provincial and territorial jurisdiction. However, the Government of Canada has jurisdiction over issues of custody and visiting rights to the extent that they arise in the context of divorce, and over immigration, criminal law and Indians and the lands reserved to them, and to this extent has a role to play in regard to family environment and alternative care.

A. Best interests: article 3 **1. Measures in force**

(a) Paragraph 1 (best interests)

124. See paragraph 66.

(b) Paragraph 2 (protection and care)

125. The *Hazardous Products Act* provides Consumer and Corporate Affairs Canada with the authority to ban or regulate products that present a danger to the health or safety of children. Over the past 20 years, 14 prohibitions and 20 sets of regulations have been developed on children's products. The Product Safety Branch of Consumer and Corporate Affairs Canada regulates and provides information on the safety of toys, children's furnishings, children's clothing, household products, child-resistant closures on chemical products and child-resistant lighters. Consumer and Corporate Affairs Canada has also encouraged the development of voluntary industry standards for children's products.

126. In 1990 the Government of Canada initiated *KIDSCARE*, a national programme to raise public awareness of accidental injuries and death due to product hazards. This programme was allocated \$312,000 in 1992-1993, and raised another \$130,000 through sponsorship from the private sector.

127. The Road Safety Directorate of Transport Canada is responsible for the Child Seats and Restraints for Vehicles Programme under the *Motor Vehicle Safety Act*. Although legislation requiring the use of child restraints for children under 20 kg in motor vehicles is a provincial and territorial responsibility, the Government of Canada provides information on child restraint systems, tether anchorages and notices of defective seats.

128. See also paragraph 187 below on the Child Development Initiative and paragraphs 370 and 371 on the Missing Children's Initiative.

(c) Paragraph 3 (standards for institutions, facilities and services)

129. The Government of Canada, in part through its membership on the federal-provincial-territorial advisory committee structure, has provided leadership in the development of guidelines for standards regarding institutional care as they may be adopted or amended by each province. The Guidelines address such topics as distribution of units, bed requirements, policies for the units or services, staffing and preparatory learning required, supporting services required, space and equipment requirements. Guidelines relating to children include:

(a) Child and Adolescent Services in General Hospitals;

(b) Child and Adolescent Psychiatric Services Provided by General Hospitals; Child and Youth Long-Term Services;

(c) Health Care Related to Abuse, Assault, Neglect and Family Violence; Child Sexual Abuse Guidelines: A Guide for Community Workers; and

(d) National Guidelines for Family-Centred Maternity and Newborn Care.

2. Factors, difficulties and progress

130. Awareness of childhood injury as a major health issue is recent, and models for action have been geared to specific types of injuries and so are not widely applicable. The many individuals and organizations concerned have not traditionally worked together to deal with this problem. While injury is the leading cause of death in children, the rate of death by accident declined among children aged 1 to 4 by 54 per cent from 1971 to 1985. This decline is attributed to many factors, including less drinking by drivers, increased use of child restraints, improvements in the safety of children's products and a growing awareness among children, parents and care-givers of safety issues.

3. Priorities and goals

131. The goals of the Government of Canada are to increase federal collaboration with national organizations to heighten awareness of this major health issue, and to develop, implement and evaluate childhood injury programmes on the basis of Canadian Hospitals Injury Reporting and Prevention Programme data and other routinely collected morbidity and mortality data.

B. Views: article 12

132. See paragraphs 76 to 79.

C. Parental guidance: article 5

133. Section 2 of the *Divorce Act* defines custody to "include care, upbringing and any other incident of custody". See also paragraphs 84 to 85.

D. Parental responsibilities: articles 18 (1) and (2)

1. Measures in force

(a) Paragraph 1 (parental responsibilities)

134. Section 16 (10) of the *Divorce Act* requires that the Court, in making orders pertaining to custody and visiting rights, "give effect to the principle that a child of the marriage should have as much contact with each spouse as is consistent with the best interests of the child". Section 15 (8) states that support orders should recognize that spouses have a joint financial obligation to maintain the child, and that the obligation should be apportioned on the basis of their financial situation. (Issues of custody and visiting rights arising outside the divorce context are governed by provincial or territorial law).

135. Section 9 (2) of the *Divorce Act* requires legal advisors to discuss with divorcing spouses the

advisability of negotiating matters that may be the subject of a support or custody order and to inform the spouses of the mediation facilities known to him or her that might be of assistance.

136. Status of Women Canada is involved in strategies to integrate successfully work and family responsibilities, based on the underlying principle that children (and the home) are not the sole responsibility of the mother. Status of Women is collaborating with Labour Canada on a number of relevant projects, including working towards ratification of Convention 156 of the International Labour Organisation. A joint Federal-Provincial-Territorial Working Group of Status of Women and Labour officials is preparing two papers: the first is on options for improving the integration of work and family responsibilities, to be undertaken by Status of Women officials; and the second is a compilation of best practices and innovative proposals offered by private and public sector employees, to be undertaken by the representatives of the Department of Labour. Labour Canada has established a Workplace Equality Fund, which has, as one of its priorities, projects that address work and family responsibilities.

137. The *Canada Labour Code*, which applies to employees in federally regulated industries, provides for 17 weeks of unpaid maternity leave and 24 weeks of unpaid parental leave, which are available to either parent or may be shared between them. The *Unemployment Insurance Act* provides 15 weeks of maternity benefits and 10 weeks of parental benefits for all employees in Canada who have worked the prescribed number of weeks within the preceding year. The *Canada Labour Code* provides protection against dismissal or lay-off because of pregnancy leave or parental leave. The *Canadian Human Rights Act* prohibits discrimination based on sex (including pregnancy or child birth), marital status or family status. The Supreme Court of Canada has concluded that the prohibition against discrimination on the basis of sex in provincial and territorial human rights legislation precludes discrimination on the basis of pregnancy, even if it is not enumerated as a prohibited ground (Brooks v. Canada Safeway Ltd.)

138. The report of the Federal-Provincial-Territorial Working Group on the Mental Health of Children and Youth entitled Building for the Future: A Framework for Mental Health Services for Children and Youth in Canada recognizes that the family is central to the provision of care, nurturance and support for children and youth, and that it is a priority of the community to strengthen the capacity of families to provide for their children.

139. The Children Mental Health Strategy Programme of Health and Welfare Canada has funded a booklet for parents on ways to help their children to cope with separation and divorce.

(b) Paragraph 2 (assistance to parents)

140. The Nobody's Perfect Programme is a national support and education programme for parents of young children from birth to age 5. It builds on the strengths of parents, facilitates mutual support and provides information on parenting and child development.

141. The Postpartum Parent Support Programme, which is based on the concept of family-centred maternity care, is delivered through hospitals and community health centres in all regions of Canada. The programme responds to the information and support needs of parents and their families during the postpartum period and is designed to increase parental confidence. The Postpartum Programme has received \$800,000 in funding since its inception in 1988.

142. "Ready or Not" is a national support and education programme for children 8 to 12 years of age and their parents. Its goal is to promote positive family communication and prevent the use of tobacco, alcohol and other drugs by children.

143. The Military Family Support Programme was established in 1991 to meet the special needs of military families by providing a consistent and coordinated system of family support within the military community. Based on the principles of community organization, it aims to give ownership of the programme to the families and communities it serves. The Canadian Forces have committed up to \$16 million per year to

funding this ongoing programme.

144. Health and Welfare Canada is working in partnership with the private and non-profit sector to develop a multi-media campaign entitled "Strengthening Families". It is designed to promote positive family communication and to provide information on the healthy growth and development of children.

145. Parents who are immigrants or refugees sometimes need information on Canadian institutions and norms. The Community Support and Participation Programme of Multiculturalism and Citizenship Canada provides information sessions for new Canadians. They include information dealing with schools and the education system, contact with police and access to health services.

2. Priorities and goals

146. The effective integration of work and family responsibilities is a priority for Status of Women Canada and for the Women's Bureau of Labour Canada. The joint Federal-Provincial-Territorial Status of Women and Labour Working Group is drafting a document which will examine the complex nature of the issues and suggest directions for action.

147. The *Canada Labour Code* is being amended to provide for maternity-related reassignment to support a woman's right to remain at work while pregnant. Employers will be required to make every reasonable attempt to modify the job or reassign a pregnant employee when her temporary health needs so require.

E. Separation from parents: article 9

1. Measures in force

148. As indicated earlier, paragraph 134, section 16 (10) of the *Divorce Act* requires the court to give effect to the principle that children of the marriage should have as much contact with both parents as is consistent with their best interests of the child. Section 16 (5) provides that the parent with visiting rights to the child has the right to make inquiries and be given information as to the health, education and welfare of the child. Section 16 (7) authorizes the court to include in an order a requirement that the parent with custody of the child inform the parent with visiting rights if he or she intends to change the place of residence of the child.

2. Factors, difficulties and progress

149. The Department of Justice is reviewing the issues of custody and visiting rights. Current empirical data demonstrate that children are badly affected by the experience of family violence, including witnessing an abusive parental relationship. There may be cases of family violence and abuse where the best interests of the child are not served by direct contact with both parents.

F. Family reunification: article 10

Measures in force

150. Section 3 (c) of the *Immigration Act* includes as one of the objectives of Canadian immigration policy the need "to facilitate the reunion in Canada of Canadian citizens and permanent residents with their close relatives from abroad". "Family" is defined in the Act to mean the father and mother and any child who, by reason of age or disability, is mainly dependent on the mother or father for support (including illegitimate children). The *Immigration Regulations* define a "dependent son" or a "dependent daughter" to include an unmarried person under the age of 19 years, a person over 19 years who is enrolled full-time as a student and is financially dependent, and a person who as a result of a physical or mental disability is incapable of supporting him- or herself and is financially dependent on the parent.

151. Pursuant to the *Immigration Act*, children of a Canadian citizen or permanent resident may be sponsored by that person without being subjected to the "points system" or selection standards and without the sponsor meeting any financial criteria. They are then admitted to Canada as immigrants, provided medical and security requirements are met. The Minister and the Governor-in-Council may exempt children from these requirements. In order to ensure that the family reunification programme is as humane and expeditious as possible, the *Immigration Regulations* state that the processing of visas for spouses and

dependent children has the highest priority.

152. In some cases, persons who are in Canada without legal status have Canadian-born children who are Canadian citizens. If the parents leave or are removed from Canada and have a dependant child who is a Canadian citizen, the fact of the parents' deportation does not affect the child's status as a Canadian citizen, nor his or her right to remain in Canada. Section 6 (1) of the *Canadian Charter of Rights and Freedoms* prevents the Government of Canada from denying a Canadian citizen or permanent resident the right to enter, remain in or leave Canada, unless it is justified under section 1 of the Charter.

153. Family reunification is also facilitated by allowing children who are Canadian citizens or permanent residents to leave Canada for the purpose of visiting their parents abroad, and then return to Canada, in accordance with section 6 of the *Canadian Charter of Rights and Freedoms*. If it is not possible for a child to travel to his or her parents' country of residence - for instance because the authorities of that country would not permit such entry - there are general provisions in place which could be used to allow parents to visit their children in Canada.

G. Maintenance: article 27 (4)

1. Measures in force

154. Pursuant to section 15 (5) of the *Divorce Act*, in making a support order the court shall take into account the means and needs of the parties. Pursuant to section 17, a support order may be varied if there has been a change in the condition, means, need or other circumstance of the child or his or her parents.

155. A Family Support Enforcement Fund has been established to ensure that people responsible for providing support to their spouses and children fulfil their obligations. It enables the Government of Canada to facilitate the exchange of information on enforcement matters amongst provincial and territorial governments, and to assist them in developing new remedies and means of enforcement and in raising public awareness of the importance of respecting family support orders.

156. At present there are several reciprocity maintenance order regimes between provincial governments and foreign countries to secure the recovery of maintenance for children.

2. Priorities and goals

157. A Federal-Provincial-Territorial initiative is currently under way which seeks to review the whole question of child support. One of the options for reform being considered is the establishment of Child Support Guidelines.

158. Requests from a certain number of States are now being considered to develop bilateral conventions regarding the recovery of maintenance abroad. The Government of Canada, after further consultations with the provinces, may also consider the possibility of becoming a party to existing multilateral conventions on the matter of recovery of maintenance orders.

H. Alternative care: article 20

159. Provincial and territorial governments have jurisdiction over alternative care for children. For special measures adopted by the Government of Canada regarding Aboriginal children, see paragraphs 86 to 88.

I. Adoption: article 21

1. Measures in force

160. Upon ratification of the present Convention, in consultation with national Aboriginal organizations, Canada entered a reservation to article 21, to ensure that recognition of customary forms of care among Aboriginal peoples in Canada, such as custom adoption, was not precluded by the requirement in article 21 that adoptions be authorized by competent authorities, in accordance with applicable laws and procedures.

161. The National Adoption Desk of Health and Welfare Canada develops new adoption programmes and negotiates arrangements with other countries to ensure that the best interests of the child are safeguarded by requiring that adoptions be arranged by the appropriate authorities in Canada and the sending country. Article 21 of the Convention is identified in illustrative arrangements as providing the "Guiding Principles",

with the essential points of article 21 listed. The Child Development Initiative of 1992 (which is described in para. 187) provided resources to the National Adoption Desk to enable it to pursue additional adoption arrangements with other countries. Contact has been made with officials in 12 other countries to explain the role of the Adoption Desk and explore working arrangements.

162. The Immigration Regulations provide for the admission of children adopted abroad and also of children to be adopted in Canada who are under the age of 19 years. Children adopted abroad are treated in the same manner as natural-born children who are dependants. Thus, adopted children over the age of 19 years who are still dependent on the parents are admissible. In order to prevent abuse, adoptions of convenience are not accepted, and a child may not at a later date rescind the adoption in order to sponsor his or her birth parents.

163. In regard to children to be adopted in Canada, they are eligible for sponsorship by a prospective parent who is a Canadian citizen or permanent resident if the child is an orphan, an abandoned child whose parents cannot be identified, or a child who has been placed with a child welfare authority for adoption. In order to protect the interests of the child, the government of the province where the child is to reside must state, in writing, that it has no objection to the proposed arrangements for the reception of the child.

164. In Canada, the involvement of private individuals and organizations in international adoptions is not regulated by federal or provincial law except in the Province of Québec. Consequently, Canadian individuals and organizations that are not regulated by any child welfare authority may establish contact with foreign officials to arrange adoptions for Canadians residing in provinces other than Québec.

2. Factors, difficulties and progress

165. Not all countries contacted by the National Adoption Desk are receptive to an arrangement for the adoption of children through the appropriate authorities for a variety of reasons, including lack of a legislative base or clearly defined authority to oversee international adoptions and identify and declare children abandoned or available for adoption, and lack of infrastructure and resources to effectively implement procedures.

3. Priorities and goals

166. The National Adoption Desk is giving priority to developing new programmes and improving existing programmes for the adoption of children, through the appropriate authorities in Canada and the sending country.

167. The Government of Canada participated in the development of the *Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption* under the auspices of the Hague Conference on Private International Law, and is currently working towards early ratification by Canada of the Convention. The main objectives of the Convention are to establish safeguards to ensure that intercountry adoptions take place in the best interests of the child, to establish a system of interstate cooperation to ensure that those safeguards are respected and to secure the recognition of adoptions made in accordance with the Convention.

J. Illicit transfer: article 11

1. Measures in force

168. The *Criminal Code* contains offences that are relevant to combating the illicit transfer and non-return of children. For example, section 279 (1) of the Code provides for a penalty of life imprisonment for kidnapping where force is used. See also paragraph 377 below.

169. Canada has ratified the *Hague Convention on the Civil Aspects of International Child Abduction*. Implementing legislation has been enacted in all provinces and territories to secure the prompt return of children wrongfully removed or retained and to ensure the respect of parental rights of custody and access. (This Convention also provides for measures to ensure the rights set out in arts. 9 and 10.)

2. Factors, difficulties and progress

170. The Hague Convention has had a deterrent effect on the illicit transfer and non-return of children abroad. However, in several cases, delays and non-voluntary submission have created difficulties. The

search for relevant information, e.g. regarding location of the abductor and the abducted children, is sometimes cumbersome. Furthermore, when the abducted child is removed to a State which is not a party to the Hague Convention, intervention through diplomatic channels is not often successful.

3. Priorities and goals

171. The Government of Canada has been actively promoting accession to the Hague child abduction convention by other States, in particular Commonwealth countries. It is seeking ways to improve the efficient application of the Convention domestically as well as internationally. The Government of Canada may also consider ratifying the *Convention on the International Return of Children* of the Organization of American States.

K. Abuse and neglect: article 19

1. Measures in force

172. The *Criminal Code* contains several provisions protecting children and youth from all forms of sexual abuse: sections 151 (sexual interference), 152 (invitation to sexual touching), and 153 (sexual exploitation). Specific offences in the *Criminal Code* concerning parents, guardians and householders are sections 170 (parent or guardian procuring sexual activity), 171 (householder permitting sexual activity) and 172 (corrupting children).

173. In 1984 the Committee on Sexual Offences Against Children and Youths delivered its report entitled Sexual Offences Against Children (the Badgley Report) to the Ministers of Justice and Health and Welfare. The response of the Government of Canada included the appointment in 1987 of a Special Advisor on Child Sexual Abuse to the Minister of National Health and Welfare with a mandate to prepare a report on the long-range direction of federal initiatives regarding child sexual abuse, their implementation and coordination. This report, entitled Reaching for Solutions, was published in 1990 and contains a total of 74 recommendations. To date, over 90 per cent of the recommendations directed to the Government of Canada have been implemented in some form.

174. The Family Violence Prevention Division of Health and Welfare Canada coordinates federal activities in the field of family violence. Current activities build upon the 1986 five-year Child Sexual Abuse Initiative and the 1988 Family Violence Initiative. There are presently 32 child abuse or child sexual abuse projects under way across Canada, and 25 completed. The National Clearinghouse on Family Violence of Health and Welfare Canada is a national resource centre and referral service for all Canadians seeking information and solutions to family violence, including child abuse. It is currently developing descriptive inventories of child abuse and child sexual abuse projects funded between 1989 and 1991.

175. In 1991 the Family Violence Initiative was announced, with a budget of \$136 million over four years. Its purpose is to reduce the incidence of all forms of child abuse through various prevention strategies, including raising awareness, mobilizing communities and changing attitudes. It will also explore innovative models of intervention and treatment for abusive and neglectful families. With respect to reducing child sexual abuse, activities include evaluation of existing treatment models and the consideration of alternatives, assessing available training and information coordination, and developing community prevention programmes and strategies to prevent child abuse. In addition to numerous information, training and evaluation projects, Health and Welfare Canada is conducting research on child abuse (including neglect and physical, emotional or sexual abuse). Research results will be widely distributed in Canada.

176. The Aboriginal Initiative to combat violence on Indian reserves reflects the recognition on the part of the Government of Canada of the seriousness of the problem in Aboriginal communities and involves an allocation of \$36 million over four years.

177. As a component of the Family Violence Initiative, Canada Mortgage and Housing Corporation (CMHC) provides capital funding to non-profit or charitable community groups and Indian Bands for the development of hostel-style living units where abused women and their children can stay on an emergency basis (the Project Haven Programme). The Project Haven Programme spent \$22.21 million from 1988 to 1992, and has funded 458 shelter units. An additional CMHC programme, called "The Next Step", aims to address the need for longer-term accommodation for victims of family violence by providing capital funding for the development of non-profit "second stage" housing projects. The Next Step Programme has been

allocated \$21 million over five years (1991-95), which is expected to result in the provision of 80 emergency and 170 second-stage units.

2. Factors, difficulties and progress

178. As awareness of child abuse increases, the number of court actions has also increased, resulting in an increase in the length of time it takes to bring these cases to court. This delay has implications for the treatment and well-being of the child victim. The provinces and territories have jurisdiction over the administration of justice, and Justice Canada has initiated dialogue with them to address this issue.

179. The court process for dealing with child sexual and physical abuse and neglect is becoming more centred on the child. For example, a number of provinces are reviewing their child protection legislation with a view to making it easier for children to testify in court. Federal legislation has also facilitated the provision of children's testimony in courts.

3. Priorities and goals

180. Prior to 1991, the federal focus was on raising public awareness of child sexual abuse. While activities will continue to address the problem of child sexual abuse, they will also address child physical abuse and neglect.

181. Section 43 of the *Criminal Code*, which permits parents and teachers to use reasonable force on children, is currently being reviewed to assess its acceptability from the perspective of the present Convention. Health Canada is preparing to consult with interested individuals and groups on this issue, and to educate parents on alternatives to the use of physical force on children.

182. The Government of Canada has been involved in discussions with Aboriginal communities to determine the most appropriate way to deal with family violence in Aboriginal communities. Communities are setting their own priorities for services, such as assistance to victims of past abuse and prevention services.

183. The Government of Canada recognizes that it may be necessary to consider the adoption of additional measures to combat all forms of abuse. Among the measures suggested by the Canadian Coalition on the Rights of Children in the course of consultations with them on the present report are banning war toys and other violent games, increasing sentences for repeat offenders and developing measures to make the court process less stressful for children and less sexually biased.

L. Periodic review of placement: article 25

184. The administration and delivery of health and social services is the responsibility of the provincial and territorial governments. However, there is a federal responsibility for the administration and delivery of health and social services on reserves. There has been a movement towards increased control by First Nations for health and social services.

VI. BASIC HEALTH AND WELFARE

185. While Canadians are responsible for the basic health and welfare of their children, they are supported by an active and dedicated voluntary sector, as well as by governments at all levels - municipal, provincial, territorial and federal. At the federal level, Health and Welfare Canada has primary responsibility.

A. Survival and development: article 6 (2)

1. Measures in force

186. The Government of Canada has adopted preventive and promotional measures to improve the health of young children, through the preconception, prenatal, postnatal and early childhood stages. It aims to advance development in the areas of education and training, public awareness, research and community support, and to mobilize individuals, parents and interested organizations to act to reduce conditions of risk.

187. In 1992, as part of Brighter Futures: Canada's Action Plan for Children, the Government of Canada announced the Child Development Initiative, which has the objective of promoting the health and well-being

of "children at risk " — that is, children who are likely to experience a higher than normal incidence of poor health and nutrition, mental health problems, disability and injury, or abuse and neglect, with such ensuing problems as developmental disabilities, early school drop-out and delinquency. The \$459 million five-year initiative is a group of long-term programmes designed to address conditions of risk during the earliest years in a child's life.

188. The Community Action Programme for Children, a component of the Child Development Initiative, will provide ongoing funding to community groups to promote the health and development of children under the age of 7 who are at risk of poor health.

189. The Indian and Inuit Component of the Brighter Futures Initiative provides financial resources to Aboriginal communities to address the issues of mental health and child development, healthy babies, injury prevention, parenting and solvent abuse. The majority of the funds have been decentralized to deal with the issues in a community-directed manner. In addition, approximately 380 Indian and Inuit communities receive prevention services.

190. The Children's Mental Health Strategies Programme of the Child Development Initiative addresses children's mental health issues from a prevention and early intervention perspective. Particular emphasis is placed on children up to the age of 6 years whose circumstances (including socio-cultural, economic, family and environmental factors) place them at risk for mental health and developmental problems. The Indian and Inuit Component of the Child Development Initiative is providing an amount of \$145 million over a five-year period to Aboriginal communities to support their mental health programmes, and is aimed at strengthening the mental health of children, families and communities.

191. The Federal-Provincial-Territorial Working Group on Mental Health of Children and Youth has published a report entitled Building for the Future: A Framework for Mental Health Services for Children and Youth in Canada (see para. 32). The report recognizes that children and youth have specific biological, emotional, developmental and social needs, and sets the following objectives:

(a) to research the links between early childhood problems and adult mental health; to support early identification of children who are at risk of developing mental health problems and who are in need of services;

(b) to determine criteria for an epidemiological data-base regarding children with mental, emotional and behavioural problems; and

(c) to develop a framework for providing coordinated and comprehensive services to promote the mental health of children and youth.

The Children's Mental Health Strategies Programme of Health and Welfare Canada funded the preparation of the report.

192. The appropriate dosage and usage of prescription and non-prescription drugs is a vital consideration for children's safety and well-being. Health and Welfare Canada has engaged a clinical pharmacist to do research on the use of prescription and non-prescription drugs for children, with the findings from the research to be evaluated independently by the Canadian Paediatric Society. The Society will present recommendations on changes to produce monographs to the Government of Canada for appropriate action with industry.

193. Although immunization coverage for Canadian children is relatively high (the estimated immunization rate of Canadian children upon entry into school is 95 per cent), a number of children's immunization problems have emerged in the past few years, such as unexpected outbreaks of measles and pertussis, which have been attributed to inadequate immunization. In Canada, immunization programmes are a provincial-territorial responsibility, and there is mandatory vaccination in two provinces. The Government of Canada has made a financial contribution to the Canadian Public Health Association for two national conferences to provide a forum for provincial and territorial governments to standardize vaccine coverage. Under the Child Development Initiative, assistance will be provided for the development of national goals for

diseases preventable by vaccines. In regard to children abroad, the Government of Canada will spend \$50 million over five years on its international immunization programme, which will include 130 immunization projects in more than 60 developing countries.

194. The National Health Research and Development Programme, which received \$25.168 million in grants and contributions in 1992-93, funds research on prenatal, infant and child health. Health and Welfare Canada sponsored a symposium in 1992 on fetal alcohol effects and the fetal alcohol syndrome, and will concentrate on prevention. Furthermore, in partnership with Aboriginal people, a programme has been established to examine how environmental contaminants affect pregnancy and child development, particularly among Aboriginal women and children where contaminant problems exist.

195. See paragraph 226 on comprehensive school health.

2. Measures foreseen

196. Health and Welfare Canada is currently seeking a consensus on national Child Health Goals, with a view to developing a vision of child health in Canada that will address the issue of what makes children healthy and set in motion a process to facilitate the achievement of health goals for them.

197. Health and Welfare Canada has begun an initiative for the development of Children's Nutrition Recommendations, which brought together nutritional experts to review the guidelines and formulate a statement of national policy with respect to dietary fat intake by children. A draft report prepared jointly by Health and Welfare and the Canadian Paediatric Society was endorsed in principle. Guidelines will be disseminated among groups involved in children's nutrition and feeding, such as schools and day-care centres.

198. Through consultation with provinces and territories, Health and Welfare Canada is developing a National Public Health Unit-based Surveillance Programme to improve the accuracy and timeliness of information on communicable and non-communicable childhood diseases (such as meningitis and childhood asthma). Surveillance on this scale is essential for effective application and evaluation of public health disease prevention measures.

199. The nourishment of a low birth-weight infant can have profound effects on long-term growth and development. Health and Welfare Canada is currently engaged in developing Standards for Low Birth Weight Baby Formula, which involves the development, promulgation and application of standards and guidelines to ensure that commercial baby formulas for low birth-weight babies meet their nutritional needs. When the guidelines have been finalized, consideration will be given to whether they should be enacted as regulations.

3. Institutions and mechanisms

200. An Ad Hoc Committee of First Nations Technical Experts has been established with a mandate to identify elements of a national strategy to address fetal alcohol syndrome and effect (FAS/FAE). It has developed a process for the development of the national strategy. FAS/FAE will be featured in the 1993 addictions awareness week.

4. Governmental-NGO cooperation

201. Health and Welfare Canada has a Grants and Contributions Programme to National Voluntary Health Organizations, which supports non-governmental organizations in carrying out education and prevention programmes to decrease child and infant morbidity and mortality. Among organizations supported are the Canada Safety Council, the Canadian Foundation for the Study of Infant Deaths, Saint John's Ambulance, the Canadian Red Cross Society and the Canadian Council on Smoking and Health. In 1992-93 the Government of Canada contributed \$2.899 million to 48 national voluntary health organizations. In addition, family health and family planning counselling and services are supported through La Leche League, Planned Parenthood Federation of Canada and Serena Canada. Support is also provided to the following associations dealing with specific diseases affecting children: Canadian Cystic Fibrosis, Canadian Diabetes Association, Canadian Down's Syndrome Society, Canadian Haemophilia Society, Spina Bifida Association of Canada and Turner's Syndrome Society of Canada.

202. The health of children is a major focus of the Health Promotion Contribution Fund of Health and Welfare Canada. The fund provides support to the non-governmental sector to implement projects in areas such as breast-feeding promotion and the prevention of low birth-weight and inequalities in parenting and child health.

203. Health and Welfare Canada, in conjunction with community organizations, is developing a Canadian Children's Safety Network, and is working with the Canadian Institute of Child Health and the Canadian Association of Paediatric Hospitals to develop a directory of childhood injury prevention programmes, resources and researchers. In collaboration with the Canadian Centre for Health Information, it is developing a procedure for surveillance of the prevalence and incidence of childhood asthma.

204. The Medical Services Branch of Health and Welfare Canada is working in partnership with non-governmental organizations to develop projects relating to the health of Aboriginal children. Some projects are:

- (a) With the Aboriginal Nurses' Association of Canada, developing a model curriculum guide for the education and training of community health personnel in prevention of injury;
- (b) With the Institute of Health Promotion Research at the University of British Columbia, a literature review of the effectiveness of injury prevention in Aboriginal Communities;
- (c) With the Health Sciences Centre of the University of Ottawa, to analyse available data and produce a statistical report on fatal injuries among status Indians;
- (d) With the Injury Prevention Centre of the University of Alberta, to design, deliver and evaluate twelve Childhood Injury Prevention Workshops for Aboriginal community practitioners;
- (e) With Pauktuit, the Inuit Women's Association, to identify child health goals and develop a framework and strategy for activities to promote healthy Inuit babies;
- (f) With the Assembly of First Nations, to establish a technical committee on child health goals and healthy babies activities for First Nations people;
- (g) With the Faculty of Nursing at MacMaster University for a literature review of the effectiveness of healthy babies programmes in Aboriginal communities;
- (h) With the Canadian Pediatric Society, the Canadian Institute for Child Health and the Sudden Infant Death Syndrome Foundation, to develop a strategy to reduce the incidence of Sudden Infant Death Syndrome;
- (i) With the Canadian Institute of Child Health, to improve statistical information on the health of Aboriginal children.

205. In the area of mental health and child development, the Medical Services Branch has hosted a Suicide Prevention Workshop and has supported consultation processes for First Nations, Inuit and Dene people on mental health and child development issues. Activities to improve mental health and child development are based on the importance of healthy families and communities.

5. Factors, difficulties and progress

206. Infant and child mortality rates of Aboriginal children have dropped dramatically in recent years, from 82.0 deaths for every 1,000 live births in 1960 to 10.2 for every 1,000 live births in 1990. However, they remain higher (about 50 per cent) for Aboriginal children than for other children. There are problems of fetal alcohol syndrome, suicides, child abuse, substance abuse and prostitution. The physical conditions in which Aboriginal peoples live are often adverse to their survival and development. Alienation from the values of their traditional way of life has also not been conducive to their well-being.

6. Priorities and goals

207. Resource materials on the multicultural adaptation of parents are being prepared for the Postpartum Parent Support Programme and Nobody's Perfect Programme.

208. It is a goal of the Government of Canada to design and implement a national prenatal health programme to promote healthy births.

B. Disabled children: article 23
1. Measures in force

209. The Secretary of State of Canada is responsible for encouraging the full participation of all Canadian citizens, including children with disabilities, in the educational, economic and social aspects of life. It coordinates the participation of 10 federal departments and agencies in carrying out the National Strategy for the Integration of Persons With Disabilities. The Strategy, which was announced in 1991, is a five-year project with a total budget of \$158 million. It is dedicated to the goals of equal access, economic integration and effective participation of persons with disabilities.

210. As part of the National Strategy, the Secretary of State of Canada, in cooperation with the Department of Justice, coordinated a comprehensive review of legislation affecting persons with disabilities, which led to the enactment, in 1992, of Bill C-78, *An Act to Amend Certain Acts with Respect to Persons with Disabilities*. This omnibus legislation amended six federal statutes. For example, the preamble of the *National Transportation Act* was amended to include access for persons with disabilities as an element in the overall description of Canada's transportation system.

211. Another element of the National Strategy, under the responsibility of Health and Welfare Canada, addresses the needs of children and youth with disabilities. A fund of \$4 million has been established to help child-serving organizations, such as schools and day-care agencies, to better integrate children with disabilities into their programmes.

212. In 1985 the Secretary of State of Canada created the Disabled Persons Participation Programme to support non-governmental organizations of disabled persons in undertaking projects related to legislative reforms, acting as advocates and assisting the media and advertising organizations to develop approaches which promote a favourable portrayal of disabled persons, including children. Support has been provided to organizations such as the Canadian Association for Community Living to carry out projects aimed at increasing awareness among young people of the challenges and obstacles facing youth with intellectual disabilities, and introducing school friendship circles to enable children with disabilities to be included in all aspects of regular school life.

213. The Secretary of State of Canada has created the Open House Canada-Youth Participation Programme, which provides for exchange and learning opportunities for youth. Youth with disabilities are one of the targeted client groups. The programme aims at increasing knowledge, appreciation and respect for the diversity of Canadian society and its institutions.

214. In accordance with paragraph 4 of article 23, the Secretary of State of Canada has taken initiatives to provide international leadership and establish a network of ministers responsible for the status of persons with disabilities, with a permanent Secretariat in Montreal.

215. The Canada Mortgage and Housing Corporation has provided funds to adapt dwellings to meet the special needs of disabled persons, including disabled children, through the Residential Rehabilitation Assistance Programme.

216. Pursuant to the *Canada Assistance Plan* the Government of Canada shares with provinces and territories the cost of day-care services for children with disabilities and of special needs such as wheelchairs, special diets, hearing aids and glasses.

217. See paras. 139, 189 to 191, 227, 239 and 240 for information on measures that the Government of Canada has adopted regarding mentally disabled children.

218. In 1991-92, Disabled Peoples' International, a self-help development programme which seeks to increase the participation of disabled people in the social and economic development of their respective

countries, received \$535,981 from the Canadian International Development Agency (CIDA).

2. Institutions and mechanisms

219. The Status of Disabled Persons Secretariat coordinates activities relating to disabled persons and conducts consultations, develops policies and undertakes special projects. It has established a National Clearinghouse to provide information and expert advice on Canadian models of integration and accessibility that will be made available to governments, the Canadian public, other countries and the United Nations, its international agencies and organizations.

220. The Government of Canada has pioneered the concepts of community living and included people with disabilities as full participating members of society. Leaders in the children's movement are now turning to Canada for help in understanding our successes and in learning how to apply them elsewhere. The Government of Canada will provide over \$2 million to the Partnership in Community Living Project, one of several projects funded under the Partners for Children Fund, which is a collaboration between Canadian and inter-American partners, designed to influence policies and programmes for children with disabilities throughout the Americas. Children with disabilities and their families will be involved in all aspects of the project.

C. Health: article 24

221. Through the efforts of voluntary organizations, professional associations, Canadian citizens and governments, Canada has built a health care system which is one of the most accessible and efficient in the world. Today, Canadians are among the world's healthiest people, with a high average life expectancy and one of the lowest infant mortality rates of any country.

222. The administration and delivery of health services, including services for children, are within the jurisdiction of provincial and territorial governments. The Government of Canada makes a financial contribution towards these services, establishes the basic framework of the health care system in Canada, and operates a number of programmes designed to contribute to the health of everyone in Canada, including children.

223. In regard to health care for Aboriginal children, since the mid-1980s the Government of Canada has been in the process of transferring the resources for community health programmes and the operation of health facilities to Aboriginal communities. Over 25 agreements have been signed and more than 212 are in planning stages. In addition to the long-term savings in health care that are expected, transfer to First Nations will provide culturally sensitive care that may provide more effective and long-lasting results.

1. Measures in force

224. The *Canada Health Act* establishes the basic criteria for eligibility for federal funding of provincial-territorial health systems: public administration, comprehensiveness of health care services, universality of coverage, portability from one province to another, and accessibility of health care services on a uniform and reasonable basis. For the most part doctors and hospitals do not impose direct charges on patients.

225. A comprehensive approach to health promotion called Achieving Health for All: A Framework for Health Promotion has been adopted, based on the World Health Organization's definition of health promotion as "the process of enabling people to increase control over, and to improve their health" by strengthening public participation, coordinating healthy public policy and strengthening community health services. Programme strategies provide funding to advance development in the areas of education and training, public awareness, research and support to communities.

226. The Government of Canada encourages the provinces to develop a Comprehensive School Health approach to school-based health promotion, involving a broad spectrum of programmes, activities and services which take place in schools and their surrounding communities. The Comprehensive School Health Programme provides a practical framework for action that integrates instruction about health, support services for students and families, social support from families, peers, school staff, public policy and the community and a healthy physical environment. Such action is designed to improve the health and well-being of individual students and to change the environment in which they live and learn.

227. Through the Child Development Initiative of Brighter Futures (see paras. 30 and 187), Health and Welfare Canada has developed a number of programmes to support parents and contribute to the healthy development of children:

(a) The Healthy Babies Programme works to improve prenatal, maternal and infant health and the situation of infants at risk, and supports parents during the prenatal and postnatal period;

(b) The Breast-feeding Promotion Programme aims to improve the health of infants by promoting breast-feeding. Studies have shown that breast-fed babies are less subject to gastrointestinal disease and respiratory illness;

(c) Childhood Safety Promotion Programmes aim to reduce the rates of injury-related mortality and morbidity among children;

(d) The Canadian Hospitals Injury Reporting and Prevention Programme has developed a national network of childhood injury surveillance;

(e) The Food Safety Initiative has the aims of providing immediate protection from food-borne illnesses and ensuring the early development of lifelong healthy habits;

(f) The Cancer Control Programme has established a national childhood cancer surveillance and risk assessment system based on provincial and territorial cancer registries. Aboriginal children are at the centre of this programme because they experience higher cancer mortality rates;

(g) The Children's Mental Health Strategies Programme aims to develop knowledge through research, to evaluate existing mental health programmes and to support the exchange of information on emerging issues, knowledge and skills. See also paragraphs 139, 189 to 191, 239 and 240 for information on other measures adopted to foster the mental health of children.

228. The *Food and Drugs Act* was introduced in 1953 to ensure a high standard of safety and nutritious quality of foods, plus the safe and effective production of drugs sold in Canada.

229. The Canadian Children's Heart Health Initiative is a public health and health promotion strategy for cardiovascular disease prevention and control. It was established in 1985 in an effort to promote behaviour that is conducive to a healthy heart in children, youth and their families at the school, family and community levels.

230. The Canadian Task Force on the Periodic Health Examination makes recommendations on procedures, content, and frequency of preventive interventions at defined ages and for specific population groups. A number of recommendations concern the health of children, e.g. screening for cystic fibrosis, preschool screening for developmental problems and for visual and hearing deficits, prevention of neonatal herpes simplex, and baby care in the first two years of life.

231. In the case of status Indian and Inuit children, the Government of Canada provides free medical benefits not covered by provincial-territorial health systems, e.g. dental care.

232. Many of the illnesses of Aboriginal children are related to poor water quality. To address this problem, in addition to the annual capital allocation for water and sewer projects on reserve, the Government of Canada has announced that it will provide \$275 million over six years for a major Indian Water and Health Initiative.

2. Institutions and mechanisms

233. The Health Promotion Directorate of Health and Welfare Canada includes a Child and Family Health Unit which deals with priority health promotion concerns for children and families.

234. The Federal-Provincial Advisory Committee on Institutional and Medical Services serves as a continuing

forum for consultation and information exchange between officials and consists of senior provincial and territorial health plan officials, as well as representatives of the federal government.

235. The Canadian Diabetes Advisory Board — Expert Committee developed clinical guidelines for the treatment of diabetes mellitus in children, adolescents, and adults.

236. As the lead agency in Canada's international development outreach, CIDA has a budget of \$2.3 billion a year to oversee the implementation of thousands of development projects and to provide substantial support to multilateral organizations. Children benefit directly or indirectly from many of these activities, especially those that address basic needs, job creation and women.

3. Governmental-NGO cooperation

237. The Federal-Provincial Advisory Committee on Health Services has a continuing liaison with a number of major national health organizations, such as the Canadian Hospital Association, the Canadian Council on Health Facilities Accreditation and the Canadian Standards Association.

238. The Health Promotion Contribution Programme supports NGO activity to foster the health and social development of children. An expanded expert consultation in 1992 confirmed broad child health goals and recommended a national process to endorse the goals through wider consultation.

239. The Strategic Fund for Children's Mental Health provides financial support to non-governmental projects that advance priorities in research, programme development and improvement of strategies for service provision to children with mental health problems.

240. In collaboration with the Canadian Mental Health Association, Health and Welfare Canada has developed a programme entitled Changing the Way Things Work to encourage youth participation in the development of institutional policies that affect them. The next step is the development of implementation strategies.

241. Health and Welfare Canada has funded the Canadian Institute of Child Health (CICH) to develop a set of mental health indicators for children as part of its revised report entitled The Health of Canada's Children: A CICH Profile.

242. A \$16 million Canadian contribution programme entitled the Partners for Children Fund aims to help children in less developed countries, and other areas such as Eastern Europe, Latin America and the Middle East. This new fund operates in conjunction with the long-standing endeavours of CIDA. Target groups of children include children at risk, female children and Aboriginal children. Funding is directed through Canadian non-governmental organizations working internationally for children.

243. In 1991/92 the Government of Canada contributed a total of \$51.5 million to UNICEF. Canada is also a very active member in the Universal Child Immunization programme of the United Nations, which has about 100 projects in 50 countries. CIDA also makes substantial contributions through international organizations and non-governmental organizations to assist people who are victims of war, conflicts and drought — a large percentage of whom are children — in the Horn of Africa. Ongoing policy discussions at all levels and in a variety of bilateral and multilateral settings encourage reallocation of resources to basic needs and greater attention to human rights, good governance and democratic development. A high priority is given to sustainable development.

4. Factors, difficulties and progress

244. While the level of health enjoyed by Canadian children is among the highest in the world, there continue to be concerns about health risks, inequities in health between high- and low-income people and the costs of health care.

245. In recent years, the health of Aboriginal children has improved considerably as a result of better living conditions, better health care and greater community involvement in health education and delivery.

5. Priorities and goals

246. The Government of Canada recognizes that care should be taken to ensure that appropriate consideration is given to traditional healing methods when planning and funding Aboriginal health care programmes.

247. Canada plans to continue to provide support to immunization goals in the 1990s, and has allocated \$50 million over five years to this priority. In addition, it will support the development of new and improved vaccines against childhood diseases. Through the Pan-American Health Organization, Canada supports other programmes aimed at improving vaccines for children in the Americas.

D. Child-care services and facilities: article 18 (3)

1. Measures in force

248. The Government of Canada has a range of measures available to support working parents and all Canadian families in meeting their child-care needs. In the 1992 budget, the Government of Canada increased the deduction under the *Income Tax Act* for child care by \$1,000 to \$5,000 for each eligible child under 7 years old, and to \$3,000 for eligible children between 7 and 14 years old. Dependent care allowances are provided for trainees in training programmes sponsored by Employment and Immigration Canada who have dependents requiring care. Under the *Canada Assistance Plan*, the Government of Canada shares in the day-care expenditures made by provinces and territories for low-income families.

249. The Child Care Initiatives Fund supports demonstration, development and research projects that promote innovation in the field of child care, stimulate the creation of services in under-served areas, encourage initiatives aimed at the improvement of child-care services and increase public awareness. In 1992/93, 182 projects were funded in the amount of \$16.4 million.

250. The National Child Care Information Centre is the main source within the federal government of information and technical expertise on child care to social service organizations, child-care associations, resource centres, libraries, educational institutions and the general public. The primary objective of the Centre is to support and promote the development of child-care services in Canada.

2. Factors, difficulties and progress

251. The Child Care Initiatives Fund (CCIF) has had a significant effect on child-care services for Aboriginal peoples. Since its inception in 1988, approximately 20 per cent of all contributions of the Fund have gone to support Aboriginal peoples.

252. Fiscal restraints facing all levels of government as well as changing priorities have precluded the introduction of a new major child-care strategy that would imply the creation of new facilities. Rather, available funds have been committed to the support of new comprehensive programming aimed at children at risk of poor health, poverty, abuse and neglect. This federal initiative is part of the Brighter Futures plan already mentioned. See also paragraphs 30 and 187.

E. Social security: article 26

1. Measures in force

253. The Canada Pension Plan (CPP) provides two benefits to children of contributors: the Disabled Contributor's Child Benefit, which is payable on behalf of the child of a person receiving a CPP disability pension, and the Orphan's Benefit, which is payable on behalf of the child of a deceased contributor. If both parents are deceased or disabled, two orphan's benefits are payable in respect of a child.

254. Pursuant to the *Unemployment Insurance Act*, approximately \$1 billion is spent each year on maternity and parental benefits. The Act provides 15 weeks of maternity benefits to pregnant women and a total of 10 weeks of parental benefits to the mother or father, or to both, of a newborn or newly adopted child.

255. The Family Allowances Programme, created in 1945, supplemented the income of Canadian families by providing for the payment of a monthly benefit on behalf of all dependent children under the age of 18 years resident in Canada and in the care of parents or guardians. Special allowances were paid to welfare agencies, government departments and institutions, and sometimes directly to foster parents, who maintained children under the age of 18 years. At the end of 1992 the Family Allowance Programme ceased

to exist, and was replaced by the new Child Tax Benefit under the *Income Tax Act* in 1993. The Child Tax Benefit is a single, monthly, tax-free payment and is a new supplement for low-income working families. The Child Tax Benefit provides simpler, fairer and more generous support to families with children, especially low- and modest-income families.

2. Institutions and mechanisms

256. To ensure timely review of social policy aspects of the *Canada Pension Plan* (CPP), Health and Welfare Canada, in cooperation with the provinces and territories, established a Federal-Provincial-Territorial CPP Committee.

3. Governmental-NGO cooperation

257. Health and Welfare Canada consults with national non-governmental organizations on issues relating to the *Canada Pension Plan*.

F. Standard of living: article 27 (1-3)

1. Measures in force

258. The *Canada Assistance Plan* was established by an Act of Parliament in 1966 to encourage provinces to expand their social welfare programmes. It is a major federal programme that enables the Government of Canada to share the costs of a wide range of provincial and territorial programmes designed to ensure that everyone in Canada, including children, has a standard of living adequate for their physical, mental, spiritual, moral and social development. It covers assistance programmes for persons in need as well as welfare services to lessen, remove or prevent the causes and effects of poverty, child neglect and dependence on public assistance. In 1992/93, under the *Canada Assistance Plan*, the Government of Canada transferred \$7.4 billion to the provinces.

259. Programmes funded by the *Canada Assistance Plan* of particular relevance to children include the following: residential care for children in the care of the state; maintenance of children in foster homes; day-care services (pre-school, after-school, family home care, special needs day care); special needs (back to school costs, books, tuition, glasses, hearing aids); non-insured health care (drugs and dental); child welfare services (protection services for abused or neglected children, preventive services, foster and adoption home finding and placement) and counselling services.

260. The *National Welfare Grants Programme* is a national research and development programme which has as its mandate the development and promotion of knowledge and resources that will contribute to the social well-being and healthy social and economic environment of all Canadians. The 1992/93 budget of the *National Welfare Grants Programme* was \$7.875 million. One of its priority areas for funding is research in child and family issues, with the aim of producing knowledge to assist decision-makers in formulating policy for children that will reflect their best interests. The *National Welfare Grants Programme* funds research projects on *Child and Family Poverty*, with a twofold objective: to provide a better understanding of the issues of families and children as they struggle to exist and remain off social assistance, and to increase knowledge of the most effective programmes and policies to address the needs of children and families on social assistance.

261. The Canada Mortgage and Housing Corporation (CMHC) assists families with children in meeting their housing needs through its market housing, social housing and housing support programmes. CMHC's market housing programmes are oriented towards assisting households, including families with children, in satisfying their housing requirements on the private housing market.

262. In partnership with provincial and territorial government housing agencies, the CMHC has operated social housing programmes to assist low-income families with children who cannot afford suitable and adequate housing on the private market. The Government of Canada spends approximately \$2 billion annually on these programmes to maintain the supply of affordable housing and subsidize the rents of low-income families residing in the existing private rental stock. The CMHC also has programmes to provide financial assistance to undertake substantial rehabilitation work and, in rural areas, to complete emergency repairs. Special social housing programmes have been designed to meet the needs of native clients off reserve.

263. The annual capital expenditures of Indian and Northern Affairs Canada (DIAND) on housing are approximately \$200 million, including \$136 million in capital subsidies provided directly to Aboriginal communities for construction and repairs. Thirty per cent of the housing on reserves was built, and over 35 per cent renovated in the past six years. Through a national housing policy review, DIAND and Indian bands have been exploring ways to improve the use of existing federal resources.

264. The *Income Tax Act* includes measures to assist parents in ensuring that their children have an adequate standard of living. In 1993 the Child Tax Benefit was introduced, as described in paragraph 255 above. A Refundable Credit offsets the Goods and Services Tax (GST) paid by Canadian parents in respect of each of their children. The GST Credit is reduced gradually as the income of the parents increases over a given threshold. The *Income Tax Act* also provides for an increased tax credit for single parents who provide for at least one child.

2. Institutions and mechanisms

265. The CHMC and its provincial and territorial government partners have developed appropriate procedures to ensure the effective planning, delivery and evaluation of its social housing programmes as well as the management of the existing housing portfolio.

266. Through its National Housing Research Committee, the CMHC has also forged productive partnerships with federal, provincial, territorial and municipal governments, housing industry associations and consumer and social groups to advance research and development activities relating to housing and living environments.

3. Factors, difficulties and progress

267. Federal social housing programmes are making an important contribution towards meeting the housing needs of low-income families and their children. Some 650,000 social housing units nationwide are currently subsidized through these programmes. An estimated 500,000 children under the age of 18 reside in these units, the majority of whom are from low-income families.

268. Significant improvements continue to be made in the living conditions of Aboriginal peoples. However, the Government of Canada recognizes that there is inadequate housing and amenities in many Aboriginal communities. The need for housing assistance is also disproportionately high among single-parent families.

269. For a five-year period commencing in 1990 the Government of Canada has limited the annual rate of growth to 5 per cent in its contributions under the *Canada Assistance Plan* to the wealthiest provinces for programmes for disadvantaged Canadians, including children. This limit is part of the global attempt of the Government of Canada to control annual deficits and ultimately reduce the national debt. Among programmes potentially affected are social assistance, child day-care services, child welfare services and services to victims of violence. There is, however, little evidence of actual reduction in these programmes.

4. Governmental-NGO cooperation

270. Cooperation with non-governmental organizations has been a central element of CHMC's social housing programmes, under which individual non-profit housing corporations and cooperative housing associations sponsor and manage federally-assisted social housing projects. Provincial and territorial governments are major partners in the CMHC's social housing programmes. These governments share in the cost of these programmes, and in many cases have been the lead party responsible for their delivery.

5. Measures foreseen

271. During 1993 and 1994, the CMHC will be reviewing and, where appropriate, updating its publications and advisory materials promoting good living environments for children.

6. Priorities and goals

272. In 1993 and 1994, a priority for the CMHC will be developing innovative ways of addressing the housing needs of low- and moderate-income Canadians. Particular emphasis will be given to improving access and affordability, through innovative housing finance, institutional and regulatory reform and public-private partnerships.

VII. EDUCATION, LEISURE AND CULTURAL ACTIVITIES

A. Education: article 28
1. Measures in force

273. Although education in Canada is a provincial and territorial responsibility, the Government of Canada promotes a coordinated national approach to education, based on excellence and equality of opportunity. In 1991/92 the Government of Canada provided over \$1 billion in support for elementary and secondary education. This support was channelled through direct schooling programmes, including those for Indians and Inuit, as well as for official language education and other programmes.

274. In 1990 the Government of Canada announced the Stay in School Initiative to reduce the drop-out rates in Canadian high schools. It provides labour market programmes and support services to those young people most at risk of dropping out of school. Through the initiative, the Government of Canada aims to increase public awareness of the problem of dropping out to children, parents and community and business leaders. It includes the Occupational and Career Information Programme, which provides career information to young people to assist in their career planning. The Career Information Directorate develops print, computer systems and video materials specifically geared to the school-age group.

275. See paragraph 226 on comprehensive school health.

276. The Labour Force Development Strategy, which focuses on vocational education, apprenticeship, and cooperative education, provides transition from school-to-work measures and occupational and career information to students.

277. At present there are more than 300 schools managed by Indian bands in Canada, serving 47 per cent of Indian students. The remainder either attend schools operated directly by the Government of Canada or are enrolled in the provincial or territorial school systems.

2. Factors, difficulties and progress

278. Where Indian bands have taken on responsibility for their own educational programmes, there has been a generally recognized improvement in school attendance, retention rates and performance. For example, enrolment in band-operated schools has increased by approximately 42 per cent in the last five years. Nevertheless, the drop-out rate at the high school level remains well above the national average and is the object of continuing attention.

B. Aims of education: article 29

279. In 1991 the Government of Canada launched a national Prosperity and Learning Initiative, geared to future directions for learning. Consultations with a wide range of Canadians in the public and private sectors were conducted by an independent Steering Group on Prosperity. Its report entitled Inventing Our Future: An Action Plan for Canada's Prosperity, released in 1992, stressed three broad themes: innovation, learning and inclusion. It offers a strategy for building a learning culture in Canada through emphasis on excellence, results and greater accessibility.

280. Multiculturalism and Citizenship Canada encourages education policies and programmes which take into account the needs of ethno-cultural minority families, provide opportunities for all students to understand the cultures of their fellow students, and serve to eliminate racist attitudes, establish standards for acceptable behaviour and contribute to equality of opportunity.

281. The Canadian Studies Programme encourages the development of Canadian studies learning materials in a number of specific content areas considered to be underdeveloped or neglected, for use at any educational level or by the general public.

282. The Open House Canada Programme has a mandate to increase the knowledge, appreciation and respect of Canadian youth for the diversity of Canadian society and its institutions. Funding is provided to non-profit organizations to administer reciprocal youth group exchanges and national forums.

283. The Commonwealth Youth Programme promotes the overall well-being of young people in the Commonwealth, through encouraging youth participation in national development, recognizing their

contribution to society, and increasing international understanding among Canadian youth. Current priorities include youth enterprise and employment, young women and development, health, drugs and AIDS, the environment, literacy and youth policy development.

C. Leisure: article 31

Physical activity

284. The Government of Canada supports active living for young Canadians, through the Ministry of Fitness and Amateur Sport. It has developed a collaborative national plan entitled Because They're Young: Active Living for Canadian Children and Youth: A Blueprint for Action to raise the priority of physical activity for Canadian children and youth. It is aimed at key leaders who may influence the systems, environment and societal norms that support active living for children and youth.

285. The Fair Play Initiative advocates the elimination of violence and improvement of the ethical environment in sports. The Canadian Child Care Physical Activity Survey identifies needs in the continually growing area of day care. Physical Activity and the Child reviews the current status of research with respect to the physical and mental development of prepubertal children.

286. Jeux Canada Games were established in 1967 with the motto, "Unity Through Sport". The games are held every two years, alternating between winter and summer competitions. They provide Canadians as young as 11 years old with the opportunity to experience the value of participation in sport. The cost of the games is shared by federal, provincial and municipal governments.

287. The Government of Canada supports activities in sport for children through the Sport Canada Core Support Programme by making financial contributions to assist teachers and instructors in introducing children between the ages of 6 and 12 years to sport. Emphasis is placed on fun, developing basic skills and confidence building.

Cultural activity

288. The Government of Canada through the Canada Council provides funding for Canadian children to participate in and enjoy cultural activities in the fields of dance, music and theatre. Federal support is provided for the development of young artists and writers, through grants to non-profit music societies and organizations which contribute to the career development of young Canadian musicians, scholarships to the most promising students at the National Ballet School and National Theatre School, grants for artists working in the areas of children's literature and drama and travel subsidies for professional performing artists to appear in children's festivals in other provinces.

289. In keeping with the United Nations *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, as well as with article 30 of the present Convention, the Heritage Cultures and Languages Programme of Multiculturalism and Citizenship Canada supports heritage activities such as skill development in performing and visual arts, writing and publications and theatre and film projects, in addition to promoting innovative approaches to the learning of heritage languages. These activities make heritage cultures and languages more accessible to children and youth from ethno-cultural communities.

Museums

290. The Canadian Museum of Civilization includes a Children's Museum, which provides animated sessions, workshops, performances and demonstrations for children. It has produced specially designed children's exhibitions for circulation across Canadian museums until 1997. The National Aviation Museum provides extensive programming for children through guided tours, workshops, demonstrations and workshops for children. The Museum also works with teachers to develop programmes to respond to their curricula needs.

291. The public programming of the National Museum of Science and Technology is intended to foster scientific and technological literacy by contributing to an informed public, in particular, by inspiring young

people to consider careers in science and technology. The Canadian Museum of Nature's collections in the fields of botany, zoology and the earth sciences are of particular interest to educators and students. The museum operates an extensive educational programme to increase children's knowledge, appreciation and respect for the natural world.

292. There are a number of other national museums and galleries in Canada of interest to children, including the National Gallery of Canada and the Canadian War Museum.

293. The Museums Assistance Programme of the Department of Communications provides financial and technical assistance to Canadian museums, art galleries, exhibition centres and related institutions, to increase physical and intellectual access to our natural, cultural and technological heritage, and to preserve museum collections for future generations.

1. Institutions and mechanisms

294. With respect to article 28 (3), Canada participates regularly in meetings of the steering committee of the education sub-commission at UNESCO and on the Education Committee of the Organization for Economic Cooperation and Development (OECD).

295. An interdepartmental working group on educational materials, made up from 47 federal departments and agencies, promotes cooperation in supporting the development and distribution of curriculum support materials for primary and secondary school students and teachers.

296. Jointly with the Council of Ministers of Education, the Government of Canada supports the Canadian Information Centre for International Credentials, which facilitates the integration of international students and immigrants into the Canadian education systems, as well as Canadian students to educational institutions abroad.

297. The Commission for Fair Play was established in 1986 to promote the principles of fair play in sport activities for Canadians. Particular interest is paid to children and children's experience in sport.

2. Governmental-NGO cooperation

298. The Government of Canada, through a variety of instruments and agreements, cooperates closely with non-governmental and international organizations on education issues.

299. A Children's Advisory Committee composed of children provides the national Children's Museum with ideas on the development and enhancement of programmes and exhibitions.

300. The Active Living Alliance for Children and Youth (funded by Fitness Canada) is a partnership of national organizations and agencies whose goal is to create a supportive environment for healthier, more physically active lifestyles for Canadian children and youth. A Central Information Bank on Children-Youth and Active Living is provided by the Active Living Alliance for Children and Youth to maintain a referral service which directs Canadians to the appropriate resources. In 1993 the Active Living Alliance for Children and Youth was incorporated into a new entity entitled Active Living Canada.

301. The Fitness Canada Contributions Programme assists the development and implementation of national programmes and activities of national non-governmental organizations which promote and provide physical activity opportunities.

302. The Quality Daily Physical Education Programme is a joint venture of Fitness and Amateur Sport and the Canadian Association of Health, Physical Education and Recreation. It is designed to increase awareness of the importance of physical education in schools through the development of resources and a national lobbying campaign. In addition, the Government of Canada has committed funding to develop a strategy on active living for the pre-school child which began with a national workshop in April 1993.

3. Factors, difficulties and progress

303. There is unequal access by children to recreational facilities, particularly by children living in remote or rural communities. The growing expense of cultural activities for children is cause for concern, and the

Government of Canada plans to encourage the private sector to play a greater role in increasing access in this area.

4. Priorities and goals

304. The Canadian Active Living Challenge for children and youth will be launched in 1994. To date Fitness Canada has committed \$0.75 million to develop, design and produce this programme. The focus of the initiative is on activity, fun and participation, personal progress and encouragement of daily physical activity throughout life. Delivery of the programme will be through national organizations to schools, communities, clubs and camps. During the pilot phase an estimated 100,000 young Canadians will participate, with a future annual target rate of 1 million participants.

VIII. SPECIAL PROTECTION MEASURES

A. Children in situations of emergency: articles 22 and 38

1. Article 22 (refugees)

(a) Measures in force

305. Section 3 (g) of the *Immigration Act* states that one of the objectives of Canadian immigration policy is "to fulfil Canada's international legal obligations with respect to refugees and to uphold its humanitarian tradition with respect to the displaced and the persecuted".

306. Any person may claim to be a Convention refugee under the *Immigration Act*. Pursuant to section 2 of the *Immigration Act*, and in accordance with the *Convention relating to the Status of Refugees*, a Convention refugee is any person who by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion is outside the country of the person's nationality or is unwilling, by reason of that fear, to avail himself or herself of the protection of that country.

307. Children may arrive in Canada without their parents and claim to be Convention refugees, or they may arrive with their parents and, along with them, claim refugee status. In other cases, it may be just the parents who claim to be Convention refugees. In such circumstances, pursuant to section 46.04 of the *Immigration Act*, if the parents are so found, they may apply for landing of themselves and their dependants.

308. Refugee claims are considered by an administrative tribunal. A negative decision is reviewable by the Federal Court. A positive decision has the result that the claimant is entitled to remain in Canada; the refugee may apply within Canada for permanent resident status, which status will normally be granted unless security or criminal record considerations render the refugee ineligible for such status. Even in such circumstances, a Convention refugee may not be removed to a country where the person's life or freedom would be threatened for the reasons outlined in paragraph 306.

309. The *Canadian Charter of Rights and Freedoms* applies to everyone in Canada, including refugees. In *Singh et al. v. Minister of Employment and Immigration* the Supreme Court of Canada held that by virtue of section 7 (right to life, liberty and security of the person) of the Charter, persons in Canada claiming to be Convention refugees have a right to an oral hearing.

(b) Factors, difficulties and progress

310. In 1992 the Government of Canada introduced Bill C-86, the Act to amend the *Immigration Act* (proclaimed in force on 1 February 1993). It exempts refugees so found in Canada who apply for permanent resident status from the application of section 19 (1) (a) (medical inadmissibility) and section 19 (1) (b) (inadmissibility for inability or unwillingness to support oneself). In 1994, the Immigration Regulations were amended to permit refugee claimants to obtain work permits pending the determination of their claim.

(c) Priorities and goals

311. The Government of Canada plans to adopt measures to ensure that immigration and refugee boards

are well informed about relevant provisions of the present Convention.

2. Article 38 (armed conflicts)

(a) Measures in force

(i) Paragraph 1

312. Canada has ratified the Geneva Conventions of 12 August 1949 and the Additional Protocols to the Geneva Conventions of 1977, and in accordance with their provisions has adopted measures to educate members of the Canadian Forces about international humanitarian law rules regarding combatants, prisoners of war, and civilians including children.

(ii) Paragraphs 2 and 3

313. Relevant age limits for participation of Canadian youth in the armed forces are set out in paragraph 49.

(iii) Paragraph 4

314. It has been the practice of members of the Canadian Forces engaged in peacekeeping activities for the United Nations, or other actions of a military nature in accordance with the resolutions of the United Nations, to take measures to care for, protect and provide for non-combatants in general and children in particular. At present Canada is participating in a number of peacekeeping operations which include the delivery of humanitarian aid to the children of Yugoslavia, Cambodia and Somalia.

B. Children in conflict with the law

1. Article 40 (administration of juvenile justice)

315. As with many other areas of the Convention, the Government of Canada and provincial or territorial governments share constitutional responsibility for matters relating to children in conflict with the law. The Government of Canada has jurisdiction over criminal law, including criminal procedure, and has enacted the *Young Offenders Act*. Provincial and territorial governments have jurisdiction over the administration of juvenile justice, including the provision of custodial and health facilities and services for young persons in conflict with the law.

(a) Measures in force

(i) Paragraph 1 (basic principles)

316. The Declaration of Principle in the *Young Offenders Act* recognizes in section 3 (e) that "young persons have rights and freedoms in their own right, including those stated in the *Canadian Charter of Rights and Freedoms* ... and young persons should have special guarantees of their rights and freedoms". Section 3 (a) states that "while young persons should not in all instances be held accountable in the same manner or suffer the same consequences for their behaviour as adults, young persons who commit offences should none the less bear responsibility for their contraventions". See also paragraph 68.

(ii) Paragraph 2 (a) (retroactivity)

317. Section 11 (g) of the *Canadian Charter of Rights and Freedoms* guarantees the right set forth in paragraph 2 (a) of the Convention.

(iii) Paragraph 2 (b) (i) (presumption of innocence)

318. Section 11 (d) of the Charter guarantees the right set forth in paragraph 2 (b) (i) of the Convention. The purpose of section 11 (d) is to ensure that no one is held responsible for a criminal offence where there is a reasonable doubt of guilt. Thus, an offence violates section 11 (d) if it imposes a burden of evidence on the accused or standard of proof that does not respect this principle (*The Queen v. Oakes*, *Vaillancourt v. R.* and *R. v. Keegstra*).

(iv) Paragraph 2 (b) (ii) (informed of charges, legal assistance)

319. Section 11 (a) of the Charter provides that everyone charged with an offence has the right to be informed without unreasonable delay of the specific offence. In addition, pursuant to section 10 (b) of the Charter, upon arrest or detention everyone has the right to retain and instruct counsel without delay and to be informed of that right. According to section 11 of the *Young Offenders Act*, a young person has the right to retain and instruct counsel without delay. Section 11 (4) of the Act requires that provision be made for counsel, by way of legal aid or court appointment, where the young person wishes to obtain counsel but is unable to do so.

(v) Paragraph 2 (b) (iii) (fair hearing)

320. Section 7 of the Charter guarantees everyone the right not to be deprived of security of the person except in accordance with the principles of fundamental justice. Section 11 (b) of the Charter provides for the right to be tried in a reasonable time. Section 11 (d) of the Charter provides that everyone 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. For more detailed information on these Charter safeguards, see Canada's Second and Third Reports on the *International Covenant on Civil and Political Rights*. See also paragraph 327.

321. Section 9 of the *Young Offenders Act* provides parents with the opportunity to be present at the hearing. Section 10 enables the youth court to order their attendance if it is necessary or in the best interests of the youth. Section 11 of the Act ensures that a young person may have the assistance of counsel at the hearing.

(vi) Paragraph 2 (b) (iv) (right not to be a witness and to examine witnesses)

322. Section 11 (c) of the Charter guarantees everyone charged with an offence the right not to be a witness in proceedings against that person regarding the offence. Section 11 (d) (fair and public hearing) of the Charter has been interpreted to include the right to present and examine witnesses (Davidson v. R.). Section 7 of the Charter, on the right not to be deprived of life, liberty or security of the person except in accordance with the principles of fundamental justice, has been interpreted to include the right to make full answer and defence and to examine and cross-examine witnesses (Reference re. sect. 94 (2) of the Motor Vehicle Act).

(vii) Paragraph 2 (b) (v) (review of decision and disposition)

323. Section 27 of the *Young Offenders Act* provides for a right of appeal from findings of guilt or dispositions by a youth court.

(viii) Paragraph 2 (b) (vi) (right to interpreter)

324. Section 14 of the *Canadian Charter of Rights and Freedoms* provides that a party in any proceeding has the right to an interpreter if he or she does not understand or speak the language in which the proceedings are conducted. The interpreter is provided by the court, without charge to the party.

(ix) Paragraph 2 (b) (vii) (privacy)

325. Section 38 of the *Young Offenders Act* prohibits the publication of a report of an offence committed or alleged to have been committed by a young person which discloses the name of, or information sufficient to identify, the young person. In Southam Inc. v. the Queen the Ontario High Court of Justice held that section 38 involves a reasonable limit on freedom of expression as guaranteed by section 2 (b) of the *Canadian Charter of Rights and Freedoms* (appeal dismissed by Ontario Court of Appeal; leave to appeal refused by Supreme Court of Canada). The Court stated as follows:

"[T]he protection and rehabilitation of young people involved in the criminal justice system is a social value of the 'superordinate importance' which justifies the abrogation of fundamental freedom of expression, including freedom of the press (pp. 698-99)."

326. The issue of the extent of the ban on publication of information relating to young offenders is under review by the Government of Canada.

(x) Paragraph 3 (a) (minimum age of criminal responsibility)

327. Section 13 of the *Criminal Code* provides that "[n]o person shall be convicted of an offence in respect of an act or omission on his part while that person was under the age of 12 years". See also paragraphs 51 and 52.

(xi) Paragraph 3 (b) (alternative measures to judicial proceedings)

328. The Declaration of Principle in the *Young Offenders Act* states in section 3 (e) that "where it is not inconsistent with the protection of society, taking no measures or taking measures other than judicial proceedings under this Act should be considered for dealing with young persons who have committed offences". Furthermore, section 4 of the Act provides that alternative measures may be used to deal with a young person alleged to have committed an offence instead of judicial proceedings, where such alternative measures are part of a programme authorized by the Attorney General of the province in question, and furthermore are appropriate for the particular young person, in light of a number of factors set out in section 4.

(xii) Paragraph 4 (variety of dispositions)

329. Section 20 of the *Young Offenders Act* provides for a variety of dispositions for young persons found guilty of an offence, including absolute discharges, fines, payment of compensation or restitution, performance of community services, detention for treatment, probation and custody. The Declaration of Principle in section 3 of the Act sets out the relevant considerations for determining the appropriate disposition for a particular offender, in a manner consistent with paragraph 4 of article 40. See also paragraphs 381 and 382.

(b) Factors, difficulties and progress

330. The Government of Canada recognizes that there is a need for more data on children involved in the criminal justice system, and will consider measures to meet this need.

331. Children involved in the penal system and their families need to be better informed of their rights within the criminal process. They also need to be made aware of their right pursuant to Article 40 (1) of the Convention to be treated in a manner which promotes the child's sense of dignity and worth. This is particularly the case for Aboriginal and visible minority children. The Government of Canada will consider measures to ensure that all children involved in the criminal justice system and their families are conscious of their rights.

332. The Government of Canada recognizes that Aboriginal people in Canada, including children, are involved with the criminal justice system to an unacceptable degree. Inquiries into this have pointed to a variety of reasons. Current actions taken to try to deal with some of the problems include cross-cultural training of law-enforcement officers, inclusion of Aboriginal elders in decisions on sentencing, and funding for Aboriginal justice reform.

2. Children deprived of their liberty: article 37 (b), (c) and (d)

(a) Measures in force

(i) Paragraph (b) (arbitrary detention)

333. Section 9 of the *Canadian Charter of Rights and Freedoms* guarantees everyone the right not to be arbitrarily detained or imprisoned.

334. The Declaration of Principle in the *Young Offenders Act* states in section 3 (f) that "in the application of this Act, the rights and freedoms of young persons include a right to the least possible interference with freedom that is consistent with the protection of society, having regard to the needs of young persons and the interests of their families".

335. As indicated in paragraph 329 above, alternatives to custody are provided for those found guilty under the *Young Offenders Act*. Furthermore, pursuant to sections 24-24.2 of the Act, custody may be "open custody"; that is, in a community residential centre, group home, child care institution, forestry or wilderness camp or other like facility. According to the Act, custody (open or secure) should be ordered only when it is necessary for the protection of society, having regard to such factors as the seriousness of the offence. The longest period of custody that can be ordered under the *Young Offenders Act* is three years for conviction in youth court for murder (with a possible extension, upon application, to five years).

336. Pursuant to section 28 of the *Young Offenders Act*, where a disposition of over one year of custody has been ordered, at the end of the first year the disposition shall be reviewed to determine whether it may be varied. Upon application after six months of custody, or with leave at an earlier time, the disposition may be reviewed if there has been a change of circumstances.

(ii) Paragraph (c) (separate detention of young offenders)

337. As indicated below, for the most part young offenders in Canada are held separately from adults. However, upon ratification of the present Convention, Canada entered a reservation to article 37 (c) to ensure that, in determining the custodial arrangements for a young offender, the well-being of other young offenders and the safety of the public may be taken into account.

338. Young persons who receive a disposition of custody pursuant to the *Young Offenders Act* are held in provincial places of detention separately from adults. Paragraphs 339 to 341 indicate the limited circumstances in which young persons involved in the youth justice system may not be held separately from adults.

339. Pursuant to section 7 (2) of the *Young Offenders Act* a young person shall be held, prior to the disposition of his case, separately from adults unless, having regard to his safety or the safety of others, it would not be appropriate to do so, or there is no place of detention for young persons available within a reasonable distance.

340. Pursuant to section 13 (3) of the *Young Offenders Act* a youth court may remand a young person who is being examined to such custody as it directs (including with adults) for up to 8 days (or, in certain circumstances, up to 30 days). This provision is currently under review.

341. Pursuant to section 16 (1.1) of the *Young Offenders Act*, a young person over 14 years of age who is alleged to have committed a serious offence will be transferred to adult court if the objectives of the protection of the public and rehabilitation of the young person cannot be reconciled by the youth remaining in the juvenile system; protection of the public is the paramount consideration. Pursuant to section 16.1 of the *Young Offenders Act*, pending trial a transferred youth shall be held separately from adults unless, having regard to the best interests of the young person and the safety of others, a court determines otherwise.

342. If a young person who has been transferred to adult court is then convicted under the *Criminal Code*, section 16.2 of the *Young Offenders Act* requires the court specifically to consider the issue of his or her placement, and decide whether the youth should be placed in a youth or an adult facility. The court must take into account a number of factors, including the safety of the young person, the safety of the public, and the appropriateness of treatment, education and other resources. At present there is only one person under the age of 18 years in the federal penitentiary system.

343. Young persons who are in a federal penitentiary are subject to the *Corrections and Conditional Releases Act* in the same manner as adult inmates. Pursuant to section 31 of the Act, an inmate may be held in administrative segregation from other inmates only if it is necessary for reasons of security or safety, including the safety of the inmate in question.

344. According to section 3 of the *Corrections and Conditional Release Act*, the purpose of the federal correctional system is to contribute to the maintenance of a just, peaceful and safe society by ensuring the safety and humane custody of offenders, and assisting in their rehabilitation and reintegration into the community as law-abiding citizens. Pursuant to section 28, a relevant consideration in assigning an offender to a particular penitentiary is its accessibility to the person's home community and family. Pursuant to section 71, an inmate is entitled to have reasonable contact, including visits and correspondence, with family and friends, subject to reasonable limits regarding safety and security.

345. As indicated in paragraph 49, persons 16 and 17 years of age may, with parental consent, enrol in the Canadian Forces. Under certain circumstances, they would then be subject to provisions of the *National Defence Act* and dealt with under military law, which is not affected by the *Young Offenders Act*. Although the *National Defence Act* does not specifically require that service members 16 or 17 years old be held in separate detention facilities, as a matter of practice, and to the extent that existing facilities permit, such service members are held separately.

(iii) Paragraph (d) (legal assistance)

346. Section 10 of the *Canadian Charter of Rights and Freedoms* guarantees everyone the right on arrest or detention to retain and instruct counsel without delay, and to have the validity of the detention determined by way of *habeas corpus*. Petitions of *habeas corpus* are dealt with expeditiously in the Canadian legal system.

347. In *R. v. G. (J.M.)*, referred to in paragraph 120, the Ontario Court of Appeal held that the school principal who removed drugs from a student's socks had not contravened section 10 of the Charter in not informing the student of his right to retain counsel, because there was no "detention" within the terms of section 10. Rather, in the view of the Court, the principal was performing his duty to maintain proper order and discipline as required under the *Education Act*.

(b) Factors, difficulties and progress

348. Prior to 1992 transferred youth were not held separately from adults pending trial, and if sentenced to life imprisonment were not eligible for parole for 10 (second degree murder) or 25 (first degree murder) years. In amending the *Young Offenders Act* as described above in paragraphs 341 and 342, consideration was given to the requirements of the *Convention on the Rights of the Child*.

349. The *Young Offenders Act*, which was enacted in 1984, is a progressive piece of legislation. There is, however, increasing public pressure for the introduction of more onerous sentences for young offenders who have committed serious offences or who are repeat offenders. This is in part due to the public perception that there is an increasing level of violent crime on the part of young people, and that lenient sentences are contributing to recidivism. The 1992 amendments to the *Young Offenders Act* regarding transfers to adult court to some extent reflected this concern (see para. 341).

350. At present in Canada there are a disproportionate number of visible minorities and Aboriginal children who are brought into the youth justice system and sentenced to custody.

3. Sentencing of Young Persons: article 37 (a)

Measures in force

351. In the Canadian criminal justice system the most serious penalty that can be imposed on youths is a sentence of life imprisonment, with eligibility for parole within 5 to 10 years. This penalty can be imposed only where the youth has been transferred to adult court in accordance with relevant provisions of the *Young Offenders Act* (see para. 342 above), and then convicted of first or second degree murder pursuant

to the *Criminal Code*.

352. Pursuant to section 139 of the *National Defence Act* one of the punishments that can be imposed on members of the Canadian Forces for service offences is the death penalty. As indicated in paragraph 49 above, persons who are 16 or 17 years of age may join the Canadian Forces with parental consent, and therefore it is theoretically possible that the death penalty would be imposed on them. However, according to section 206 of the *National Defence Act* the death penalty may only be imposed with the approval of the Governor-in-Council. Furthermore, no death penalties have been imposed under the *National Defence Act* since 1945.

C. Children in situations of exploitation **1. Article 32 (economic exploitation)**

Measures in force

353. Section 179 of the *Canada Labour Code*, in conjunction with the regulations enacted pursuant to it, permits the employment at the federal level of persons under 17 years of age if the following conditions are met:

- (a) The child is not required under the law of the province where he or she resides to be in attendance at school;
- (b) The work is not underground in a mine nor as an atomic energy worker;
- (c) It is not work prohibited for young workers under the Explosives Regulations or the *Canada Shipping Act*;
- (d) It is not likely to be injurious to the child's health nor to endanger his or her safety; and
- (e) The work is not carried out between 11.00 p.m. of one day and 6.00 a.m. of the next day.

354. Pursuant to section 256 (1) of the *Canada Labour Code*, any employer who contravenes section 179 of the Code is guilty of a summary conviction offence and liable to a fine not exceeding \$5,000.

355. In 1992 the basic minimum wage for persons under the age of 17 years was \$4.00 an hour, the same rate as for other persons.

356. The *Canada Labour Code* also deals with such matters as standard hours of work, vacations and holidays, sick leave, sexual harassment and safety and health matters. These standards apply to children as well as adults.

2. Article 33 (drug abuse)

(a) Measures in force

357. The *Food and Drugs Act* and the *Narcotic Control Act*, which apply to children as well as adults, provide the general framework for controlling drugs in Canada. The *Food and Drugs Act* regulates the use of psychotropic substances such as amphetamines, barbiturates and hallucinogens, and includes provisions regarding enforcement and penalties. The *Narcotic Control Act* regulates the use of narcotic drugs such as opium, cocaine and marijuana.

358. In 1992 the Government of Canada allocated \$270 million to a five-year renewal of Canada's Drug Strategy, which will focus on preventing drug use, especially among groups at risk, such as young children, high school drop-outs, street children and Aboriginal people living off reserve.

359. The age limit in the *Tobacco Restraint Act* is in the process of being raised from 16 to 18 years (see para. 50).

360. The Medical Services Branch of Health and Welfare Canada has established a Solvent Abuse Working

Group and is conducting a National Survey on Solvent Abuse to determine the patterns of solvent abuse and the essential elements of solvent treatment for First Nations and Inuit children and youth. The survey results will contribute to recommendations for a National Strategy on Solvent Abuse Prevention and Treatment.

361. In 1992-93 the National Native Alcohol and Drug Abuse Programme (NNADAP) provided approximately \$51 million for a variety of prevention, treatment, training and research programmes. The NNADAP is based on community participation at all stages of its development and implementation. At present approximately 380 Aboriginal communities receive prevention services, and there are 51 alcohol and drug residential treatment programmes, managed by Aboriginal communities, providing 730 client beds.

(b) Factors, difficulties and progress

362. In consultations with Aboriginal groups, it was pointed out that the circumstances of children who abuse drugs vary, and therefore global programmes to deal with drug abuse which apply to all children, regardless of their particular situation or locale, may not be effective.

(c) Priorities and goals

363. The Government of Canada proposes to introduce legislation that will treat drug dealing in and around schools and with minors as an "aggravating factor" in the commission of drug offences.

3. Article 34 (sexual abuse)

(a) Paragraph (a) (inducement)

364. According to section 152 of the *Criminal Code*, every person who, for a sexual purpose, invites, counsels or incites a child under the age of 14 years to engage in physical contact with that person, or another person, is guilty of a summary conviction offence.

(b) Paragraph (b) (exploitation)

365. According to section 151 of the *Criminal Code*, it is an indictable offence to touch a child under the age of 14 years for a sexual purpose. Furthermore, it is an indictable offence to do so with a child between the ages of 14 and 18 years, where the person is in a position of trust or authority over the child, or the child is his or her dependant (sect. 153). Pursuant to section 155, it is an indictable offence for a natural parent to have sexual intercourse with his or her child. Pursuant to section 153, every male person who has illicit sexual intercourse with his step-daughter, foster daughter or female ward is guilty of an indictable offence.

366. In *R. v. L. (D.O.)*, the Supreme Court of Canada held that section 715.1 of the *Criminal Code*, which permits the use of videotaped evidence of complainants under the age of 18 years in sexual assault cases, was not contrary to section 7 (right not to be deprived of liberty except in accordance with the principles of justice) or section 11 (d) (presumption of innocence) of the *Canadian Charter of Rights and Freedoms*. In regard to the argument that the age limit of 18 years was arbitrary and therefore contrary to the Charter, the Court referred to articles 1, 19, and 34 of the Convention on the Rights of the Child to conclude that "it is in no way arbitrary and accordingly, it was perfectly acceptable for Parliament to draw the line where it did" (p. 465).

(c) Paragraph (c) (pornography)

367. Section 163 makes it a criminal offence to publish, distribute, have in one's possession, etc., any obscene material. A publication is deemed to be obscene if it has as its dominant characteristic the undue exploitation of sex, or of sex and any one or more of the following subjects: crime, horror, cruelty and violence.

368. In *R. v. Butler* the Supreme Court of Canada held that section 163 involved a reasonable limit on the guarantee of freedom of expression in section 2 (b) of the *Canadian Charter of Rights and Freedoms*. It stated that section 163 served the important purpose of protecting women and children from exploitation, which can lead to "abject and servile victimization".

369. As part of the Child Development Initiative referred to in paragraph 187 above, the Government of Canada introduced Bill C-128, an *Act to amend the Criminal Code and Customs Tariff* (child pornography and corrupting morals) to protect children from child pornography, sexual exploitation and harm. Bill C-128 defines child pornography to include photographic, film, video or other visual representations showing a person under the age of 18 years engaged in, or depicted as being engaged in, sexual activity. It also includes the depiction, for a sexual purpose, of a sexual organ or the anal region of a person under the age of 18 years. Bill C-128 creates new offences to prohibit the possession, production, importation, distribution and sale of child pornography. Written material or visual representation that advocates or counsels sexual activity with someone under the age of 18 years is an existing offence under the *Criminal Code*. The maximum sentences for existing offences are increased when they relate to child pornography. Bill C-128 was proclaimed as law on 1 August 1993.

4. Article 36 (other exploitation)

(a) Measures in force

370. In 1985 the Government of Canada established the Missing Children's Initiative, and in 1986 it created the Royal Canadian Mounted Police Missing Children's Registry. As of 1992, the Registry indicated that 93 per cent of missing children are runaways.

371. Runaway children are especially vulnerable to exploitation and abuse. As of 1992, it is estimated that there were 900 to 1,000 children living, working or both on the street in Ottawa, 8,000 to 10,000 in Toronto, and 6,000 to 8,000 in Winnipeg, with the latter including a disproportionate number of Aboriginal youth. Almost all runaways participate in illegal activities as a means of support, including shoplifting (44 per cent), stealing money (31 per cent) and prostitution (19 per cent).

372. In 1992 the Government of Canada allocated \$5 million to a new programme to deal with Missing Children and Other Youth at Risk, which has as its mandate assisting police agencies to respond to the needs of those young people most at risk of being exploited, victimized or chronically involved with the criminal justice system. As part of this new programme, it allocated \$3.7 million to increasing the effectiveness of the Missing Children's Registry, and \$1.3 million for research and demonstration projects to enable police to play a more positive role in dealing with runaway children, other youth at risk and their families.

(b) Factors, difficulties and progress

373. The Government of Canada recognizes the complexity of dealing with the problem of runaway children and other children at risk, and the need for governmental intervention in this area.

374. In particular, the Government of Canada recognizes that there are many articles of the *Convention* relevant to the situation of children living or working or both on the street - for example, articles 19 (protection from abuse by those having care), 26 (social security), 28 to 29 (education), 32 to 34 (economic and sexual exploitation and drug abuse), 40 (penal law) and 39 (recovery and reintegration). Therefore, it is necessary to adopt a comprehensive approach, which involves a more effective implementation of all these articles, in order to deal effectively with the problem of such children.

(c) Priorities and goals

375. With regard to measures that should be adopted to deal with runaway youth and other youth at risk, the Government of Canada has established the following priorities: forming partnerships amongst the various federal initiatives (such as the Family Violence Initiative, Canada Drug Strategy and Stay-in-School), regional offices, the police and non-governmental organizations; conducting research and disseminating information to the police community; evaluating the effectiveness of measures adopted; establishing

programme priorities; and considering legislative reforms.

376. In regard to specific categories of runaway youth and other youth at risk, the Government of Canada has identified the following as having priority: children living or working or both on the street, youth gangs, juvenile prostitutes, children involved in pornography, children who belong to visible minorities or who are Aboriginal, children with disabilities and rural children.

5. Article 35 (prevention of sale)

(a) Measures in force

377. Sections 279 to 283 of the *Criminal Code* make the various forms of kidnapping and child abduction criminal offences. These offences include kidnapping (sect. 279), hostage taking (sect. 279.1), abduction of persons under the age of 16 years from their parents (sect. 280), abduction of persons under the age of 14 years from their parents (sect. 281), abduction by a parent in contravention of a custody order (sect. 282), and abduction by a parent where there is no custody order (sect. 283). See also paragraph 169.

378. Pursuant to section 212 of the *Criminal Code*, it is a criminal offence to procure or solicit a person for sexual intercourse or to become a prostitute, or to live on the avails of prostitution. From 1986 to 1989 young persons accounted for about 5 per cent of those charged with soliciting for the purpose of prostitution.

(b) Priorities and goals

379. As mentioned earlier in paragraph 167, Canada has been actively involved in the finalizing of the *Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption*, and is currently working toward its early ratification. One of the main objects of the *Hague Convention* is to "establish a system of cooperation amongst Contracting States to ensure that [safeguards regarding the best interests of children and their fundamental rights] are respected and thereby prevent the abduction, the sale of, or traffic in children".

D. Recovery and reintegration: article 39

1. Measures in force

380. As indicated in paragraph 123, social welfare agencies providing care to children, including care pertaining to recovery and reintegration, come primarily within provincial and territorial jurisdiction. See paragraphs 139, 189 to 191, 227, 239 and 240 for information on measures the Government of Canada has adopted regarding the mental health of children.

381. The Declaration of Principle in section 3 (1) (c) of the *Young Offenders Act* recognizes that "young persons, because of their state of dependency and level of development and maturity ... have special needs and require guidance and assistance". This principle is reflected in the entire process of dealing with young persons alleged to have committed offences under the Act. As to the treatment of young offenders in custody in youth facilities, such facilities are under the jurisdiction of the provinces and territories.

382. In *R. v. M. (J.J.)* the Supreme Court of Canada described the approach that the court should take in sentencing young offenders pursuant to the *Young Offenders Act* as follows:

"Society must be concerned with the illegal acts of young people ... Yet there must be some flexibility in the dispositions imposed on [them]. It is not unreasonable to expect that in many cases carefully crafted dispositions will result in the reform and rehabilitation of the young offender. That must be the ultimate aim of all dispositions. They may often achieve this goal if the disposition is carefully tailored to meet both the need to protect society and to reform the offender."

383. Health and Welfare Canada has provided support for the Healing Conferences convened by Aboriginal

peoples, including the "Healing Our Spirit Conference" at Poundmaker's Lodge in 1992 and the "Healing the Wounds of the Native Family Conference" convened in 1992 by the Native Mental Health Association.

2. Priorities and goals

384. The Government of Canada recognizes that further attention needs to be given to the adoption of measures to promote the recovery and reintegration of children who have been subjected to abuse and exploitation.

E. Children members of minorities and indigenous children: article 30

1. Measures in force

(a) Culture

385. At the request of national Aboriginal organizations, upon ratification of the present Convention Canada made a reservation to the effect that article 30 would have to be taken into account in implementing all of the articles of the Convention in matters relating to Aboriginal children.

386. Section 27 of the *Canadian Charter of Rights and Freedoms* provides that the Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.

387. The *Canadian Multiculturalism Act* declares that it is part of the multiculturalism policy of the Government of Canada "to recognize and promote the understanding that multiculturalism is a fundamental characteristic of the Canadian heritage". Multiculturalism and Citizenship Canada has a Heritage Cultures and Languages Programme which makes the cultural heritage of children more accessible to them by supporting skill development in performing and visual arts, in writing and publication, and in theatre and film projects related to heritage activities. See also paragraphs 101 to 103.

388. According to section 25 of the *Canadian Charter of Rights and Freedoms*, the Charter should not be construed so as to abrogate or derogate from any Aboriginal, treaty or other rights or freedoms of Aboriginal peoples of Canada. Section 35 of the *Constitution Act, 1982* recognizes and affirms existing Aboriginal and treaty rights of the Aboriginal peoples of Canada. To date, these provisions have been interpreted by the courts to relate primarily to land and resource related rights of Aboriginal peoples (*R. v. Sparrow*, *A.G. Ontario v. Bear Island Foundation et al.* and *Delgamuukw v. British Columbia*). Aboriginal cultures reflect (among other things) the relationship of Aboriginal peoples with the land. These provisions serve to protect the right of Aboriginal children to enjoy those elements of their culture which are bound to the land (e.g. hunting and fishing). See also paragraphs 101, 103 and 110.

389. Indian and Northern Affairs Canada provides funding to 73 Aboriginal cultural and educational centres.

390. The Government of Canada has a policy to promote Aboriginal self-government. There are currently over 60 Community Self-Government Negotiations under way with Aboriginal communities across Canada. These negotiations encompass such matters as the administration of justice, the preservation and promotion of Aboriginal languages and cultures and the provision of educational, health and social services and child welfare. The successful conclusion of self-government arrangements would serve to ensure that Canada's statement of understanding regarding article 30 of the Convention is given practical effect.

(b) Language

391. The Constitution of Canada stipulates that English and French are the official languages of Canada, and that both languages have equality of status, rights and privileges as to their use in federal parliamentary and governmental institutions. At the provincial level, only New Brunswick has constitutionally recognized English and French as the official languages of provincial legislative and governmental functions, although other provinces are bound to certain constitutional obligations in respect of the use of English and French in the legislature and courts, and still others have enacted certain statutory protections.

392. Section 23 of the *Canadian Charter of Rights and Freedoms* accords to Canadian citizens the right to

have their children educated in the minority language (French or English) of the province where they reside at the primary and secondary levels, if one of the following conditions is met:

(a) the first and still understood language of the parent is the minority language (this criterion applies in all provinces except Quebec);

(b) the parent received his or her primary education in Canada in English or French and that is the language of the linguistic minority population of the province where he or she resides; or

(c) the parent already has a child who has received primary or secondary education in the language in question.

393. This right is subject to the proviso that it applies only where the number of children entitled to minority language education is sufficient to warrant providing such education out of public funds.

394. In *Mahé et al. v. Attorney General of Alberta*, the Supreme Court of Canada held that section 23 of the Charter is a remedial provision aimed at preserving and promoting the two official languages of Canada by ensuring that each language flourishes, as much as possible, in provinces where it is not spoken by the majority of the province. The Court also held that the right of minority language groups to manage and control their own educational facilities was vital to ensuring the flourishing of their language.

395. The preamble of the *Official Languages Act* states that the Government of Canada is committed to cooperating with provincial governments and their institutions to respect the constitutional guarantees of minority language educational rights and to enhance opportunities for all to learn both English and French. The Act, which is a federal statute, applies to the institutions of the Parliament and Government of Canada, and embodies the constitutional guarantees set out in sections 16-20 of the *Canadian Charter of Rights and Freedoms* respecting the equality of status of English and French with respect to their use in federal institutions and in services offered to the public by those institutions. Part VII of the Act, dealing with the advancement of English and French within Canadian society, includes measures to promote and encourage federal-provincial cooperation in this area, notably with respect to minority language and second language education.

396. The *Canadian Multiculturalism Act* declares that it is part of the multiculturalism policy of the Government of Canada "to preserve and enhance the use of languages other than English and French, while strengthening the status and use of the official languages of Canada". The Heritage Cultures and Languages Programme of Multiculturalism and Citizenship Canada funds projects to develop expertise and teaching materials for heritage language classes, to engage in research and to promote heritage language learning. It also supports the sharing of resource materials among heritage language schools and communities.

397. The Government of Canada has, through agreements with all provinces and territories, funded English and French minority language and second language education, with a budget allocation of \$235.2 million for 1993-94 for this purpose. The Government of Canada has concluded a Cooperation Agreement on French and Aboriginal Languages with the Government of the Northwest Territories. This agreement provides funding for the expansion of government services in French and Aboriginal languages and supports community based activities to develop, maintain and enhance these languages (\$9.8 million for 1993-94).

398. The Government of Canada has also concluded the Canada-Yukon Language Agreement with the Government of the Yukon, which provides funding for the protection and enhancement of French and Aboriginal language rights and services in the Yukon (\$2.89 million in 1993-94). Further to Part VII of the *Official Languages Act* (section 43), the Government of Canada has concluded agreements for the promotion of the official languages with eight provinces to support the development of English and French linguistic minority communities (\$7.48 million in 1993-94).

399. At present 63 per cent of Indian elementary and secondary students living on reserve or Crown lands receive instruction in an Aboriginal language.

(c) Religion

400. See paragraphs 111 to 114 on the guarantee of freedom of religion in the *Canadian Charter of Rights and Freedoms*. In R. v. Big M Drug Mart the Supreme Court of Canada emphasized its role in "safeguard[ing] religious minorities from the threat of the tyranny of the majority" (p. 337).

401. Multiculturalism and Citizenship Canada supports activities which promote tolerance and understanding amongst the various religions in Canada, including the development of written, film and other media materials to increase public awareness of similarities among religions, and the holding of interfaith seminars.

2. Factors, difficulties and progress

402. The Mahé decision referred to in paragraph 394 is still being implemented in several provinces and requires amendments to existing provincial legislation. The Government of Canada is continuing to cooperate with all provincial and territorial governments in the area of minority language education. It has approved the renewal of funding for programmes in this regard as well as additional funding for the implementation of the Mahé decision.

403. In 1992 the Government of Canada intervened before the Supreme Court of Canada in the Manitoba Minority Language Education Rights Reference to support a purposive interpretation of section 23 of the Charter and the application of the principles of Mahé. In its decision of March 1993 the Supreme Court clarified and reinforced the principles set out in Mahé, stating that the general right of instruction also includes the right to a distinct physical setting and facilities, and applying the general principles respecting minority management and control of those facilities in the Manitoba context. Manitoba, Alberta and Saskatchewan have enacted new legislation designed to conform with section 23 of the Charter and the Supreme Court ruling.

3. Priorities and goals

404. It is a priority of the Government of Canada to provide to official language minorities equal access to programmes of equal quality.

405. In regard to Aboriginal children and children belonging to minorities, special care needs to be taken (including the adoption of selection and training measures) to ensure that child-care workers, teachers, law enforcement officials and other persons dealing with them do so in a culturally sensitive manner.

406. It is a goal of the Government of Canada, in accordance with the statement of understanding regarding article 30 made upon ratifying the Convention, to ensure that greater attention is given, in the various matters over which it has jurisdiction, to the cultural, religious and linguistic needs of Aboriginal children.

Part Two

MEASURES ADOPTED BY PROVINCIAL AND TERRITORIAL GOVERNMENTS

I. BRITISH COLUMBIA

407. This report mainly covers the period from 13 January 1992 to 13 July 1993. With the exception of articles 21 and 37 (c) for which Canada entered statements of reservation, British Columbia was in compliance with the Convention at the time of ratification.

A. General measures

408. In July 1993, pursuant to article 4 of the Convention, British Columbia's Ministry of Social Services presented a White Paper on the *Child, Family and Community Service Act*. The purpose of this White Paper was to seek input on issues pertaining to children prior to drafting legislation. The *Convention on the Rights of the Child* was used as one of the reference documents in drafting the White Paper.

409. Pursuant to article 42 of the Convention, "to make the principles and provisions of the Convention

agencies. While accurate statistics are not yet available, the number of children placed by agencies is over 50 per cent of the total number of children in care.

5. Article 32: economic exploitation

670. Children in Manitoba are protected from engaging in work that would constitute a threat to their health or education under *The Employment Standards Act*, as well as other provincial statutes. The Act regulates conditions of employment and sets minimum ages for employment.

671. *The Employment Standards Act* of Manitoba defines a "child" as a person under the age of 16 years and an "adolescent" as a person who has reached his or her sixteenth birthday but not the eighteenth birthday. Under the Act, no child shall be employed except with the written permission of the Minister and in accordance with a permit issued by the Department of Labour. A child shall not be employed in any manner, work or service detrimental to safety, health or moral well-being.

672. Applications for a permit must indicate the signed concurrence of the parent or guardian of the applicant and school authorities. In addition, the prospective employer must guarantee acceptable workplace conditions.

673. Section 43 of the Act prohibits the employment of a child in any building or upon premises where processing, manufacturing, cleaning, repairing or servicing of articles, materials or machinery by manual labour or the use of machinery is carried on. This section also provides that regulations may be made prohibiting or regulating the employment of adolescents where work is deemed to be dangerous, unwholesome or unhealthy.

674. A child who is permitted to work is protected with respect to all terms and conditions under the Act including general holidays, weekly day of rest and minimum wage, as are all employees covered by the Act.

675. *The Public Schools Act* requires that every child of compulsory school age (under the age of 16 years) attend school unless specifically excused by the Minister responsible for the Act in accordance with the Act and Regulations. The Act prohibits the employment of an individual during those hours in which the individual is required to be in attendance in the school.

676. Under the Operation of Mines Regulation, enacted pursuant to *The Workplace Safety and Health Act*, the employer may not employ or permit the employment of a person under the age of 18 years in the underground workings of a mine or at the face of an open pit or quarry working. Other provincial legislation may also affect the employment of youths. As an example, *The Liquor Control Act* prohibits the employment of persons under the age of 18 years in the sale, handling or serving of liquor.

6. Article 33: drug abuse

677. Manitoba school boards provide drug education through its health education programme. The programme educates children in the dangers of drug abuse.

7. Article 35: sale, trafficking and abduction

678. *The Child and Family Services Act* prohibits the sale, trafficking and abduction of children.

V. ONTARIO

A. Definition of the child

679. *The Age of Majority and Accountability Act* provides that for the purposes of any law within provincial jurisdiction "Every person attains the age of majority and ceases to be a minor on attaining the age of 18 years". However, in accordance with our common-law tradition, the rights conferred upon attaining majority relate primarily to private law matters, such as the power to make contracts and to deal with property. The *Age of Majority and Accountability Act* recognizes that specific legislation may determine the age at which an individual may be treated as an adult for the purposes of that particular legislation.

680. In Ontario, for the purposes of the Convention, the law applicable to the child generally includes all

persons below the age of 18 years. In some cases, the law applicable to the child's rights are laws of general application that apply equally to children and adults. Where a person is treated as an adult before attaining 18 years of age, generally the laws applicable to the person as an adult are also relevant for the purposes of the Convention, especially where the Convention is parallel to the *Canadian Charter of Rights and Freedoms*, the *International Covenant on Civil and Political Rights*, and the *International Covenant on Economic, Social and Cultural Rights*.

681. A child attains majority at 16 years of age in the following circumstances:

(a) Article 11, p. 2, and article 35: the *Hague Convention on Civil Aspects of International Child Abduction* ceases to apply when the child attains 16 years (*Children's Law Reform Act*);

(b) Article 19: the special child protection provisions of Part III of the *Child and Family Services Act* cease to apply to persons 16 years of age or older (unless the child is already subject to a court order) since children over 16 years are generally entitled to withdraw from parental control. (Persons over 16 years are protected by laws of general application);

(c) Article 27, p. 2: parental responsibility to provide financial support ceases where a child 16 years of age or older has withdrawn from parental control (*Family Law Act*); paragraph 3: children under 16 years of age must be with their family to be eligible for social housing;

(d) Article 40: the special provisions of the *Provincial Offences Act* cease to apply where the person was 16 years of age at the time of the offence.

B. Legal minimum ages for specific purposes

682. In Ontario, the right to obtain legal counsel without parental consent is based not on age but on capacity to retain and instruct a lawyer.

683. The *Consent to Treatment Act, 1992* (in force on proclamation) clearly establishes the right of people in Ontario to make informed decisions about their own health treatment, if mentally capable to do so, regardless of age. The Act applies to health practitioners in all setting. The Act specifies certain information requirements about rights if a person aged 14 or over is determined by the health practitioner who proposes treatment to be mentally incapable of making the treatment decision. A written notice is read and given to the person, saying that he or she can apply for an independent review of the finding of incapacity, and that he or she can meet with an independent rights adviser on request. In psychiatric facilities, the meeting with a rights adviser is mandatory for findings of incapacity with respect to treatment when the person is 14 or over.

684. For the purpose of compulsory school attendance, every child shall attend school until the child attains the age of 16 years (*Education Act*). The minimum ages at which young people in Ontario may begin employment are set by regulation under the *Occupational Health and Safety Act*. See "Economic exploitation", article 32. The *Marriage Act* provides that any person who is of the age of majority may obtain a marriage licence or be married by publication of banns. If a person is under 18 but is 16 years of age or more, section 5 requires consent of parent(s) or guardian unless the "child" is a widow, a widower or divorced. A child under 12 years of age may not be convicted for a provincial offence (*Provincial Offences Act*). A child under the age of 12 years cannot be admitted to a secure treatment programme unless the Minister consents (*Child and Family Services Act*). Under the *Liquor Licence Act* liquor may not be sold or supplied to a person under 19 years of age.

C. General principles

1. Non-discrimination: article 2

685. The Ontario *Human Rights Code* provides legal protection for the equal rights and opportunities of all persons without discrimination. It specifies that "Every person has a right to equal treatment with respect to services, goods and facilities, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or handicap" (section 1). Unlike the Charter of Rights, under the *Human Rights Code*, protection against discrimination on the basis of age is limited. In the first instance, only those 18 and over can bring complaints on these

grounds; in the second, individuals who are 16 or 17 years old, and have withdrawn from parental control cannot be discriminated against in seeking accommodation on the basis of their age.

686. The *Children's Law Reform Act* abolishes any distinction between the status of children born in wedlock and born out of wedlock.

687. According to the *Education Act*, school boards are required to have an ethno-cultural equity and anti-racism policy to ensure equitable education for all students and to eliminate systemic barriers and inequities for Aboriginal and racial and ethnocultural minority students.

688. Under Ontario's Corporate Native Affairs Policy Framework (1985), Aboriginal peoples should receive provincial programmes and services on a non-discriminatory basis to meet their needs, to the extent that provincial legislation of general application applies to them and to the extent that ministry budget allocations and programme planning permit.

2. Best interests of the child: article 3

689. Custody and access disputes between parents are to be determined on the basis of the best interests of the child (*Children's Law Reform Act*).

690. The office of the Official Guardian in the Ministry of the Attorney General has a wide variety of duties to represent the legal interests of children (*Courts of Justice Act*. See "Respect for the views of the child", article 12).

691. The *Child and Family Services Act* deals with a broad range of services for children in care, child protection, adoption, and voluntary services. Section 1 declares that the purposes of the Act are "as a paramount objective, to promote the best interests, protection and well-being of children". Other key principles are that when families need help, that help should support and strengthen the family unit with the least amount of interference, and wherever possible, be based on common consent, that the least restrictive or disruptive course of action possible should be followed and that children should receive services that are tailored to their needs and respect differences in culture, religion, background and physical and mental development. It is also recognized that Aboriginal people should be entitled to provide their own child and family services where possible and that all services to Aboriginal children and families should be provided in a manner that recognizes their culture, heritage and traditions and the concept of the extended family.

692. The best interests of the child in the context of child protection (section 37(3)) and adoption (section 136(2)) are elaborated with statutory criteria for the guidance of the courts and other decision-makers.

693. Subsection 37(4) of the Act further specifies that, in the case of Aboriginal children, the importance of preserving the cultural identity must be considered in making decisions in the best interests of the child.

694. Under the *Change of Name Act*, if a required consent to a name change cannot be obtained or is refused, the court can make an order dispensing with the consent. The order shall be made in accordance with the best interests of the child.

695. Article 3, paragraph 3 (Standards), Part IX (Licensing) of the *Child and Family Services Act* (CFSA) and the CFSA Regulations provide direction to service providers to ensure the protection and safety of children receiving residential services or being placed for adoption. These directions are given in detail in the [Children's Residence Licensing Manual](#), the [Young Offenders Manual](#), the [Children in Care Manual](#) and the [Foster Care Manual](#). Compliance with standards and regulations is monitored by programme supervisors and licensing officers within the Ministry of Community and Social Services.

696. Children's Aid Societies (CAS), which are the child protection authorities in Ontario, are also directed by the Revised Standards for Investigation and Management of Child Abuse Cases, under the *Child and Family Services Act*. Compliance with these standards is monitored both by the Board of Directors of each CAS and by provincial programme supervisors.

697. The province is responsible for the licensing and regulation of child-care programmes. All child-care centres, nursery schools and private home day-care agencies (with more than five children) must be licensed. Standards are outlined by the *Day Nurseries Act* and its regulations governing the accommodation, facilities, equipment and services to ensure the health and safety of children, including training requirements for staff.

698. The Ministry of the Solicitor-General and Correctional Services has several mechanisms in place to ensure that its institutions, services and facilities responsible for the care of children in detention conform with established standards in the areas of safety, health, the number and suitability of staff and competent supervision. These mechanisms are well documented in the ministry's YOA Operational Policy and Procedures Manual, the Residential Services Standards and Guidelines, the Probation and Parole Manual and the *Ministry of Correctional Services Act*.

**D. Right to life, survival and development (art. 6);
respect for views of the child (art. 12)**

699. In general, there is no prohibition against children expressing their views. In many cases, there is a positive legal duty to consider the child's views. For example, in private custody disputes, the courts shall consider "the views and preferences of the child, where such views and preferences reasonably can be ascertained" (*Children's Law Reform Act*).

700. In civil proceedings involving a minor, there must be a litigation guardian who is to act in the best interests of the minor (Rule of Civil Procedure). The Official Guardian provides free legal representation for minors where the court directs representation in child protection proceedings (*Child and Family Services Act*); where a child is admitted to a secure treatment programme (*Child and Family Services Act*); where a minor is consenting to the surrender of his or her child for adoption (*Child and Family Services Act*). The Official Guardian may be requested to investigate and report to the court on all matters concerning custody and access (*Courts of Justice Act*).

701. Children are not disentitled to legal aid (i.e. State paid assistance of private lawyers) by reason only of their age where the general eligibility criteria are met. In some cases, the granting of legal aid is mandatory. Other cases will be considered on their merits (see generally the *Legal Aid Act*). A free legal aid clinic has been established solely to provide advocacy for children and youth. The *Evidence Act* enables a child to give evidence in legal proceedings even though the child does not understand the nature of an oath.

702. Under the *Child and Family Services Act* (CFSA), persons providing child development, child treatment, child welfare, community support and young offenders services "shall ensure that children and their parents have an opportunity where appropriate to be heard and represented when decisions affecting their interests are made and to be heard when they have concerns about the services they are receiving ...".

703. The *Child and Family Services Act*, concerning rights of the child receiving residential services, states that "a child in care has a right to be consulted and to express his or her views, to the extent that is practical given the child's level of understanding whenever significant decisions concerning the child are made ...", and states specific points at which the child has a right to consent or to be represented when decisions are made.

704. There are specific sections in many parts of the Act, including Voluntary Services, Child Protection, Young Offenders, Rights of Children, Extraordinary Measures and Adoption which concern the rights of children, the requirement that children be informed of their rights, and the establishment of complaints procedures or review mechanisms which can be used by children receiving services under the Act. The Act also determines how the child is to be involved in decisions regarding services he or she is receiving, as well as the manner in which the child's wishes will be ascertained and under what circumstances.

705. The Office of the Child and Family Service Advocacy is established under the *Child and Family Services Act* to coordinate and administer a system of advocacy on behalf of young persons and families who are seeking or receiving services under the Act. The goal of the Advocacy Office is to assist and encourage all service providers to respond effectively and promptly to the needs of the young person and his or her

family. A young person receiving or seeking services under the Act is entitled to approach the Office of Child and Family Services Advocacy for assistance. It is the responsibility of the service provider to maintain an up-to-date written statement of policies and procedures governing the concerns or complaints of residents.

706. Under the *Change of Name Act*, the legal changing of a child's name requires the written consent of the child, if the child is 12 years of age or older. A person over 16 who complies with the requirements of the *Change of Name Act* may legally change his or her name. If the person or persons having lawful custody of the child will not consent to the change of name, the child may apply to the court for an order dispensing with the consent. The court shall determine the matter in accordance with the best interests of the child.

707. Under the *Marriage Act*, if a parent or guardian whose consent to a child's marriage is required under section 5 is not available or unreasonably or arbitrarily withholds consent, the child may apply to a judge without the intervention of a litigation guardian for an order dispensing with the consent.

708. Children's rights in consenting to health treatment under the *Consent to Treatment Act, 1992* are described in paragraph 683 above.

709. The Consent and Capacity Review Board is an independent board that, on application, holds hearings on findings of incapacity.

E. Civil rights and freedoms

1. Name and nationality (article 7)

710. Under the *Vital Statistics Act*, a child's birth must be registered within 30 days of the birth. As a general rule, under section 10, a child shall be given at least one forename and a surname.

711. The right to be cared for by both parents is recognized in the *Children's Law Reform Act*, which declares that the father and mother of a child are equally entitled to custody of the child.

2. Preservation of identity (art. 8)

712. Under the *Vital Statistics Act*, a child may be given a certified copy of his or her birth registration, which would disclose the mother or father or both. If a child has been adopted, as a matter of law and policy, the child cannot obtain a copy of the original birth registration disclosing biological parentage; this information can only be obtained through the adoption disclosure process under the *Child and Family Services Act* or by court order.

713. Under the *Change of Name Act*, or upon adoption under the *Child and Family Services Act*, if a child is 12 years of age or older, the child's name cannot legally be changed without his or her written consent, unless a court dispenses with the consent in the best interests of the child.

3. Freedom of expression (art. 13)

714. The *Libel and Slander Act* defines the torts, specifies a number of exceptions for "privileged reports" and outlines the procedures for court action.

715. Ontario's public libraries support the child's right to freedom to seek and receive information and ideas in a broad range of formats. Information and ideas are available to children through materials, programmes, services and personalized staff assistance. In most instances, there is no fee for membership in Ontario's public libraries. Where there is a fee, it is nominal.

716. Recreational programmes concentrate on providing children and youth with an opportunity to express their views in programme design and execution.

717. The *Child and Family Services Act* deals with the rights of communication for children in care, including the right to speak with, visit and receive visits from members of his or her family regularly, to speak in private with and receive visits from (i) the child's solicitor, (ii) another person representing the child, including an advocate appointed for the child by the Office of Child and Family Service Advocacy, (iii) the

Ombudsman appointed under the *Ombudsman Act* and members of the Ombudsman's staff, and (iv) a member of the Legislative Assembly of Ontario or the Parliament of Canada; and (v) to send and receive mail that is not read, examined or censored by another person.

4. Access to appropriate information (art. 17)

718. Guidelines for the protection of children from inappropriate material exist in the *Theatres Act*, which regulate the times and ages at which children may attend movie theatres, and the ages at which children may view certain classifications of films.

719. The *Liquor Licence Act* and regulations prohibit advertising aimed at those under the legal drinking age.

720. Ontario's public libraries purchase and make available information and materials from a diversity of national and international sources. Content, quality of presentation and age appropriateness are primary purchase criteria for acquisition of material for Ontario public libraries. The majority of Ontario's public libraries are aware of, support, and endorse the principles and activities of the Canadian Children's Book Centre and the International Board on Books for Young People (IBBY-Canada). The purchasing power of Ontario's public libraries encourages and supports the production of children's materials. Ontario's public libraries are a major vehicle for the dissemination of children's books.

721. Through the ministry's funding of cultural agencies such as TVOntario, the Ontario Film Development Corporation (OFDC), and the Ontario Publishing Centre, the province encourages and supports the dissemination of information and material of social and cultural benefit to all Ontarians, including children. As an educational broadcaster, TVOntario plays a particularly prominent role in this regard. Both TVOntario and the OFDC moreover, are involved with co-production arrangements thereby facilitating the dissemination of such material from a diversity of sources.

722. A wide range of publishers, including those of children's books, are eligible for provincial funding. In this way, the province contributes to the production and dissemination of children's literature.

5. Freedom of thought, conscience and religion (art. 14)

723. Under the common law rules which apply in Ontario, the persons who have lawful custody of a child have the right to direct the child's religious training, subject to the best interests of the child (Delaurier v. Jackson, [1934] Supreme Court Reports 149).

724. With respect to children in residential care, the *Child and Family Services Act* provides "A child in care has a right ... to receive the religious instruction and participate in the religious activities of his or her choice ...".

725. Public schools and school programmes, including opening or closing exercises and education about religion, must not indoctrinate or give primacy to any particular religious faith. Public schools may provide education about religion to enable students to acquire knowledge and awareness of a variety of the religious traditions that have shaped and continue to shape our world. The programmes enable individuals to understand, appreciate, and respect various types of religious beliefs, attitudes, and behaviours. The purpose of these programmes is not to instill the beliefs of any particular religion.

726. Roman Catholic separate schools are denominational schools responsible for their own religious education programmes. The right to these schools was guaranteed to Roman Catholics prior to Confederation in 1867 and is retained in the Constitution of Canada.

727. Private schools are categorically distinct from the general definition of "school" as stated within the *Education Act*. Other than the general obligation to provide "satisfactory instruction", the *Education Act* places no substantive standards on private schools. By definition, they may offer programmes in religious education, which by their nature may be doctrinal.

6. Freedom of association and of peaceful assembly (art. 15)

728. Any limits on freedom of assembly permitted by the Canadian Charter are subject to the laws relating

to trespass to private property, which apply to all persons, regardless of age (*Trespass to Property Act*).

729. The *Child and Family Services Act* imposes a curfew for young people under the age of 16 years. The Act requires parents of children under the age of 16 years to ensure that these children are not in a public place between the hours of midnight and 6 a.m. or in a place of public entertainment unaccompanied during the same times. A peace officer may apprehend any child in such a place and return them to their home or to a place of safety.

7. Protection of privacy (art. 16)

730. A child in residential care has the right to reasonable privacy, uncensored mail, receive visits, personal property, religious interaction, education, recreation, food, clothing, medical and dental care and a plan of care under Part V (Rights of the Child) of the *Child and Family Services Act*.

731. No person, other than prescribed school authorities, shall have access to a school record of a person under 18 without the written consent of the person's parents or guardian (*Education Act*).

732. Ontario's access and privacy legislation (the *Freedom of Information and Protection of Privacy Act* and the *Municipal Freedom of Information and Protection of Privacy Act*) protects the rights of all individuals, regardless of age, to privacy from other individuals as well as from government authorities. The legislation applies to provincial and local government bodies as well as to other public bodies such as school boards and police forces.

733. The legislation protects privacy in a practical way by allowing any individual to complain to an independent body, the Information and Privacy Commission of Ontario, about alleged breaches of privacy. The complaint process is free of charge and without restriction. The Commission has the power to investigate breaches of privacy and to order a public body to destroy personal information improperly collected and to refrain from the activity in the future.

734. In Ontario, any person, regardless of age, may take civil proceedings to recover damages resulting from defamation. The *Libel and Slander Act* regulates such proceedings.

F. Family environment and alternative care **1. Parental guidance (art. 5)**

735. The *Children's Law Reform Act* provides that the mother and father are equally entitled to custody of the child and have the duty to exercise the common law rights and responsibilities of parents. Any person — such as members of the extended family or of the community — may apply to a court for custody of the child. If they are granted custody, they have the same rights and responsibilities as a natural parent. Anyone who has rights and responsibilities of a parent "must exercise those rights and responsibilities in the best interests of the child" (section 20 (2)). In any judicial determination of custody rights, "the court where possible shall take into consideration the views and preferences of the child to the extent that the child is able to express them" (section 65).

736. In providing child development, child treatment, child welfare and other services, the *Child and Family Services Act* "recognizes that while parents often need help in caring for their children, that help should give support to the autonomy and integrity of the family unit and, wherever possible, be provided on the basis of mutual consent ...".

737. The Act also states that "all services to Indian and Native children be provided in a manner that recognizes their culture, heritage and traditions and the concept of extended family". In Part X, "customary care" is defined as "... the care and supervision of an Indian or Native child by a person who is not the child's parent, according to the custom of the child's band or Native community."

2. Parental responsibilities (art. 18, paras. 1-2)

738. Under the *Children's Law Reform Act*, "the father and mother of a child are equally entitled to custody of the child". Persons with parental rights and responsibilities "must exercise those rights and responsibilities in the best interests of the child".

739. In any judicial determination of custody rights "the court where possible shall take into consideration the views and preferences of the child to the extent that the child is able to express them".

740. Parents are assisted in child-rearing by government-funded prevention services that promote the healthy development of children. Such services include parent support groups, parent effectiveness training, counselling services, distribution of educational materials for parents, provision of home-maker services through the children's aid society, community development programmes that empower parents living in high-risk communities. Ontario also funds parent relief services for families with disabled children.

741. Parents may enter into voluntary agreements with a children's aid society when the parents need assistance caring for a child. Services provided by the society may include residential placement for the child.

742. The Government aims to support local recreation programmes, which accommodate the needs of working parents.

3. Separation from parents (art. 9)

743. The *Children's Law Reform Act* sets out the procedures for resolving disputes about custody of the child where the parents are living apart. Applications are decided by courts on the basis of the best interests of the child. All interested parties, including the child, are given an opportunity to participate in the proceedings and make their views known. The court may order an assessment of the child or the parties, or may request the Official Guardian to conduct an investigation and prepare a report (*Court of Justice Act*).

744. Where the parents live separately, the parent without custody is entitled to visiting rights unless a court order or private agreement provides otherwise. Judicial determinations of visiting rights are also made on the basis of the best interests of the child. Ontario has established pilot projects in a number of areas to provide supervised visits in cases where problems may arise between the parents or the children.

745. The *Child and Family Services Act* specifies the grounds on which the State may, without the parent's consent, intervene to protect children. A child is in need of protection where the child has suffered or is at risk of suffering physical, sexual or emotional harm; needs treatment for a medical, mental, emotional or developmental condition and the person in charge refuses or is unable to provide that treatment; is under 12 and has killed, seriously injured another person or caused serious property damage and the person in charge refuses or is unable to consent to treatment necessary to prevent a recurrence; has a history of causing personal injury or property loss or damage and the person in charge encourages the activity or fails adequately to supervise the child; has been abandoned or has had the parents die without making adequate provision for the child's future care or the parents refuse to resume custody after a residential placement; is brought before the court with the consent of the parents and, if the child is over 12, with the child's consent.

746. A child is normally taken into care only if other measures have been tried or considered. If a child must be brought into care, the children's aid society develops a plan of care that will result in either the child's return home to an improved family situation or placement in a permanent situation which will meet his or her changing needs.

747. There are specific legal procedures which must be followed when taking a child into care. A court hearing must be held to determine whether the child is in need of protection. The child is entitled to legal representation at any stage of the court proceedings. If the child does not have legal representation, the court may direct that such be provided. In those situations when a court order is made for a child to be taken into care, application regarding visiting rights may be made. Generally, the court will permit visits except where it is not considered to be in the child's best interests.

748. When the child is an Aboriginal person, the preservation of the child's cultural identity shall be taken into consideration. If the court decides that it is necessary to remove an Aboriginal child from the care of the person who had charge, the child shall normally be placed with a member of the child's extended family, band or Aboriginal community or another Aboriginal family.

749. The Ontario Provincial Police has formal procedures for carrying out court orders to assist parents and guardians who have been wrongfully deprived of custody or visiting rights by the other parent. Procedures have also been implemented in Police Orders to buttress a federal government initiative aimed at transporting children who have been abducted by a parent who does not have legal custody.

750. The *Young Offenders Act Operational Policy and Procedures Manual* and *Ministry of Correctional Services Act* require that the young person's parents be contacted whenever there is detention, imprisonment or death of a youth.

4. Recovery of maintenance (art. 27, para. 4)

751. Social welfare agencies may make an application against a parent for support of a child if the agency is providing benefits to the child (*Family Law Act*).

752. The *Family Support Plan Act* creates a government agency to collect court awarded support for the child. Employers are obliged to deduct payments from the parent's wages and to forward them to the Family Support agency for payment to the child.

753. The *Reciprocal Enforcement of Support Orders Act* establishes a regime for agreements to reciprocally enforce support orders. At present, Ontario has agreements with all other provinces, 40 American states and 15 other countries.

5. Children deprived of a family environment (art. 20)

754. A fundamental goal of child protection legislation is to specify the grounds on which the State may, without the parents' consent, intervene to protect children. The *Child and Family Services Act* provides an objective minimum standard of care, concentrating on specific harms from which children must be protected. Among the twelve factors which must be considered when making decisions in the best interests of the child are cultural background, religious faith (if any), the child's relationships through blood or adoption order, the importance of continuity of care, the merits of plan for care as compared with staying with the parent, and the child's views and wishes.

755. The *Child and Family Services Act* incorporates rights for children in residential care, including children in foster care or those placed by an order under the *Young Offenders Act*. The Act contains a listing of fundamental rights to which every child in residential care is entitled (see comments on article 12). Rights are enforced through a complaint and review procedure.

6. Adoption (art. 21)

756. Adoption of a child under the *Child and Family Services Act* is made by the court in the "child's best interest". The Act provides for adoption of children through a children's aid society, a private agency or an individual licensed under the Act. If the adoptive applicants are related to the child, they may apply directly to the court. The Act governs all aspects of placing a child for adoption in Ontario.

7. Illicit transfer and non-return (art. 11)

757. Ontario is party to the *Hague Convention on the Civil Aspects of International Child Abduction (Children's Law Reform Act)*. As well, the Act discourages bringing abducted children into Ontario by denying recourse to the courts for custody orders unless the child is habitually resident or has a real and substantial connection with Ontario (*Children's Law Reform Act*, section 22). At the same time, there is a presumption in favour of recognizing custody orders made by tribunals outside Ontario and applications may be brought to enforce those orders (section 41). The court may order return of the child (section 40). To prevent abduction from Ontario by a person otherwise prohibited from removing the child, the court may direct the police to locate, apprehend and deliver the child to the person entitled to lawful custody (section 36). In all these matters, the court is required to consider the views and preferences of the child (*Children's Law Reform Act*, section 64).

8. Abuse and neglect (art. 19); recovery and reintegration (art. 39)

758. Measures for the protection of children from the forms of violence listed in article 19, other than those already mentioned under article 9, include a variety of programmes which support high-risk parents in child-rearing responsibilities; sexual abuse prevention and education programmes in schools; instructing persons

entrusted with children about their duty to report child abuse; sexual abuse treatment programmes; other child and family counselling services; and the operation of the Child Abuse Register under the *Child and Family Services Act* to assist children's aid societies in monitoring and tracking of verified child abuse cases.

759. Every person who performs professional or official duties with respect to a child has a duty to report suspected child abuse. Failure to report is an offence.

760. As a result of the Review of the Safeguards for Children in Residential Care (1991), a number of initiatives have been undertaken, including standardized training for staff working with young offenders, improved reporting to the Ministry of Community and Social Services of serious occurrences within agencies, development of protocols for investigating abuse in residences for children with developmental or physical challenges, funding the development of a handbook of services for Aboriginal people, updated licensing standards and procedures, development of a video explaining children's rights, increased advocacy measures for children and families, and funding the expansion of peer group networks for youth in residential placements.

761. The Government has introduced amendments to the *Regulated Health Professions Act* to deter and prevent the sexual abuse of patients by regulated health professionals, by requiring mandatory reporting of abusers, and improvements to the disciplinary process.

762. In cases of family violence, women with children are given high priority for social housing.

763. The Ontario Provincial Police are fully committed to ensuring that children are protected from all forms of physical or mental violence, injury or abuse, etc. Procedures have been established for working with children's aid societies in child protection cases under the *Child and Family Services Act*.

764. Ontario Provincial Police Community Services officers teach "street-proofing" programmes in the schools. Older students are made aware of issues surrounding "date rape" and sexual assault prevention. Many police detachments have assigned liaison officers to area high schools to deal with the growing problem of violence in schools.

765. The Ontario Police College provides training to new police recruits about child sexual abuse. In addition, it has recently developed, in conjunction with the Institute for the Prevention of Child Sexual Abuse, a programme for joint training of police officers and social workers.

766. Measures have been taken to protect the child from all physical or mental violence, injury of abuse, neglect or negligent treatment, maltreatment or exploitation including sexual abuse while in the care of correctional services. These are well documented in the policy manual entitled the YOA Operational Policy and Procedures Manual and the Residential Services Standards and Guidelines

767. The Province of Ontario and Aboriginal organizations are committed to work together in partnership to develop a comprehensive provincial strategy to respond to Aboriginal family violence. Aboriginal family violence refers not to isolated, specific incidents of abuse, but rather to the physical, mental, emotional, and spiritual welfare of Aboriginal individuals, families, extended families and nations. The Aboriginal Family Violence Joint Steering Committee was created in July 1991 to oversee an Aboriginal-driven community consultation process and a joint Aboriginal family healing strategy development process. The Committee is comprised of 8 Aboriginal provincial or territorial organizations and 10 Ontario ministries.

768. Children who are victims of criminal violence are entitled to financial compensation, including compensation for pain and suffering under the *Compensation for Victims of Crime Act*. Compensation is awarded by an administrative agency, the Criminal Injuries Compensation Board. The Official Guardian may make an application on behalf of an abused child (*Child and Family Services Act*). Where it is in the interest of a victim of child abuse, any hearing for compensation may be closed to the public (*Compensation for Victims of Crime Act*).

769. A victim and witness programme in 13 jurisdictions assists children who are victims or witnesses of abuse and neglect to participate in court proceedings with minimum harm to the child's emotional and

psychological well-being.

770. The Government has adopted a strategy for assisting persons who were child victims of abuse in provincial institutions. The strategy includes counselling and rehabilitation services.

9. Periodic review of placement (article 25)

771. The *Child and Family Services Act* provides for the establishment of Residential Placement Advisory Committees. Part of their mandate is to review certain residential placements of children away from their parents in residences with 10 or more beds.

772. The Act provides for a review of every child who is subject to an order for society supervision, society wardship or Crown Wardship. The Society, the child if he or she is at least 12 years of age or both, a parent of the child may apply for a status review. The Act provides for an annual review of every Crown Ward.

773. The Act provides for the establishment of the Custody Review Board, which, as part of its mandate, will review a young person's placement in a residence under the *Young Offenders Act* upon request from the young person.

774. Children may go to the Office of Child and Family Advocacy to address difficulties in placements.

775. Under the *Mental Health Act*, a child who is 12 years of age or older but less than 16, who is an informal patient in a psychiatric facility and who has not so applied within the preceding three months may apply in the prescribed form to the Review Board to inquire into whether the child needs observation, care and treatment in the psychiatric facility.

776. In determining whether the child needs observation, care and treatment in a psychiatric facility, the Review Board shall consider whether the child needs care of a kind that the psychiatric facility can provide, whether there is an alternative to the psychiatric facility in which the child's needs could be more appropriately met, the child's views and wishes (where they can be reasonably ascertained) and any other matter that the review board considers relevant.

G. Basic health and welfare **1. Survival and development (art. 6)**

777. Refer also to article 24, "Health and health services".

778. Ontario's Income Maintenance Programmes (*General Welfare Assistance Act, Family Benefits Act*) ensure a responsive system of financial assistance to persons in need for a prolonged period of time and includes sole support parents raising children alone. Children are a priority in the calculation of these allowances, which include dental, vision and health care as well as special clothing allowances. There is a Handicapped Children's Programme for families caring for disabled children in their own homes.

779. Ontario is committed to improving the quality of life in Aboriginal communities through its Aboriginal agenda. Ontario's Aboriginal Community Capital Infrastructure Fund was established in 1991 to meet Ontario's commitment to improve the quality of life in Aboriginal communities through improving the health, safety and environmental conditions in Aboriginal communities by addressing existing infrastructure deficiencies. A portion of this Fund is committed to on-reserve, infrastructure programmes which address the critical need for safe drinking water and appropriate handling of sewage waste.

2. Disabled children (art. 23)

780. Ontario has a range of legislation, programmes and services relevant to the goals of article 23. They cover children with physical, mental, developmental, sensory and invisible disabilities. These supports enable disabled children to develop their capacities for independence, to grow up in non-institutional family and group settings and to participate in community life. Supports are offered in key areas: education, health, housing, recreation and social services. The majority of these services are free of charge. One exception is the Assistive Devices Programme which requires a contributory payment.

781. Four new pieces of legislation — The *Advocacy Act*, the *Consent to Treatment Act*, the *Substitute*

Decisions Act and an amending act consequent on the other three — due to be proclaimed in 1995 — will provide safeguards for young persons with disabilities in the areas of self-determination, access to entitlements and the ensuring of due process.

782. The *Advocacy Act* provides aid to those vulnerable persons, 16 years of age and older, who, because of moderate or severe disabilities, illnesses or infirmities, find it difficult or impossible to say what they want, find out what their rights are or have their rights and wishes respected. The Act provides for individual advocacy, systemic advocacy, non-instructed advocacy and rights advice to those in danger of losing the right to make their own decisions. Rights advice was included in the Act to offset potential unwanted guardianship and substitute decision-making provided under two companion pieces of legislation, the *Substitute Decisions Act* and the *Consent to Treatment Act*.

783. The *Consent to Treatment Act* provides protection to individuals of any age in determining their own health care treatment. See paragraph 683 above.

784. The *Substitute Decisions Act* protects, among others, those 16 years of age and older deemed mentally incapable in matters related to their own personal care; that is, those who cannot make decisions or appreciate the consequences of their decisions related to health care, nutrition, shelter, clothing, hygiene and safety. The Act provides safeguards against undue state intervention and defines the process whereby if incapacity is established, substitute decision makers can be appointed.

785. Ontario has undertaken a plan to establish a comprehensive community service system in which all developmentally handicapped people receive the support they require in their home communities, to phase out institutional placement of people with developmental handicaps and to strengthen supports for families caring for developmentally handicapped children at home.

786. In the first phase of this plan, children were transferred from institutions to community alternatives — community group or foster homes or in many cases in their own homes. Additional services support families in maintaining children with developmental disabilities at home. Such services include infant stimulation programmes, parent relief, assessment services, family support workers and special services at home which assist parents to provide for the needs of their child in the family's home.

787. Ontario also funds some speech and language services for persons with developmental disabilities. Over the past 15 years recreation services for children have increasingly supported children with disabilities in community-based settings. Since 1980, school boards have been required to provide special education programmes and services for all exceptional students (pupils with behavioural, communications, intellectual, physical or multiple exceptionalities). Within this context, school boards have been encouraged to provide a range of placements to meet the needs of these students. As a matter of policy, Ontario is committed to increasing opportunities for the integration of exceptional students into regular classrooms and is working on developing policies to support this direction.

788. The *Education Act* will be amended to remove references to "trainable retarded" students. This will allow for the implementation of a uniform procedure for the identification and placement of all exceptional pupils.

789. The Assistive Devices Programme was established in 1982 (International Year for the Disabled Person) to help parents obtain devices that would aid the rehabilitation of their physically disabled children. The programme facilitates the rehabilitation of children with long-term physical disabilities by helping to purchase basic, selected devices that promote the independence of the child.

790. The School Health Support Services Programme was established in 1984 to ensure that all children have access to the public education system. The programme provides nursing and therapy services to allow children with special health needs to attend school.

791. Children's Treatment Centres are facilities which provide therapy services to children and youth (up to 19 years) with physical handicaps and communication disorders. The core services are physiotherapy, occupational therapy and speech pathology.

3. Health and health services (art. 24)

792. Under the *Health Insurance Act*, the Ontario Health Insurance Plan provides for insurance against the costs of insured services on a non-profit basis to all residents of Ontario. The Act specifies that every person who is a resident of Ontario is entitled to become an insured person and "every dependent of an insured person is an insured person". In effect, all essential health care services are available to children without charge.

793. The boards of health in Ontario are responsible for ensuring health education to parents and child care-givers. Programmes give priority to parents most in need, such as parents of first babies, adolescents and mothers, low-income groups and developmentally handicapped parents.

794. Under the authority of the *Health Protection and Promotion Act*, mandatory health programmes and service guidelines have been developed for children and adolescents to enable them to attain their optimal level of physical, mental, emotional and social development. Services are geared to need: postnatal home visits as soon as possible but no later than four weeks after the infant's discharge from hospital, group sessions to parents and care-givers, and consultation to and referral of parents and care-givers, as appropriate.

795. A community programme, "Best Start", aims to reduce the incidence of low birth-weight (less than 2,500 grams). Two demonstration sites will receive funding from 1992 to 1998 to support and mobilize their communities to promote the health of women and families before, during and after pregnancy. The sites will develop health promotion strategies to address a wide range of risk factors associated with low birth-weight.

796. Under the Community Health Centre Programme, individual centres have identified teens as a priority group. Some centres target programmes to multicultural youth and street youth.

797. A Children's Health Strategy is being developed with a goal to maintain or improve the well-being of children and youth in the province.

798. With respect to article 24, paragraph 3, (abolishing traditional practices prejudicial to the health of the child), the College of Physicians and Surgeons of Ontario announced in March 1992 that female circumcision, excision and infibulation by a physician who is licensed in Ontario will be regarded as professional misconduct.

799. One of the 10 Essential Cross-curricular Learning Outcomes identified in the Ministry of Education and Training Common Curriculum, Grades 1-9 (February 1993), states that students will demonstrate an understanding of the role of personal health in our lives and demonstrate the ability to make wise and safe choices for healthy living. Health education is a mandatory component of education in Ontario from the primary division up to and including the compulsory credit in physical and health education required for graduation from secondary school.

4. Social security and child care services and facilities **(arts. 26, 18, para. 3)**

800. See article 6 concerning Ontario's Income Maintenance Programmes.

801. The Ministry of Community and Social Services is responsible for the development, design and monitoring of the child-care system in the province. The four main goals of the child-care programme are: health child development; health, stable families and communities; women's equality in the workforce; and economic renewal.

802. At present, there are no restrictions on use of child-care services, where the programmes exist. Handicapped children are equally able to use programmes.

5. Standard of living (art. 27, paras. 1-3)

803. Under the *Family Law Act*, "Every parent has an obligation to provide support, in accordance with need, for his or her unmarried child who is a minor ... to the extent that the parent is capable of doing so". (Support obligations between divorcing parents are dealt with under the federal *Divorce Act*).

804. Children in needy families are housed directly through the Ontario Housing Corporation (the province's public housing agency with 84,000 units) or in community-based non-profit groups that provide an additional 113,000 units of affordable housing with help from the Ministry of Housing (*Housing Development Act, Ontario Housing Corporation Act*).

805. Altogether there are 155,000 children (aged 0 to 17 years) in rent-geared-to-income units in public housing and in geared-to-income non profit units which are cost-shared with the Federal Government. Between 1986 and February 1993, approximately 57,000 new units of community-based non profit housing were built and an additional 28,000 are under development. To meet increasing needs, in 1992, the Province announced "jobsOntario" Homes under which an additional 20,000 units of community-based non-profit housing will be built. Ten per cent of this housing, or 2,000 units, will be for Aboriginal people living off-reserve.

806. Ontario's housing policy is concerned not only with the availability of basic shelter, but also with the quality of life in social housing. Accordingly, support is given to the development of tenant or community-based services by providing amenity space to tenants or community agencies to provide a broad range of services such as family resource centres, parent child drop-ins, clothing and food depots, recreation programmes, support groups and meals programmes.

807. Ontario continues to work towards improving the quality of life in Aboriginal communities through the implementation of the province's Aboriginal Agenda.

H. Education, leisure, cultural activities

1. Education, vocational training and guidance (art. 28)

(a) Paragraph 1 (a)

808. The *Education Act* provides for the attendance at school of compulsory school-age children (6 to 16 years of age). Primary and secondary education is free of charge. Rights to French-language elementary and secondary instruction are entrenched in the *Education Act* and *Canadian Charter of Rights and Freedoms*, with the objective of providing programmes, services and facilities equivalent to those of English-language education.

(b) Paragraph 1 (b)

809. Two recently released documents, the Transition Years Policy and Programme Requirements and the Common Curriculum, Grades 1-9 (February 1993) encourage schools to use a variety of instructional and organizations models in order to best meet the needs of students. The Common Curriculum also emphasizes exploration of work and career opportunities in all subject areas.

810. The curriculum in the senior division includes Cooperative Education and School Workplace Apprenticeship Programmes which provide the integration of school and work experience for students.

811. Every school board must, if so requested, provide (via direct offering or purchase) French-language education for every child where rights to language of instruction are protected under the *Canadian Charter of Rights and Freedoms*.

(c) Paragraph 1 (c)

812. All children have the opportunity to apply to attend institutions of higher education. Some programmes in these institutions have limited enrolment. Students with identified exceptionalities are entitled to specialized programmes and services. Programmes are available to help families deal with the cost of higher education.

(d) Paragraph 1 (d)

813. Information concerning occupations and post-secondary educational opportunities is available to all secondary school students. Guidance counsellors are available in all secondary schools to assist with educational and career decision-making.

814. All aspects of transition-to-work and further education are under review to ensure that elementary and secondary schools are adequately preparing students for their role in society and the world of work.

(e) Paragraph 1 (e)

815. The *Education Act* provides for the appointment of a Provincial School Attendance Counsellor, who directs the enforcement of compulsory school attendance. The Act provides for inquiries by the Provincial School Attendance Counsellor into cases of non-attendance. The Act provides for various school officials such as principals, supervisory officers and attendance counsellors to assist in enforcing attendance. The Act provides for the liability of parents in such enforcement. It also provides for court action by attendance counsellors in case of habitual absence. Three alternative secondary education projects have been established to help reduce the dropout rate of Aboriginal students.

2. Aims of education (art. 29)

(a) Paragraph 1 (a)

816. The school curriculum ensures that daily physical and health-related activities are part of the programme from grades 1 to 9.

(b) Paragraph 1 (b)-(d)

817. The Essential Cross-curricular Learning Activities and the outcomes of the Self and Society Programme area identified in the Common Curriculum, Grades 1-9 (February 1993) reflect the spirit of article 29. For example, it is the responsibility of all teachers in all programme areas to demonstrate a commitment to peace, social justice and the protection of the environment, to be able to interact and work effectively with others, to demonstrate respect for human rights and to be motivated to fulfil the responsibilities of citizens in a democratic society.

818. Through the Self and Society Programme, integrating business studies, family studies, geography, guidance, history and physical and health education, it is the responsibility of teachers to ensure that students will be willing and able to resolve conflicts in a cooperative and non-violent manner and to contribute to social change through peaceful, democratic action.

819. With regard to respect for the child's language, since 1977, Ontario has provided for the instruction in languages other than Canada's official languages. Publicly funded schools boards must by law offer instruction in a heritage language when requested by the parents of 25 elementary school-age children. All children regardless of language background are entitled to enrol in any of the 63 Heritage Languages Programme.

820. French-language education, programmes, services and facilities are also in place.

(c) Paragraph (a)

821. A team of French-speaking educators and professionals in support of education is available to French-language schools, particularly in geographically and demographically isolated Franco-Ontarian communities. Their mandate is to provide direct pupil services and professional development for the educators in such schools.

(d) Paragraph (b)

822. Using federal funds, Ontario makes available annually French-speaking post-secondary students to assist French-language secondary school teachers in their task of preserving and promoting the French language and culture in the school setting.

(e) Paragraph (c)

823. Funds are available to assist French-language schools to organize and participate in French-language cultural activities with a view to preserving and promoting the French language and culture.

3. Leisure, recreation and cultural activities (art. 31)

824. All cultural and recreation agencies and organizations funded by the government are encouraged to offer programmes for children and students; attractions agencies, such as the Art Gallery of Ontario, the Ontario Science Centre and the Royal Ontario Museum, have extensive educational programming, most often on-site. Through the Ontario Arts Council's Arts Education programme, children throughout Ontario benefit from a variety of arts activities in their classroom. As mentioned above, TVOntario, through a range of children's programming, contributes to children's participation on cultural life.

825. The government also directly and indirectly supports the development of parks, playgrounds, facilities and programmes for community members, including children, through policy development and programme funding. Ontario's 81 sports organizations provide athletic opportunities for children and youth.

826. Ontario's public libraries respect and promote the rights of the child to participate fully in cultural and artistic life through materials and programmes that encourage children of all ages to learn about and participate in a wide variety of cultural, artistic, recreational and leisure activities.

I. Special protection measures

1. Refugee children (art. 22)

827. Refugee children receive services under the *Child and Family Services Act*, within integrated programmes according to their special needs, including all services and programmes offered under each of the five categories of children's services: child welfare, child treatment, child development, community support and young offender programme areas.

828. Services must be responsive to the changing needs of children and families. One of the principles of the Act requires that services to children and their families should be provided in a manner that respects cultural, religious and regional differences. Refugee families with children are eligible for social housing.

2. Administration of juvenile justice (art. 40)

829. Criminal offences are dealt with under federal jurisdiction. Provinces have responsibility only for contraventions of provincial laws, which seek to regulate matters that are otherwise lawful. They do not aim to prohibit such conduct altogether or to deal with offences against the social order. Accordingly, the prosecution of provincial offences is governed by procedures that reflect the regulatory nature of these offences.

830. Persons under 16 years of age who commit provincial offences (e.g. trespassing on private property, illegal consumption of alcohol, driving a motor vehicle without a licence) are dealt with under Part VI of the *Provincial Offences Act*. (The vast majority of provincial offences committed by persons over 16 arise from the operation of a motor vehicle. Since children over 16 have the same privileges as adults to operate a motor vehicle, they are also treated as adults for the purposes of motor vehicle offences).

831. The following special provisions of the *Provincial Offences Act* apply to young persons: parents must be given notice of any charge; the identity of the young persons is not to be published; children below the age of 12 may not be convicted of a provincial offence; young persons may not be imprisoned (except where they have wilfully refused to comply with a probation order).

832. The general approach to young persons who commit provincial offences is minimum intrusion by the State, consistent with respect for provincial legislation. Provincial service providers are guided by a philosophy of involving young offenders in programming appropriate to their needs.

833. A planning process is to be implemented for each young offender to ensure full involvement of all appropriate children's services staff, provide adequate assessment of individual needs and determine the programming that is appropriate to those needs.

834. To the extent possible, the family of any young offender should be involved in decision-making, kept in contact with the young persons, given progress reports, and if appropriate, involved in programme support of the young person.

835. The Ontario Provincial Police have procedures for advising young persons of their rights and for taking statements.

3. Children deprived of their liberty (art. 37 (b), (c) and (d))

836. The *Child and Family Services Act* prohibits locking up of children except as authorized under the federal *Young Offenders Act* or under the provisions of the Act for dealing with children who, as a result of a mental disorder, may cause or suffer serious bodily harm. Both of these require a court order. All children receiving service are protected from corporal punishment. A child in care has the right to communicate with his or her family in person or by mail. In addition to the right, under the *Canadian Charter of Rights and Freedoms*, to retain and instruct counsel without delay, all persons, including persons under 18 years of age, may apply for State-paid private legal representation (*Legal Aid Act*).

4. Economic exploitation of children (art. 32)

837. The minimum ages at which young people in Ontario may begin employment are set by regulation under the *Occupational Health and Safety Act*. Although the *Employment Standards Act* and its regulations set minimum standards for hours of work for all employees in Ontario, these provisions do not provide a maximum number of hours for young people based on age or type of employment. Two other statutes, the *Child and Family Services Act* and the *Education Act*, provide legislative or regulatory guidance for the employment of children.

838. Minimum wage rates, as determined by Regulation 285 under the *Employment Standards Act*, apply to youth workers in Ontario. However, a separate, lower minimum wage applies to students under 18 years of age, working during school holidays or not more than 28 hours a week at other times. The student minimum wage is currently \$5.90, \$0.45 (7 per cent) below the general minimum wage. The minimum wage does not apply to a person employed as a student in certain recreational programmes, instructing or supervising children, at a camp for children or in training for selected professions.

839. Although there is no universal minimum age for working, the regulations under the *Occupational Health and Safety Act* do not permit children below a certain age to work in particular workplaces. The provisions vary somewhat depending on the particular sector, e.g. industry, mining, and construction, and the type of workplace within that sector.

840. The Regulations for Industrial Establishments stipulate that a worker must have reached the minimum age of 14 to work in a workplace other than a factory, 15 to work in a factory and 16 to work in a logging

operation. The Regulations for Construction Projects require that no person employ a person younger than 16 years of age at a project. A person aged 15 and who is excused under the *Education Act* from attending school, or is required to attend school only part-time, may be employed as a worker at a project. The Regulations for Mines and Mining Plants require that a person be 16 years to work at a mining plant or a surface of a mine (excluding the working face) and 18 years to work at an underground mine or at the working surface of a mine. No person is allowed to operate a mine hoist unless over 18 years where the hoist does not transport persons, and over 21 years where the hoist does transport persons.

5. Drug abuse (art. 33)

841. Drug education is a mandatory part of the health education programme for Ontario students beginning in Grade 1 (*Education Act*). In addition to receiving basic information about drugs, students are also given appropriate skills to resist being enticed to use drugs, such as decision-making skills and strategies for dealing with peer pressure. Ontario school boards are required, as of September 1991, to have drug education policies in place that deal with the prevention of drug use through education, intervention and counselling, and procedures for dealing with drug-related incidents.

842. A Provincial Substance Abuse Strategy is under development. Within the Strategy, certain vulnerable groups, including homeless youth, will be given priority.

6. Sexual exploitation and sexual abuse (art. 34)

843. Under the *Child and Family Services Act*, a child may be apprehended and may be placed in the care of a children's aid society if the court finds that the child is in need of protection because "the child has been sexually molested or sexually exploited by the person having charge of the child or by another person where the person having charge" knew or should have known. It is an offence under the Act to inflict abuse or permit the child to suffer abuse.

844. The Ontario Provincial Police combats the exploitation of children in pornography through the Anti-Rackets Branch, Pornography Section. This investigative unit, the only one of its kind in Canada, deals exclusively with pornography (photographs, magazines, videotape). In this unit's mandate and priorities, child pornography takes precedence over any other investigation.

7. Sale, trafficking and abduction (art. 35)

845. The *Child and Family Services Act* prohibits payment of any kind in connection with adoption, except prescribed expenses or proper legal fees.

8. Physical and psychological recovery and social reintegration (art. 39)

846. In Ontario, the Ministry of Health gave funds to 20 public hospitals for children's mental health out-patient services. As well, four public hospitals have psychiatric in-patient units for children and adolescents. General and psychiatric hospitals may also provide services to children with mental health problems through emergency departments and family service programmes. The Ministry of Health funds community-based mental health and addictions programmes for adolescents, and also funds approximately 30 programmes for youth. Children and adolescents receive mental health and addictions counselling from psychiatrists and physicians in private practice who bill the Ontario Health Insurance Plan (OHIP) for these services.

847. The *Child and Family Services Act* provides a range of services, including child welfare, child treatment, child development and community support, which promote "the best interests, protection and well-being of children", whether the child's need arises through neglect, exploitation, abuse or otherwise.

9. Children belonging to a minority or an indigenous groups (art. 30)

848. The principles of Ontario's 1985 Corporate Native Affairs Policy Framework are fully in accord with article 30.

849. The Statement of Political Relationship signed by Ontario and First Nations in August 1991, recognizes that the "First Nations represented by the Chiefs-in-Assembly ... exist in Ontario as distinct nations, with their governments, cultures, languages, traditions, customs and territories."

850. The Ministry of Education and Training has adopted a policy for the teaching of Aboriginal languages

and cultures in Ontario. The programme enables Aboriginal students to enhance their cultural awareness and improve their use of Aboriginal languages through study, practice and communication.

851. The government is working with Aboriginal communities to establish Native Recreation Councils which would design and deliver culturally appropriate recreation opportunities to Aboriginal children.

VI. QUEBEC

852. The Government of Québec has undertaken to comply with the *Convention on the Rights of the Child*, and therefore to respect and guarantee the rights provided for therein, by adopting Order in Council 1676-91 on 9 December 1991, in conformity with its domestic law. The present report contains information on the situation in Québec related to compliance with the Convention up to 3 December 1992.

A. Measures of general application

853. Since 1975, the *Charter of Human Rights and Freedoms* (R.S.Q., c. C-12) (the *Québec Charter*) has recognized for all without distinction, exception or preference, the fundamental rights, such as the right to life, and fundamental freedoms, such as the freedom of conscience, of religion and of opinion. These rights and freedoms are complemented by political, judicial, economic and social rights. The *Québec Charter* is binding on both the Crown and individuals and concerns those matters that come under Québec's legislative authority under the constitutional law of Canada. The victim of any unlawful interference with any right or freedom recognized by the *Québec Charter* is entitled to obtain the cessation of such interference and compensation for the moral or material prejudice resulting therefrom. In case of unlawful and intentional interference, the tribunal may condemn the guilty party to exemplary damages.

854. In addition, the National Assembly of Québec passed the new *Civil Code of Québec* (C.C.Q.) on 18 December 1991; it is an instrument of general application that governs a variety of questions covered by the *Convention on the Rights of the Child*. The new Civil Code is the fruit of over 35 years of work, consultation and discussion, and constitutes a major reform. In harmony with the *Charter of Human Rights and Freedoms* and the general principles of the law, the Civil Code governs persons, relations among persons and poverty. Its scheduled coming into force on 1 January 1994, in many ways represents a step forward in the protection of the rights of the child. It was considered appropriate to refer to it in the present report because it will form a part of the relevant legislation once it is published.

855. Since 1977, a specific organization, the Comité de protection de la jeunesse, which has since become the Commission de protection des droits de la jeunesse, has been responsible for ensuring respect for the rights of children in difficulty. Such children have specific rights recognized by specific legislation: the *Youth Protection Act* (R.S.Q., c. P-34.1).

856. Finally, in Québec, a Secretariat à la famille has the mandate of coordinating the measures adopted by the various departments to put into effect the plan of action it developed for the 1992-1994 period concerning economic support for families, and relationships, links and relationships of families with schools, leisure and cultural activities, child-care services, and health, social and community services. Thus, the Secretariat has a specific role to play where children are concerned.

857. Finally, in order to meet the particular needs of children, Québec has created two organizations devoted to youth. The Secretariat à la jeunesse is responsible for the planning, coordination and development of youth policy within government structures in order to improve the situation of youth in all sectors. The Conseil permanent de la jeunesse, made up of 15 young people from all regions of Québec, advises the minister responsible for youth, currently the Premier of Québec, on all questions concerning youth, especially in the fields of education, social affairs, employment and entrepreneurship, leisure activities and culture.

B. Definition of the child

858. Article 153 of the C.C.Q. sets the age of majority at 18 years. The Code also contains a series of provisions related to the rights of minors. Thus, a minor 14 years of age or over is deemed to be of full age for all acts pertaining to his employment or to the practice of his craft or profession. He or she may also give consent, alone, to receive care required by his or her state of health. A minor 16 years of age or over may marry with the consent of the person having parental authority; as a result of the marriage, the minor