# Federal and Ontario Component of

# Canada's Fifth Periodic Report

# Human Rights Committee

CCPR/C/CAN/2004/5

18 November 2004

UNITED
NATIONS

CCPR

International covenant on civil and political rights

Distr.
GENERAL

CCPR/C/CAN/2004/5
18 November 2004

Original: ENGLISH AND
FRENCH

HUMAN RIGHTS COMMITTEE

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

**Fifth periodic report**

**CANADA***

[27 October 2004]

* This report is issued unedited, in compliance with the wish expressed by the Human Rights Committee at its sixty-sixth session in July 1999.

GE.04-44672 (E) 140205

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## Introduction

1. The present report outlines key measures adopted in Canada from 1995 to April 2004 to enhance its implementation of the *International Covenant on Civil and Political Rights* (the *Covenant*). The report is focused primarily on issues raised by the Human Rights Committee in its Concluding Observations, issued after review of Canada's Fourth Report in 1999, and on significant developments and case law since this review.

2. In order to improve the timeliness and relevance of reporting to UN treaty bodies, effort has been taken to keep this report concise and focused on key issues. To that end, where articles under this Covenant encompass rights included within other conventions to which Canada is a party, information detailed in reports under these other conventions are referred to but, with few exceptions, not repeated in this report.

3. Canada has taken note of the concerns and recommendations raised by the Human Rights Committee. Information pertaining to these concerns can be found in this report under the relevant article of the Covenant.

4. The Concluding Observations of the Human Rights Committee and Canada's previous reports were provided to all federal departments and provincial and territorial governments. Canada's reports are available to the public on the website of the Department of Canadian Heritage at: http://www.pch.gc.ca/progs/pdp-hrp/docs/index_e.cfm.

### Consultations with non-governmental organizations

5. The Government of Canada invited 58 non-governmental organizations to give their views on the issues to be covered in the federal portion of the report. One response was received from Focus on the Family Canada (FFC), which has been forwarded to the Human Rights Committee.

6. FFC has expressed concerns with respect to Canada's compliance with the *Covenant* in relation to the following:

- Bill C-13, *An Respecting Assisted Human Reproduction*, which, according to the FFC, does not provide for human dignity and the inherent right to life of all human beings, in particular people with disabilities;

- *An Act to Amend the Criminal Code* that provides for hate crime legislation to include discrimination based on "sexual orientation" and which, according to FFC, poses a serious threat to freedom of thought, conscience and religion and freedom of expression;

- The absence of a federal level ministry tasked with a mandate to ensure that Canadian families are given protection and support; and

- The formulation of legislation that changes the definition of marriage to allow any two persons to marry, including same-sex couples.

## Part I

## MEASURES ADOPTED BY THE GOVERNMENT OF CANADA

### Article 1. Right to self-determination

7. Canada subscribes to the principles set forth in the *International Covenant on Civil and Political Rights*. Article 1 of the Covenant is implemented without discrimination as to race, religion or ethnic origin. All Canadians have meaningful access to government to pursue their political, economic, social and cultural development.

8. The Government of Canada acknowledges the Human Rights Committee's request for further explanation of the elements that make up Canada's concept of self-determination as it is applied to Aboriginal peoples. As the Government of Canada's concept of self-determination as it may be applied to Aboriginal peoples is continuing to evolve in relation to its ongoing participation in the UN Working Group on the Draft Declaration on the Rights of Indigenous Peoples and other international fora, the Government of Canada will present information on this specific issue at the oral presentation of this report.

9. Information pertaining to the Government of Canada's implementation of the Royal Commission on Aboriginal Peoples and Canada's policy on inherent aboriginal rights is included under Article 27 of this report. Provincial and territorial sections of this report also provide related information with respect to Aboriginal peoples under Article 27.

### Article 2. Equal rights and effective remedies

#### Canadian Charter of Rights and Freedoms

10. The appeal in *Doucet-Boudreau v. Nova Scotia (Minister of Education)*[1] pertained to the nature of the remedies pursuant to subsection 24(1) of the *Canadian Charter of Rights and Freedoms* (appropriate and just remedies under the circumstances) that may be granted to uphold the minority-language education rights guaranteed by the Charter. The Supreme Court of Canada ruled that the purposive interpretation of the remedies provided in the Charter requires that the intent of the guaranteed rights and remedies be furthered. In this regard, the courts must grant effective and appropriate remedies that fully and meaningfully protect the rights and freedoms guaranteed by the Charter. The Court also ruled that the superior courts have concurrent, permanent and full jurisdiction to grant remedies that they consider just and appropriate under the circumstances. The Court stated that these remedies include the power to grant injunctions against the executive branch and to monitor the implementation of the remedies ordered.

#### Specific concern of the Human Rights Committee

11. In its Concluding observations (paragraph 9), the Committee recommended that human rights legislation be amended to guarantee access to a competent tribunal and effective remedy in all cases of discrimination. The Government of Canada emphasizes that the Canadian Human Rights Commission and Tribunal have a broad mandate with respect to complaints alleging discrimination. The *Canadian Human Rights Act* (CHRA) also provides for a range of remedies at the tribunal disposal.

12. On 8 April 1999, the Minister of Justice announced the establishment of an independent Panel, chaired by Mr. La Forest, a former Justice of the Supreme Court of Canada, to conduct a review of the CHRA. The report was released on 21 June 2000 and contains 165 recommendations covering various issues ranging from significant structural and process changes to the addition of new grounds of discrimination. The Government has undertaken a cost analysis of various structural models, begun consideration of the additional grounds recommended for inclusion in the Act, and consulted with both the Canadian Human Rights Commission and Tribunal to understand the need for and impact of potential changes.

13. In follow-up to the La Forest report, the Canadian Human Rights Commission introduced new process reforms in May 2003 aimed at reducing its chronic backlog of cases and the excessive delays in the complaints process. These reforms include: (1) using Alternative Dispute Resolution in all stages of the complaints process; and, (2) referring some cases to the Canadian Human Rights Tribunal where the claimant will represent himself/herself without Canadian Human Rights Commission assistance.

14. Discussions on the repeal of s.67 of the CHRA - with the goal of ensuring all Aboriginal people, especially women, receive the full protection of the Act - continue in anticipation of the Government of Canada moving forward on CHRA reform.

15. The Committee expressed concerns that there may be gaps between the protection of rights under the Canadian Charter and other federal and provincial laws, and recommended that measures be introduced to ensure the full implementation of the *Covenant*. Canada continues its efforts in this area.

- In April 2001, the Standing Senate Committee on Human Rights was established. It was given a broad mandate to examine issues relating to human rights and, inter alia, the machinery of government dealing with Canada's international and national human rights obligations. The Senate Committee tabled its first report on 13 December 2001, which identifies a number of issues for further study as well as recommendations for action. This report is being taken into consideration in developing policies that will further enhance the implementation of human rights instruments in Canada.

- In October 2002, a federal Deputy Ministers Committee was established with the mandate to provide integrated leadership on human rights issues and the responsibility to ensure coordinated communication, dialogue and improved horizontal management and share responsibility for implementing international human rights obligations. It should be noted that some provinces have also begun implementing additional interdepartmental committees to deal with human rights issues within their jurisdictions.

16. With respect to the Committee's more specific recommendation, which suggests that consideration be given to establishing a public body for overseeing implementation and reporting on deficiencies, this has been discussed and will be given further consideration within the context of follow-up to the recommendations of the CHRA Panel Review.

## Article 3. Equal rights of men and women

17. Canada reports more fully on its implementation of this article in its reports on the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW). Canada's fourth and fifth reports on CEDAW, an update paper and the statement made by the Head of Delegation during Canada's 2003 appearance before the CEDAW treaty body are available on the Internet at www.pch.gc.ca/progs/pdp-hrp/docs/cedaw_e.cfm. These documents provide information on Canada's efforts to achieve equal rights and improve the situation of women.

18. While Canadian women have made many gains in achieving formal equality, full substantive equality has yet to be achieved. Building upon the foundations of Federal Plan for Gender Equality (1995 2000), the Government of Canada, in 2000, approved the Agenda for Gender Equality (AGE), a government wide multi-year strategy to ensure that gender equality becomes a reality for Canadian women. The components include accelerating implementation of gender based analysis commitments; enhancing voluntary sector capacity and engaging Canadians in the policy; and meeting Canada's international commitments and treaty obligations.

19. Following a number of high profile and lengthy pay-equity cases, an independent task force and secretariat conducted a comprehensive review of relevant legislation, regulations and guidelines. The aim of the review was to identify an efficient way to achieve and implement effective pay-equity policies. The Pay Equity Task Force released its report in May 2004, and government officials are studying the report.

20. Since the adoption of the *Canadian Human Rights Act* in 1977, the status of women in Canada has improved markedly. However, more than one in five complaints received by the Canadian Human Rights Commission over the last few years involved discrimination on the grounds of sex. Many complaints pertain to pregnancy, for example not hiring or renewing qualified women because they were pregnant. Sexual harassment in the workplace is another area where there is a need for continuing vigilance. The *Canada Labour Code* requires every employer to make every reasonable effort to ensure that no employee is subjected to sexual harassment. They are also required to issue a policy statement concerning sexual harassment. To assist employers in meeting the legal requirements and develop anti-harassment policies, the Canadian Human Rights Commission, in cooperation with Human Resources Development Canada and Status of Women, developed in 2001 a guide for employers, entitled Anti harassment Policies for the Workplace.[2]

### Specific concern of the Human Rights Committee

21. Canada shares the Committee's concern (paragraph 20 of the Concluding Observations) that women have been disproportionately affected by poverty. Tackling poverty, particularly for children and lone parent mothers, as well as for Aboriginal and immigrant women, continues to be a challenge and priority for the Government of Canada. However, the most recent data available indicates that, starting in 1997, there has been a continuous downward trend in poverty rates in Canada.

22. Over the last few years, the federal government has introduced a series of measures that have steadily developed support for low and modest income families with children. Governments across Canada have continued to introduce new or enhanced measures to improve women's situation in paid work, to help families meet their income needs and balance employment and family responsibilities, and to gain access to other economic resources such as affordable housing. As part of its commitment to reduce poverty and further women's economic equality, the Government of Canada is pursuing activities in a variety of areas:

- Parental benefits under the Employment Insurance (EI) program were extended from six months to one year;
- EI coverage is now extended to part time workers, the majority of whom are women;
- The National Child Benefit System commits all levels of government to reduce child poverty by providing increased Canada Child Tax Benefits to low income families as well as child related services (see article 24).

23. In 2003, the government established a number of initiatives to promote women's entrepreneurship including the introduction of tax measures in support of the small business sector and the creation of a Task Force on Women Entrepreneurs. The task force released its report in October 2003, and made recommendations in four areas: recognition of the challenges faced by women entrepreneurs; information, training and retraining; access to capital; and export marketing. The government is currently assessing these recommendations and will report on how these are addressed in its next report under the CEDAW.

24. In its Concluding observations (paragraph 20), the Committee also expressed its concern that social program cuts in recent years have exacerbated the inequalities suffered by women affected by poverty. As explained further in Canada's Fourth Report on the *International Covenant on Economic Social and Cultural Rights*, the 1990s were a period of major transformation in public policy for Canada. It was during this period that Canadians and their governments became convinced that massive annual deficits and growing public debt could not continue. There was increasing concern about the long-term sustainability of fundamental social programs. During this period, the federal, provincial and territorial governments faced the challenge of fiscal responsibility and bringing their fiscal deficits under control. As governments restructured and their fiscal situations improved, they were able to reinvest in a number of initiatives supporting Canadian families with children, and thereby benefiting women, and beginning to address any disproportionate impacts that earlier program cuts may have had on women.

25. Collectively, federal, provincial and territorial governments succeeded in improving economic conditions and improving the situation for women. For example, in 2002:

- Women's participation rate in the labour force increased to 59.8%;
- Employment growth was greater for women (1.4%) than men (0.6%);
- Growth in full-time employment for women (1.5%) exceeded that of men (0.4%);

- 7.1% of all female labour force participants were unemployed compared to 8.1% of male labour force participants;

- 72% of women with children less than age 16 living at home were part of the paid labour force; and

- 67% of female lone parents with children less than 16 living at home were employed (increasing 17 percentage points between 1995 and 2002).

26. Overall, low-income rates for women have declined since the mid-1990s. According to Statistics Canada's after-tax Low-Income Cut-offs, the poverty rate of women aged 18 to 64 has decreased from a high of 14.7% in 1996 to 11.5% in 2001. Likewise, the low-income rate for female lone parents has declined from a high of 49% in 1996 to 31.9% in 2001.

27. In 2003-04, the federal government increased the Canada Health and Social Transfer (CHST), the primary mechanism by which the Government of Canada transfers funds to provincial and territorial governments for health care, post-secondary education, social assistance and social services, including early childhood development, to $37.9 billion (compared to $25.8 billion in 1997/98).

*Aboriginal Women*

28. In its Concluding Observations (paragraph 19), the Human Rights Committee recommended that issues related to the status of Aboriginal women and children still outstanding after the 1985 amendments to the *Indian Act* be addressed.

29. One such issue is the gap in law with respect to matrimonial real property on reserve lands, which has been a pressing concern to both First Nations and to the Government. At present, people living on a reserve have fewer rights regarding their matrimonial home when a marriage or common-law relationship ends than do people living off a reserve. Most of the legal rights and remedies found in Canadian laws relating to the matrimonial home, which apply off reserves, are not available to people living on a reserve.

30. In September 2003, a new research report on the socio-economic effects of marriage breakdown on First Nation women and their children provided further insight into on-reserve matrimonial real property issues. The report, "Urban Aboriginal Women in British Columbia and the Impacts of the Matrimonial Real Property Regime" is an exploratory study based on interviews with women who, following marital breakdown, left their reserves to live in urban British Columbia. This report is one of several research projects recently undertaken by the Department of Indian and Northern Affairs Canada in its efforts to better understand how contemporary matrimonial real property issues have affected the lives of reserve residents, most particularly women.

31. In November 2003, the Standing Senate Committee on Human Rights, which had undertaken a study on the issue, tabled an interim report, entitled "A Hard Bed to Lie In:

Matrimonial Real Property on Reserve." This report recommends an amendment to the *Indian Act* which would allow provincial/territorial laws with respect to the division of both personal and real matrimonial property to apply on reserves. The Government of Canada is now studying this report and its recommendations.

32. Under Gathering Strength, Canada added $500,000 annually to the Aboriginal Women's Program, which provides support to independent Aboriginal women's organizations and community groups, to enable these women's organizations or groups to: undertake research, develop strategies, enter into discussions, distribute information, participate in Aboriginal self-government initiatives, and communicate with other Canadians and Aboriginal people on the position of Aboriginal women in regards to Aboriginal self-government.

## Article 6. Right to life

33. The *Immigration and Refugee Protection Act* (IRPA) came into effect 28 June 2002. Risk to life constitutes an express ground for protection in IRPA (section 97).

### Canadian Charter of Rights and Freedoms

34. The Supreme Court of Canada, in *United States v. Burns*,[3] an extradition case, decided that assurances that the death penalty will not be imposed by the requesting State are constitutionally required by section 7 of the *Canadian Charter of Rights and Freedoms* (the *Canadian Charter*) in all but exceptional cases.

### Specific concern of the Human Rights Committee

35. In its Concluding observations (paragraph 12), the Committee recommended that Canada take measures to address the problem of homelessness.

36. In 1999, the Government of Canada launched the three-year National Homelessness Initiative (NHI) to help reduce and prevent homelessness across Canada. This included $305 million in funding under the NHI's cornerstone program for the Supporting Communities Partnership Initiative (SCPI) which is designed to help communities across Canada, in partnership with all levels of government and not for profit and private stakeholders, to plan and implement comprehensive local strategies addressing the needs of homeless men, women, children and youth. As a result, many thousands of low-income housing units in a state of disrepair have been brought back, through renovation, to safe conditions. Some of these renovated units are shelters for victims of family violence and rooming houses for people at greatest risk of homelessness.

37. On 4 March 2003, the Government of Canada renewed its commitment to fighting homelessness in communities across Canada by investing $405 million over the next three years. There will be a stronger focus on longer-term transitional and supportive interventions and preventative measures.

38. In November 2001, the Government of Canada introduced a $680 million Affordable Housing Program to stimulate the production of affordable housing, including units for the relative homeless. An additional $320 million investment was made in 2003, bringing the total investment to $1 billion by 2007-2008 ($2 billion with equal financial contributions

from the provincial and territorial governments). The Government of Canada also announced a $384 million investment in housing renovation. The Affordable Housing Program will be evaluated in a few years, when sufficient data is available.

39. The Government of Canada's residential renovation assistance was evaluated in 2002. This evaluation confirmed that, overall, the assistance is well targeted to low-income households, including those at risk of homelessness. For example, in 2002: 20% of the renovated rooming houses were occupied by the former homeless; more than one-third of the occupants of renovated rooming houses and 10% of the occupants of renovated rental units reported that hey had been homeless at some time in the pasty five years; 37% of the occupants of renovated rooming houses and 7% of the occupants of renovated rental units reported that they had used shelters in the past five years; more than 50% of the owners of renovated rooming houses and rental units said that they had rented to homeless people; and 47% said that they have an increased number of tenants who were previously homeless. These data indicate that Government's of Canada renovation assistance is reducing the level of homeless population.

40. A total of $161 million in additional funding was also made available to address the needs of particularly vulnerable and/or over represented groups within the homeless population, namely Aboriginal persons ($59 million), youth ($59 million) and victims of family violence ($43 million).

## Article 7. Protection against torture

41. More information is provided in the reports the Government of Canada has submitted pursuant to the *Convention against Torture*.

*Medical or scientific experimentation*

42. New *Clinical Trial Regulations of the Food and Drug Act* came into effect in September 2001. Among other things, the Regulations require the sponsor to secure approval of the research protocol by a Research Ethics Board (REB). The principal mandate of an REB is to "ensure the protection of the rights, safety and well being" of research subjects. The Regulations also require clinical trial sponsors and investigators to adhere to the principles of good clinical practice, of which free and informed consent is a fundamental element. The REB is responsible for reviewing all research involving human subjects funded, conducted, and supported by the Department, and operates in accordance with the Tri Council Policy Statement: Ethical Conduct of Research Involving Humans.[4]

*Violence against Women*

43. Eliminating systemic violence against women is a priority for the Government of Canada. Canada recognizes that gender violence, of any kind, is a violation of fundamental human rights. The government reaffirmed its commitment to reduce family violence, particularly against women and children, by funding a third phase of the Family Violence Initiative, where policy makers, researchers and community groups integrate family violence prevention and can be better equipped to support policy and program action. Further information on the Family Violence Initiative is available in Canada's reports under the CEDAW and the ICESCR.

44. In December 2002, the Federal Provincial Territorial Ministers Responsible for the Status of Women issued a report entitled Assessing Violence Against Women: A Statistical Profile.[5] This report provided evidence that the incidence and severity of assaults against women appears to have slightly declined over the past decade. However, overall, violence against women, particularly young women, continues to be a persistent social and economic problem. *Family Violence in Canada: A Statistical Profile 2003* was also recently released.

45. In September 2003, Federal Provincial Territorial Ministers Responsible for the Status of Women concluded their 22nd annual meeting, reaffirming their commitment to advancing equality for women. Ministers focused attention on the circumstances of Aboriginal women, both on and off reserve, with violence as one of the priorities. Accordingly, Ministers established a working group to develop a plan of action to guide their work in this important area.

*Non-refoulement*

46. Pursuant to s.97 of the *Immigration and Refugee Protection Act*,[6] the risk of torture, within the meaning of Article 1 of the *Convention against Torture*, and the risk of cruel and unusual treatment or punishment are grounds for conferring protection in Canada.

**Specific concerns of the Human Rights Committee**

47. In its Concluding observations (paragraph 14), the Human Rights Committee expressed its concerns that Canada considers that it is not required to comply with requests for interim measures. Canada is of the view that interim measures requests are non-binding. Article 39(2) of the *Covenant* provides that the Committee shall establish its own rules of procedure. Rule 86 of the Committee's Rules of Procedure provides that the Committee may inform the State of its views as to whether interim measures may be desirable to avoid irreparable damage to the victim of the alleged violation. The language of Rule 86 is consistent with the non-binding nature of the Committee's views. Neither the Covenant nor the Optional Protocol provides for the Committee to make orders binding on States.

48. Nevertheless, the Government of Canada always gives careful consideration to interim measures requests from the Committee, and will respect them where it is possible to do so. Canada notes that it usually acts in accordance with the interim measures requests issued by human rights bodies. It is committed to do so in the future, although the decision whether or not to act in accordance with an interim measures request must necessarily be made on a case-by-case basis. This should not in any way be construed as a diminution of Canada's commitment to human rights or its ongoing collaboration with the Committee.

**Canadian Charter of Rights and Freedoms**

*Mandatory Minimum Penalties*

49. The Supreme Court of Canada recently upheld the constitutionality of a mandatory minimum penalty of four years for the use of a firearm in criminal negligence causing death,[7] but commented on the negative effects of mandatory penalties in introducing rigidity into the sentencing process. In determining whether a mandatory minimum sentence constitutes cruel

and unusual punishment (s. 12 of the *Canadian Charter*), Canadian courts are careful to consider both whether the sentence actually imposed is grossly disproportionate to what would have been appropriate for the particular offender and whether the statutory minimum is grossly disproportionate, taking into account "reasonable hypothetical circumstances".

50. The *Criminal Code* contains 29 offences that carry mandatory minimum penalties. They fall into eight categories - impaired driving and blood alcohol over .08, betting and book-making, treason, 1st and 2nd degree murder (mandatory life), use of a firearm in an offence, use of a firearm in 10 listed violent offences, possession, trafficking etc of various prohibited firearms, and living off the avails of child prostitution - but firearms and impaired driving offences account for the majority of the 29 offences.

*Non-refoulement*

51. In *Suresh* (*Minister of Citizenship and Immigration*),[8] the Supreme Court indicated the Immigration Minister should generally decline to deport refugees where on the evidence there is a substantial risk of torture and that only in exceptional circumstances should a person be deported to a country where they would be at risk of torture.

*Justification of the use of reasonable force by parents*

52. The Supreme Court of Canada, in *Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)* dealing with the justification of the use of reasonable force by parents and teachers by way of correction of child or pupil,[9] referred to the preamble and to Article 7 of the *Covenant* as well as to the provisions of the *Convention on the Rights of Child*. The Court concluded that from these international obligations, it follows that what is "reasonable under the circumstances" will seek to avoid harm to the child and will never include cruel, inhuman or degrading treatment. The Court concluded that neither the *Convention on the Rights of the Child* nor the *Covenant* explicitly requires state parties to ban all corporal punishment of children. It also examined the views expressed by the Human Rights Committee and noted that in the process of monitoring compliance with the *Covenant*, the Human Rights Committee of the United Nations has expressed the view that corporal punishment of children in schools engages Article 7's prohibition of degrading treatment or punishment, however the Committee has not expressed a similar opinion regarding parental use of mild corporal punishment.

## Article 8. Protection against slavery and forced labour

53. The Government supports various prevention efforts within Canada designed to prevent human trafficking and forced prostitution, particularly among vulnerable populations. The Canadian approach has been to facilitate legitimate freedom of movement, while working toward comprehensive domestic and international policies to prevent the kinds of criminal activities which exploit individuals and erode the integrity of border control systems.

54. In February 2004, the federal Interdepartmental Working Group on Trafficking in Persons was mandated to coordinate federal efforts to address human trafficking and develop a federal strategy, which will focus on the prevention of trafficking, the protection of its victims and the prosecution of traffickers.

55. In March 2004, the Canadian Minister of Justice announced a review of the Criminal Code to assess the need for any additional reforms to strengthen the criminal justice system's response to trafficking in persons. Other recent federal anti-trafficking measures include: the establishment by the RCMP of the Human Trafficking Investigative Unit to coordinate domestic and international trafficking investigations; a training seminar on trafficking for police, prosecutors, immigration, customs and consular officials, co-hosted by the Department of Justice and the International Organization for Migration in March 2004; a forum on human trafficking, hosted by the Canadian Ethnocultural Council, the Minister of Justice and the Secretary of State (Status of Women) in March 2004; the development and distribution of a Government of Canada anti-trafficking poster through police stations, victim services, community centres, refugee and immigrant centres across Canada, and; the development of a website on trafficking in persons with related information and links.

56. Trafficking in persons is prohibited by various offences in the Criminal Code of Canada, including forcible confinement, kidnapping, extortion, assault and prostitution-related offences. In addition, the Immigration and Refugee Protection Act includes a specific offence against trafficking in persons, which provides for severe penalties: fines of up to $1 million, and imprisonment for up to life. The Act lists specific aggravating factors which apply to both the trafficking in persons and human smuggling offences. These include subjecting the victim to humiliating or degrading treatment, including with respect to work or health conditions or sexual exploitation. The Act also contains a new inadmissible class to deal specifically with human traffickers. It allows for the forfeiture of money and property seized from traffickers, an increase in penalties and new provisions against the possession and use of fraudulent documents in immigration-related crimes.

**International**

57. Canada took a leading role in the development of the United Nations' *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, supplementing the United Nations' Convention against Transnational Organized Crime, both of which Canada ratified on May 13, 2002. Canada also ratified the International Labour Organization's *Worst Forms of Child Labour Convention No.182* on 6 June 2000. Canada has signed the *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography* on 10 November 2001 and has undertaken measures to facilitate its ratification in the near future. Canada is also encouraging other States to ratify and implement these new instruments quickly.

58. Canada is also taking a leading role in other international fora to combat the smuggling of migrants and the trafficking of human beings. For example, Canada held the Presidency of the G8 for 2002 and is working in both the Lyon and Roma groups (transnational organized crime and counter-terrorism working groups respectively) to address these and other international organized crime issues.

59. The Government of Canada provides support to multiple international prevention efforts designed to address the root causes of human trafficking in source States. For instance, it has committed over $3 million to eliminate the trafficking of children into forced labour and to

support the rehabilitation of children who have been trafficked. Additionally Canada has distributed a multilingual (14 languages) Anti-Trafficking pamphlet through its missions abroad and to non-governmental organizations with access to potential trafficking victims in source States.

## Article 9. Right to liberty and security of person

*National Defence Act*

60. A number of amendments to the *National Defence Act* in 1999 dealt with deprivation of liberty and arbitrary detention. One of the changes was that under the old legislative regime, release from pre-trial custody was done by way of petition to the Minister. Often this was a lengthy process and resulted in longer periods of pre-trial detention. However, under the changes to the Act a military judge now reviews pre-trial custody, in a much speedier fashion, with appeals being heard by the Court Martial Appeal Court.

*Anti-terrorism Act*

61. Following the terrorist attacks against the United States of 11 September 2001, Canada undertook a comprehensive review of criminal, security and other relevant legislation with a view to addressing the new threat. The review resulted in the *Anti-terrorism Act*. Most of the provisions came into force on 24 December 2001, and with the last proclamation on 6 January 2003, it is now fully in force. The preamble to the *Anti-terrorism Act* recognizes that terrorism is a matter of national concern but this concern must be addressed while continuing to respect and promote the values reflected in, and the rights and freedoms guaranteed by, the *Canadian Charter of Rights and Freedoms*.

62. The Act addresses a number of specific areas and implements Canada's international obligations under Security Council resolution 1373 of 28 September 2001. Specific amendments include a definition of "terrorist activity", new criminal offences and sentences, changes to evidence laws, and powers and procedures for dealing with the financing of terrorism.

63. The amendments contain new provisions respecting the arrest and detention of persons to prevent terrorist activities, based on existing criminal law powers. Those suspected of involvement in criminal offences are subject to the normal process of investigation and prosecution. As a preventive measure, however, any peace officer who believes on reasonable grounds that a terrorist activity will be carried out may obtain a judicial arrest warrant and those suspected of involvement and identified may be arrested and detained, if there are grounds to suspect that the arrest is necessary to prevent the terrorist activity. Where there are exigent circumstances, suspects may be arrested without a warrant. Anyone arrested must be taken before a judge within 24 hours if a judge is available and otherwise as soon as possible. Once before the judge, the suspect can be directed to comply with a court order to keep the peace and meet any specific requirements imposed. If the suspect agrees, he or she must be released, subject to re-arrest and prosecution if the order is not complied with. If the suspect refuses to agree, he or she may be detained for up to 12 months. At the end of this period, the suspect must be released, subject to the possibility of the State bringing a further recognizance application. In all proceedings, once the suspect has been arrested, the burden of establishing the existence of the circumstances needed to obtain a recognizance order lies with the State.

64. The legislation also contains powers to conduct judicial investigative hearings (s. 83.28 of the *Criminal Code*) at which attendance by anyone specified by the judge to have direct and material information related to a terrorism offence is mandatory, and those ordered to attend may be arrested and detained for failure to attend or if there is reason to believe they might be about to flee. The compatibility of these provisions with the *Canadian Charter of Rights and Freedoms* has been examined by the Supreme Court of Canada. On 23 June 2004, in *Application under s. 83.28 of the Criminal Code (Re)*, the majority of the Court stated that the challenge for democracies in the battle against terrorism is to balance an effective response with fundamental democratic values that respect the importance of human life, liberty and the rule of law. The Supreme Court of Canada upheld the constitutionality of this provision and clarified certain procedural aspects so as to guide future hearings.

65. The Supreme Court of Canada reiterated what it had expressed in previous cases (*Suresh v. Canada* (*Minister of Citizenship and Immigration*) and *United States v. Burns*) concerning the seriousness with which it views deportation or extradition to countries where torture and/or death are distinct possibilities and reaffirmed that evidence collected at an investigative hearing is to be subject to an order preventing its subsequent direct or derivative use in extradition or deportation proceedings where the potential for such use by the state exists.[10]

66. The *Anti-Terrorism Act* contains rigorous safeguards to uphold the rights and freedoms of those affected by it. These safeguards include, with respect to preventive arrest and investigative hearings: the prior consent of the Attorney General where the proceedings take place; a judicial authorization; and that the Attorney General and Solicitor General of Canada, provincial Attorneys General and Ministers responsible for policing report annually to Parliament on the use of the preventive arrest and investigative hearing provisions in the new Act. In addition, Parliament has directed that a comprehensive review of the legislation be commenced within 3 years of its being assented to (18 December 2001). Provisions authorizing the conduct of investigative hearings and the imposition of recognizances with conditions (including the authority to arrest without a warrant in exigent circumstances) will cease to apply after 5 years unless Parliament passes a special resolution to extend their operation.

67. Nothing in any of the new offences, investigative powers or other provisions affects any of the safeguards already in place against torture and related activities. Criminal Code subsection 269.1(4) which bars the use of any statement obtained by torture for any purpose except as evidence that it was in fact obtained by torture, applies in full to all of the new procedures.

68. In addition, the Royal Canadian Mounted Police (RCMP) has developed internal policies which add additional safeguards with respect to the use of these provisions. Among other requirements, the policy requires that the RCMP Deputy Commissioner of Operations personally approve all requests from RCMP officers to make use of these provisions, before a request is made for the consent of the Attorney General.

*Purpose and principles of sentencing*

69. The *Criminal Code* sets out principles to guide the sentencing courts and encourage flexibility in the exercise of judicial discretion. The fundamental principle of sentencing is that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. Parliament has placed a major emphasis on a "least restrictive measures" approach, and has provided a direction to use incarceration only where community sentencing alternatives are not considered feasible. This is consistent with Parliament's concern to address the overuse of incarceration as a means of addressing crime in Canada.

*Conditional sentences*

70. The Government of Canada encourages the use of measures that reduce reliance on incarceration by expanding the use of alternative measures and promoting community justice alternatives including the use of Restorative Justice approaches for youth and adults. The conditional sentence (sections 742 to 742.7 of the *Criminal Code*) contained in the sentence reforms in force 1 July 1999 is a major tool which permits the courts to use community-based sentences in cases which would otherwise result in a sentence of imprisonment. While the use of conditional sentences has gradually increased over the five years since coming into effect in 1996, they are still used in a small proportion of cases, accounting for between 4-6% of all sentences.

*Review of pre-trial detention*

71. In response to concern about remand facility overcrowding, and consistent with the goal of achieving greater efficiencies and fairness in the criminal justice system, federal and provincial/territorial government officials agreed in April, 2004 to conduct a comprehensive review of bail in both the pre-trial and appeal context. A report of the recommendations resulting from the review is expected to be delivered in 2005.

72. In *R. v. Hall*,[11] the Supreme Court of Canada considered the constitutionality of the provision of the *Criminal Code* which provides that pre-trial detention is justified for "any other just cause being shown" (pre-trial detention is also authorized to ensure attendance in court and where necessary for the protection or safety of the public) and where the detention is necessary in order to maintain confidence in the administration of justice. The court found the words "any other just cause" to be inoperative as detention on this basis would violate the *Canadian Charter of Rights and Freedoms* right to life, liberty and security of the person and right not to be denied reasonable bail without just cause. It upheld the remainder of the provision, holding that, in considering whether detention is necessary to maintain confidence in the administration of justice, the inquiry must focus on the reasonable community perception of the necessity of denying bail to maintain confidence in the administration of justice, judicially determined through an objective lens having regard to all the circumstances including the strength of the case, the gravity of the nature of the offence, the circumstances surrounding the offence and the potential for a lengthy term of imprisonment.

**Canadian Charter of Rights and Freedoms**

73. In *R. v. Mann*,[12] the Supreme Court of Canada stated that although there is no general power of detention for investigative purposes, police officers may detain an individual if there are reasonable grounds to suspect in all the circumstances that the individual is connected to a particular crime and that the detention is reasonably necessary on an objective view of the circumstances. These circumstances include the extent to which the interference with individual liberty is necessary to the performance of the officer's duty, the liberty interfered with, and the nature and extent of the interference. At a minimum, individuals who are detained for investigative purposes must be advised, in clear and simple language, of the reasons for the detention. Investigative detentions carried out in accordance with the common law power recognized in this case will not infringe the detainee's rights under the *Charter*. They should be brief in duration. Investigative detentions do not impose an obligation on the detained individual to answer questions posed by the police. Where a police officer has reasonable grounds to believe that his safety or the safety of others is at risk, the officer may engage in a protective pat-down search of the detained individual. The investigative detention and protective search power must be distinguished from an arrest and the incidental power to search on arrest.

## Article 10. Treatment of persons deprived of liberty

74. In a report released on 29 January 2004, entitled “Protecting Their Rights”, the Canadian Human Rights Commission (CHRC) found that women prisoners continue to face systemic human rights problems in the federal correctional system. The report focuses on the discriminatory impact of some policies and programs, particularly on Aboriginal women, racialized women and women with disabilities. The report’s main finding is that the correctional system should take a more gender based approach to custody, programming and reintegration for women offenders. In the report, CHRC recommends various measures to address the disproportionate number of federally sentenced Aboriginal women. These measures include: reassessing the classification of all Aboriginal women currently classified as maximum security using a gender responsive reclassification tool and balanced individual assessments; independent adjudication for decisions related to involuntary segregation, given that aboriginal women and other racialized women are more often singled out for segregation than other inmates; that the needs and low risk of minimum and medium security women inmates be considered in the construction of additional facilities for women, such as Aboriginal Healing Lodge; that the unique needs of Aboriginal offenders should be reflected in the structure and content of programming strategies meeting the rehabilitation needs of federally sentenced aboriginal women. The Correctional Service of Canada will study the recommendations and prepare a comprehensive response to the report.

75. The *Youth Criminal Justice Act* creates a comprehensive regime to deal with all aspects of the youth justice system. The new legislation (entered into force in April 2003) respects the rights of young persons, and aims to increase community responses to youth offending, reduce overreliance on incarceration, and increase rehabilitation and reintegration of young people. It sets out measures to deal with early intervention outside the formal court process; the youth court process following a charge; special rules for sentencing of young persons found guilty of an offence; the treatment of young persons sentenced to custody along with measures respecting their reintegration and rehabilitation; the safeguarding and use of information about young

persons. More information can be found in the responses given to the Committee on the Rights of the Child to the list of issues in September 2003 (http://www.pch.gc.ca/progs/pdp-hrp/docs/crc-2003/UNCRC_1BE.pdf).

76. In *Québec (Ministre de la justice) v. Canada (Ministre de la justice*[13]*)*, the Quebec Court of Appeal found that the principles on which the *Youth Criminal Justice Act* is based, as well as the provisions on sentencing, and the custody and supervision of young persons (sections 3, 38, 39 and 83) do not violate the *International Covenant on Civil and Political Rights* or the *Convention on the Rights of the Child*. The Court also found that the provisions of the Act dealing with the exception to the confidentiality of information, and the imposition of adult sentences on young persons for certain offences (sections 61, 64, 79, 72, 75 and 110(2)(b)) are not incompatible with those instruments. Furthermore, the Court found that the provisions that provide for the possible imprisonment of young persons with adults do not violate the Covenant because the basic rule established by the Act is that a young person must be held separately from adults. With respect to the compatibility of the same provisions with the *Canadian Charter*, the Quebec Court of Appeal upheld the validity of all the provisions challenged, except those creating a presumption in favour of an adult sentence and exceptions to the confidentiality rule that would create a presumption that would allow publication of information relating to a youth sentence for a serious violent offence. The Court found that those provisions were contrary to s.7 of the *Canadian Charter* for placing too onerous a burden on the youth in a manner that is inconsistent with the principles of fundamental justice, and that these violations were not justified in a free and democratic society (section 1 of the *Canadian Charter*). The Court held that a less infringing and equally effective alternative to the presumptions would be the former provisions which require the Crown to bear the burden of proof in these instances rather than the young person. The Court of Appeal's judgment was based in part on its acceptance of the following four principles as principles of fundamental justice protected by s.7 of the *Canadian Charter*: the justice system must treat young persons differently than adults; the goal of rehabilitation must guide their treatment; the youth justice system must limit the disclosure of young persons' identity to prevent their stigmatization; and the best interests of the child must be the guiding factor in decisions affecting youth.

**Canadian Charter of Rights and Freedoms**

77. In *R. v. Demers*,[14] the Supreme Court of Canada examined the *Criminal Code* provisions pursuant to which the absolute discharge is not available to the accused found unfit to stand trial. Permanently unfit accused are subject to indefinite conditions on their liberty, of varying degrees of restrictiveness, resulting from the disposition orders of the Review Board or the court. The impugned provisions deal unfairly with the permanently unfit accused who are not a significant threat to public safety and infringe the liberty of those accused. This infringement cannot be justified in a free and democratic society.

78. In *Penetanguishene Mental Health Centre v. Ontario (Attorney General)*,[15] the Supreme Court of Canada stated that the principles of fundamental justice (s. 7 of the *Charter*) require that the liberty interest of an accused who has been found not criminally responsible ("NCR") by reason of mental disorder be taken into account at all stages of a Review Board's consideration. In this process, public safety is paramount. Within the outer boundaries defined by public safety, however, the liberty interest of an NCR accused should be a major preoccupation of the Review Board when it makes its disposition order. Even where a risk to the public safety is established,

the conditions of the disposition order are to be "the least onerous and least restrictive to the accused" consistent with the level of risk posed considering the mental condition of the NCR accused, his or her other needs, and the objective of eventual reintegration into the community.

## Article 14. Fair trial rights

*Independence of courts*

79. In 1998, the Parliament of Canada amended the *Judges Act* to establish a "Quadrennial" Judicial Compensation and Benefits Commission. These amendments were intended to establish an "independent, effective and objective" process for determining judicial compensation, as required by the Supreme Court of Canada in the *Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island*,[16] which requires the provinces to set an independent body with the specific task of issuing a report on the salaries and benefits of judges to the executive and the legislature. The Court also ruled that any changes to or freezes in judicial remuneration made without prior recourse to the body are unconstitutional.

80. In *Mackin v. New Brunswick (Minister of Finance); Rice v. New Brunswick*,[17] the Supreme Court of Canada ruled that the New-Brunswick legislation abolishing the position of supernumerary judge, contravenes constitutional guarantees of judicial independence. By not seeking approval from an independent commission, the legislature violated the institutional dimension of financial security of judges as set out in the *Reference re Independence and Impartiality of Judges of the Provincial Court of Prince-Edward-Island*.

81. In *Ell v. Alberta*,[18] the Supreme Court of Canada ruled that guarantees of independence are required for justices of the peace because they exercise functions (like issuing warrants) that are directly related to the enforcement of law and that have a major impact on citizens' right and freedoms.

82. The National Judicial Institute (NJI), the principal national body dedicated to continuing education for approximately 1000 federally appointed judges, and for provincially appointed judges throughout Canada, has developed, in recent years, important and innovative programs for our judiciary. For example, a key element of the NJI's curriculum has been the Social Context Education Project. There are also a number of programs provided on international law issues, and on international human rights specifically.

83. The Canadian Judicial Council, made up of chief justices and associate chief justices and created to improve the quality of judicial services in superior courts and handle the complaints process against federally appointed judges, published a statement of judicial ethics in 1998, Ethical Principles for Judges. This Statement, advisory in nature, provides guidance to judges on matters of judicial independence, integrity, diligence, equality and impartiality, and informs the public on ethical and professional questions facing the judiciary.

*National Defence*

84. In order to ensure that those accused through the military justice system with a service offence are afforded guarantees provided to other members of Canadian society, amendments were brought to the *National Defence Act*. Consequently, the prosecutorial and defence services

of the Canadian Forces have undergone extensive changes. Separate offices have been established under the Director of Military Prosecutions and the Director of Defence Counsel Services. The Director of Military Prosecutions is responsible for all court martial prosecutions and decides which type of court martial should be held and whether there should be one. The Director of Defence Counsel Services is responsible for the provision of legal services to accused persons subject to the Code of Service Discipline. The Director of Defence Counsel Services is appointed by the Minister for National Defence for renewable terms of up to four years and so would enjoy a certain autonomy from the Judge Advocate General as well as from prosecuting counsel.

85. An independent commission has also been established to make recommendations concerning the remuneration of military judges, in order to ensure the financial independence aspect of judicial independence.

*Access to courts*

86. In *Bouzari v. Iran*,[19] the Ontario Court of Appeal concluded that there is no obligation under the *International Covenant on Civil and Political Rights* that requires access to the courts for actions alleging torture by foreign states committed outside Canadian jurisdiction. Article 14 of the *Covenant* has not been interpreted to date to require a state to provide access to its courts for sovereign acts committed outside its jurisdiction.

87. In *British Columbia (Minister of Forests) v. Okanagan Indian Band*,[20] the Supreme Court of Canada stated that Courts of Superior jurisdiction have the discretionary power to award costs to a litigant prior to the final disposition of a case and in any event of the cause (interim costs). Several conditions must be present for an interim costs order to be granted. The party seeking the order must be impecunious to the extent that, without such an order, that party would be deprived of the opportunity to proceed with the case; the claimant must establish a *prima facie* case of sufficient merit to warrant pursuit; and there must be special circumstances sufficient to satisfy the court that the case is within the narrow class of cases where this extraordinary exercise of its powers is appropriate. Concerns about access to justice and the desirability of mitigating severe inequality between litigants are a prominent feature in the rare cases where such awards are made.

88. In Canada, Aboriginal people enjoy access to the judicial system, as individual and collective plaintiffs. Accordingly, many individuals, communities and leaders are increasingly knowledgeable about the ability to seek judicial clarification of their treaty and aboriginal rights, which enjoy constitutional protection under Section 35 of the *Constitution Act, 1982*. In direct support of this process, the Test Case Funding program has been put in place. Over the past 20 years, it has funded 160 cases (including 47 cases at the Supreme Court of Canada) at a cost of approximately $20.5 million.

89. The Office for Disability issues funded Kindale Development Association in 2001 and 2002 to develop Legalpix: A pictorial explanation of Canada's Civil Justice System and funded Law Courts Education Society of British Columbia in 2003 and 2004 to develop and implement a justice system training to assist people with developmental disabilities.

*Proceedings in public and openness of the proceedings*

90. On 23 June 2004, the Supreme Court of Canada, in the context of a constitutional challenge to the investigative hearing provisions of the *Anti-terrorism Act*[21] (see above under article 9), found that Parliament chose to have investigative hearings of a judicial nature, the open court principle is a fundamental characteristic of judicial proceedings that should not be presumptively displaced in favour of an *in camera* process and that judicial officers should therefore reject the notion of presumptively secret hearings. The presumption of openness should only be displaced upon proper consideration of the competing interests at every stage of the process. The existence of the hearing and as much of its subject-matter as possible should be made public unless, under a balancing exercise of minimal impairment / proportionality, secrecy becomes necessary. Applying the test in a contextual manner, judges would be entitled to proceed on the basis of evidence that satisfies him or her that publicity would unduly impair the proper administration of justice.

91. The *Anti-terrorism Act* amended the *Canada Evidence Act* (CEA) by setting out pre-trial, trial and appellate procedures to apply where there is a possibility that information injurious to international relations, national defence or national security could be disclosed. Once notice has been given to the Attorney General for Canada by any participant to a proceeding who expects to cause the disclosure of sensitive information, disclosure is prohibited unless authorized by the Attorney General of Canada or the Federal Court. The Federal Court must balance the public interest in disclosure against that in non-disclosure and, in order to serve as far as possible both of these public interests, may provide for the use in proceedings of summaries and agreed statements of fact. To ensure that these procedures are consistent with fair trial rights, the CEA provides that the person presiding at a criminal proceeding may make any order they consider appropriate, other than calling for disclosure of the information. Orders can include staying proceedings (if the judge takes the view that the accused would not otherwise get a fair trial), dismissing specified counts of the indictment or information or proceeding only in respect of a lesser or included offence.

*Right to trial within reasonable time*

92. Amendments (entered into force in 2002) to the *Criminal Code* contain measures to render the administration of justice more efficient and effective by simplifying trial procedure, modernizing the criminal justice system and enhancing its efficiency through the increased use of technology. Elements include modifying some of the procedural aspects of preliminary inquiries (creating a pre-preliminary hearing to determine scope, allowing admission of credible or trustworthy evidence), creating a limited reciprocal disclosure obligation with regard to expert reports, establishing rules of court in relation to case management and preliminary inquiries, facilitating the use of electronic documents, expanding the potential for remote appearances, providing for jury alternates and for jury selection by a judge other than the trial judge.

*Legal Aid*

93. In November 2002, the different levels of governments agreed to work together on a renewal strategy (Legal Aid Renewal Strategy) that will ensure the legal aid needs of economically disadvantaged Canadians are met in a fair and equitable manner. The renewal strategy would address fair and equitable allocation of criminal legal aid resources as well as

addressing innovative ways to deliver legal aid services. Negotiations were undertaken ending with an agreement in principle in June 2003. Thereafter agreements were drafted which increased contributions to adult criminal, youth and immigration and refugee legal aid.

94. Canada provided an overview of its support of legal aid up to early 2003 in its report to CEDAW.

95. In *New Brunswick (Minister of Health and Community Services) v. G. (J.),*[22] the Supreme Court of Canada determined that the Canadian Charter (right to life, liberty and security) applies outside of the criminal law context. In that case, the New Brunswick Minister of Health and Community Services was granted custody of the appellant's three children for a six-month period. He later sought an extension of the custody order for a further period of up to six months. The Court found that where government action triggers a hearing in which either the physical or psychological integrity of the individual are at risk then the government is under an obligation to do whatever is require to ensure that the hearing be fair. In some circumstances, depending on the seriousness of the interests at stake, the complexity of the proceedings, and the capacities of the party, the government may be required to provide an indigent party with state-funded counsel.

96. In *Winters v. Legal Services Society*,[23] the Supreme Court of Canada held that the possibility of solitary confinement following a disciplinary hearing for a prisoner who was incarcerated and serving a life sentence entitled the applicant to mandatory legal aid services. The level of service, which a reasonable person of modest means would expect to receive, however might not include legal representation at the hearing and was up to the legal aid delivery entity to determine.

97. In *R v. Howell*,[24] the Supreme Court of Canada stated that the "accused is not entitled to publicly funded counsel of his choice but, at the highest, competent publicly funded counsel."

*Review of conviction, sentence*

98. Previously, the *Criminal Code* allowed people who believed they were wrongly convicted of an indictable offence, or sentenced to preventive detention under the dangerous and long-term offender part of the *Code*, to apply for a review of their conviction by the Minister of Justice. The *Criminal Code* contains new sections (696.1-696.6) that clearly state when a person is eligible for a review; specify the criteria under which a remedy may be granted; provide a power to make regulations to explain the review process and how one applies; expand the Minister's powers to include the review of summary convictions; and provide those investigating cases on behalf of the Minister with powers to compel witnesses to provide information and documents.

99. To make the conviction review process more open and accountable, the Minister of Justice will also provide an annual report to Parliament and a web site will be created to give applicants information on the process. A senior person from outside of the Department of Justice will be appointed to advise the Minister directly and oversee the review of applications. This will improve timeliness and openness of the review process, and provide greater independence from the Department.

*Sentencing considerations for aboriginal offenders*

100. As part of the statement of purpose and principles of sentencing (included in the 1999 sentencing reforms), judges must consider all alternatives to incarceration that are reasonable in the circumstances, with particular attention to the circumstances of Aboriginal offenders.

101. In the case of *R. v. Gladue*,[25] the Supreme Court of Canada concluded that this does not give preferential treatment to aboriginal offenders, but seeks to treat them fairly by recognizing that their circumstances are different. It requires judges to consider the extent to which background and systemic factors unique to aboriginals have played a part in bringing them before the Court, and to consider restorative approaches that take into account their aboriginal heritage or connection.

*Right to compensation for wrongful conviction*

102. In the fall of 2002, in response to a number of wrongful convictions across the country and the various reports of inquiries they generated, a Working Group on the Prevention of Miscarriages of Justice has been established. The group's mandate is two-fold: to develop a list of best practices to assist prosecutors and police in better understanding the causes of wrongful convictions, and to recommend proactive policies, protocols and educational processes to guard against future miscarriages of justice. The report is nearing completion.

## Article 17. Right to privacy

103. In 2002, the Supreme Court of Canada recognized the quasi-constitutional status of the *Privacy Act in Lavigne v. Canada (Office of the Commissioner of Official Languages)*.[26] This demonstrates the fundamental importance that Canadian society accords to respect for privacy.

104. Canadians are protected not only by the *Privacy Act*, but also by the *Personal Information Protection and Electronic Documents Act*, which governs the collection, use and disclosure of personal information in the course of commercial activities. This act has applied since January 2001 to the personal information of customers and employees of the private sector under federal jurisdiction, since January 2002 to personal health information, and since January 2004 to personal information collected, used or disclosed in the course of commercial activities by any organization, whether or not under federal jurisdiction.

105. In 1998, the enactment of the *DNA Identification Act* authorized the establishment of a National DNA Data Bank to hold the DNA profiles of offenders convicted of "designated" offences as well as DNA profiles from biological substances found at the scene of an unsolved crime. The Act also amended the *Criminal Code* to introduce provisions to allow judges to order the taking of DNA samples from an offender convicted of a designated offence for the purposes of the National DNA Data Bank. The Government undertook to subject the Act to a 5-year parliamentary review; that an independent advisory committee (including a representative from the Office of the Privacy Commissioner) will be created to oversee implementation of the Act and administration of the data bank and that the RCMP Commissioner will include a report on operation of the DNA data bank in his annual report to be tabled in Parliament. In the case of

*R. v. S.A.B.*,[27] the Supreme Court stated that, generally, the DNA provisions appropriately balance the public interest in law enforcement and the rights of individuals to dignity, physical integrity, and to control the release of personal information about themselves.

106. In 2001, the *Anti-terrorism Act* amended the *Criminal Code* to ensure that DNA technology was available in the investigation of terrorist offences and for the data banking of the DNA profiles of persons convicted of terrorism offences. Many of these offences were already covered in the existing law.

107. The *Public Safety Act, 2002* (entered into force in May 2004) amends several federal statutes (including the *Aeronautics Act* and *Immigration and Refugee Protection Act*) to facilitate the collection and use of information about particular high-risk individuals or airline passengers. The uses for the information are limited to the purposes outlined in each Act, for example, transportation security, national security, defence of Canada, etc. The safeguards in the *Aeronautics Act* include limiting the disclosure to designated officials, destroying the information after seven days unless required for transportation security or threats to the security of Canada, keeping written records of retention and disclosure, and annual reviews of any retained information. The amendments to the *Immigration and Refugee Protection Act* allow for regulation of the type of data collected and its disclosure, retention and destruction. The *Public Safety Act* also allows the Minister of National Defence to authorize the interception of private communications, where necessary to identify or prevent damage or interference with military computer systems or their data and provided that measures are in place to protect Canadians' privacy in the use and retention of such information.

108. Guidelines related to the use, access and disclosure of customs information were published in November 2003. The guidelines give direction on providing appropriate protection to private information about individuals. The guidelines focus particular attention on the need to carefully assess requests for access to private information that is considered core biographical information, or information about an individual's lifestyle and personal preferences.

109. The federal Sex Offender Registry came into operation on 1 April 2004, with the coming into force of the *Sex Offender Information Registration Act*. The legislation contains strong measures to ensure full respect for the privacy and fundamental rights of offenders who may be subject to a registry order. Offenders may apply to a judge for a refusal of a registration order or to appeal one that has been made. An offender may also apply to a judge to have his or her name permanently removed from the registry. Data collected under the legislation may only be used by authorized police and only when they are investigating a specific sexual crime. Any unauthorized access to or leaking of information in the registry is an offence.

110. In the period under review, the Supreme Court of Canada issued a number of decisions on issue of privacy as indicated below.

**Canadian Charter of Rights and Freedoms**

111. In *R. v. Jarvis and R v. Ling*,[28] the Supreme Court of Canada examined the extent to which Revenue Canada investigators could use their audit powers under the *Income Tax Act* to pursue criminal investigations. The case involves the distinction between audit and investigatory powers given under the *Income Tax Act*. The Court concluded that where the predominant

purpose of an inquiry is the determination of penal liability, all *Charter* protections (right to liberty, right to privacy) relevant in the criminal context must apply, including giving the taxpayer the appropriate warning and the need to obtain search warrants to further the investigation.

112. The Government has responded to the decision of the Court, by requiring search warrants for the collection of information from third parties where the predominant purpose of the investigation is the determination of penal liability.

113. In *R. v. Law*,[29] a locked safe belonging to the accused was reported stolen and then recovered, open, in a field. In the course of conducting the investigation for the theft of the safe, a police officer not involved in the investigation photocopied some financial documents from the safe and forwarded them to Revenue Canada. The Crown instituted proceedings against the owner of the safe for contraventions of reporting requirements under the *Excise Tax Act*. The Court concluded the police's seizure of the safe was restricted to the purpose of the seizure, namely the investigation of the theft and not to the investigation of totally unrelated hunches. The search was found to be unreasonable and the evidence was excluded from the trial. The case is important as it considers "informational privacy" in commercial documents.

114. In *R. v. Feeney*, the Supreme Court of Canada recognized the higher privacy interests attached to a dwelling house as opposed to other premises. The *Criminal Code* has been amended to provide for so-called "Feeney warrants" to authorize the police to enter a dwelling house to affect an arrest. They can be issued as part of an arrest warrant (when the police know that the person will be found in a dwelling house when they apply for an arrest warrant) or can be issued separately once the police have located the person and he is in a dwelling house.

115. In *R. v. Mann* (mentioned under article 9),[30] the Supreme Court of Canada stated that individuals may be briefly detained for investigative purposes. Where a police officer has reasonable grounds to believe that his safety or the safety of others is at risk, the officer may engage in a protective pat-down search of the detained individual. In this case, the officers had reasonable grounds to detain M and to conduct a protective search, but no reasonable basis for reaching into M's pocket. This more intrusive part of the search was an unreasonable violation of M's reasonable expectation of privacy in respect of the contents of his pockets.

116. In *R. v. Golden*,[31] the Supreme Court of Canada ruled that, in light of the serious infringement of privacy and personal dignity that is an inevitable consequence of a strip search, such searches are only constitutionally valid at common law where they are conducted as an incident to a lawful arrest for the purpose of discovering weapons in the detainee's possession, in order to ensure the safety of the police, the detainee and other persons, or for the purpose of discovering evidence related to the reason for the arrest, in order to preserve it and prevent its disposal by the detainee. In addition to reasonable and probable grounds justifying the arrest, the police must establish reasonable and probable grounds justifying the strip search. Where these preconditions to conducting a strip search incident to arrest are met, it is also necessary that the strip search be conducted in a manner that does not infringe the protection against unreasonable search or seizure (s. 8 of the *Charter*).

117. In *Aubry v. Éditions Vice-Versa inc.*,[32] the Supreme Court of Canada concluded that the artistic expression of the photograph (of Mrs. Aubry, then aged 17, which was taken in a public place, and published without her consent) cannot justify the infringement of the right to privacy it entails. The right to one's image is an element of the right to privacy under s.5 of the Quebec *Charter of Human Rights and Freedoms*. If the purpose of the right to privacy is to protect a sphere of individual autonomy, it must include the ability to control the use made of one's image.

## Article 18. Freedom of thought, conscience and religion

### Canadian Charter of Rights and Freedoms

118. In *Syndicat Northcrest v. Amselem*,[33] the Supreme Court of Canada found that the impugned provisions in the declaration of co-ownership prohibiting construction of a "succah"s on the complainants' balcony, all Orthodox Jews, infringe their freedom of religion. An important feature of our constitutional democracy is respect for minorities, which includes religious minorities. Both obligatory as well as voluntary expressions of faith should be protected under the Quebec and the Canadian Charter of Rights and Freedoms. It is the religious or spiritual essence of an action, not any mandatory or perceived-as-mandatory nature of its observance that attracts protection. In order for a triggered right of religious freedom to have been infringed, the interference with the right needs to be more than trivial or insubstantial. The impairment of the complainants' religious freedom resulting from the refusal of the Syndicat to allow the setting up of succahs on balconies is serious. As a result, the enjoyment of their rights to religious freedom have been significantly impaired. The Syndicat's offer of allowing the complainants to set up a communal succah in the building's gardens does not remedy nor does it even address that impairment.

## Article 19. Freedom of opinion and expression

119. The *Anti-terrorism Act*'s definition of the core concept of 'terrorist activity' requires that a number of intention and purpose elements be satisfied and the definition protects democratic action by expressly excluding from its coverage 'advocacy, protest, dissent or stoppage of work' (where these are not intended to result in serious forms of specified harm).

### Canadian Charter of Rights and Freedoms

120. In *Libman v. Quebec (Attorney General)*,[34] the Supreme Court of Canada dealt with the *Referendum Act*. This Act governs referendums in Quebec and provides that groups wishing to participate in a referendum campaign for a given option can either directly join the national committee supporting the same option or affiliate themselves with it. It also provides for the financing of the national committees and limits their expenses and those of the affiliated groups. Mr. Libman wished to express his opinions on the referendum question and convey meaning independently of the national committees. The Supreme Court concluded that the Act placed restrictions on such persons who, unlike the national committees, cannot incur regulated expenses during the referendum period in order to express their points of view. For similar reasons, the impugned provisions also infringe freedom of association.

121. In *Harper v. Canada (A.G.)*,[35] the Supreme Court of Canada dealt with the provisions of the *Canada Elections Act* imposing limits on third-party spending on advertising in the course of a federal election campaign. The Court concluded that these limits infringe the right to freedom of political expression but are justified in a free and democratic society. In promoting the equal dissemination of points of view by limiting the election advertising of third parties who are influential participants in the electoral process, the overarching objective of the spending limits is electoral fairness. This egalitarian model of elections seeks to create a level playing field for those who wish to engage in the electoral discourse, enabling voters to be better informed.

122. In *Thomson Newspapers Co. v. Canada (Attorney General)*,[36] the Supreme Court of Canada concluded that the provision of the *Canada Elections Act*, which prohibits the broadcasting, publication or dissemination of opinion survey results in the final three days of a federal election campaign, violate freedom of expression and the right to vote as guaranteed by the *Canadian Charter of Rights and Freedoms*. The Court concluded that the limitation cannot be justified in a free and democratic society (s. 1 of the *Canadian Charter*). The current *Canada Elections Act* provisions restricting transmission to the public of new election survey results apply to polling day only.

123. In *R. v. Sharpe*,[37] the Supreme Court of Canada dealt with the issue of the appropriate balance between prohibition of child pornography and the freedom of expression. The Court concluded that the ban on child pornography was constitutional, except for two peripheral applications relating to expressive material privately created and kept by the accused, for which two exceptions can be read into the legislation. The exceptions will not be available where a person harbours any intention other than mere private possession.

124. *R. v. Guignard*,[38] the Supreme Court of Canada stated that consumers also have freedom of expression, which sometimes takes the form of "counter-advertising" to criticize a product or make negative comments about the services supplied. In this respect, simple means of expression, such as posting signs, are the optimum means of communication for these consumers. Given the tremendous importance of economic activity in our society, a consumer's "counter-advertising" assists in circulating information and protecting the interests of society just as much as does advertising or certain forms of political expression. This type of communication may be of considerable social importance, even beyond the purely commercial sphere.

125. In *R.W.D.S.U., Local 558 v. Pepsi-Cola Canada Beverages (West) Ltd.*,[39] the union engaged in a variety of protest and picketing activities during a lawful strike and lockout at one of the Pepsi-Cola plants. These activities eventually spread to "secondary" locations, where union members and supporters picketed retail outlets to prevent the delivery of the appellant's products and dissuade the store staff from accepting delivery and engaged in intimidating conduct outside the homes of appellant's management personnel. The Court ruled that secondary picketing is generally lawful unless it involves tortious or criminal conduct.

126. In *U.F.C.W., Local 1518, v. KMart Canada Ltd.* and in *Allsco Building Products Ltd. v. U.F.C.W., Local 1288P*,[40] the Supreme Court of Canada explained the fundamental importance of freedom of expression in the labour relations context. Consumer leafleting seeks to persuade members of the public to take a certain course of action through informed and rational discourse, which is the very essence of freedom of expression. Peaceful distribution of leaflets is

acceptable if consumers are able to determine for themselves what course of action to take without being unduly disrupted by the message of the leaflets or the manner in which it was distributed.

127. In *Little Sisters Book and Art Emporium v. Canada (Minister of Justice)*,[41] the Supreme Court of Canada stated that, as conceded by the Crown, the Customs legislation infringes the freedom of expression. However, with the exception of the reverse onus provision, the legislation constitutes a reasonable limit in a free and democratic society (s. 1 of the *Canadian Charter*). The Court emphasized that Customs officials have no authority to deny entry to sexually explicit material unless it comes within the narrow category of pornography that Parliament has validly criminalized as obscene. The appellants were entitled to the equal benefit of a fair and open customs procedure, and because they imported gay and lesbian erotica, which was and is perfectly lawful, they were adversely affected in comparison to other individuals importing comparable publications of a heterosexual nature. The burden of proving obscenity rests on the Crown. Guidelines have been issued following this judgment: http://www.cbsa.gc.ca/E/pub/cm/d9-1-1/d9-1-1-e.html.

128. In *R. v. Lucas*,[42] the Supreme Court of Canada examined the defamatory libel provisions in the *Criminal Code*. The Court found that the impugned provisions contravene the guarantee of freedom of expression since the very purpose of these sections is to prohibit a particular type of expression. However, subject to the severance of part of one requirement of the offence, the Court upheld the provisions as a justifiable limit in a free and democratic society (s. 1 of the *Canadian Charter of Rights and Freedoms*). The Court referred to article 17 of the *Covenant* and the protection against attacks on reputation. The Court indicated that defamatory libel is so far removed from the core values of freedom of expression that it merits but scant protection.

### Article 20. Ban on war propaganda and inciting hatred

129. From 1997-2001, the Canadian Human Rights Tribunal had been looking into allegations that material posted on the Internet by E. Z. could expose Jews to hatred or contempt on the basis of their race, religion and ethnic origin (procedures were delayed by various legal challenges by the respondent). In January 2002, the Human Rights Tribunal concluded that hate has no place in Canada. In its decision, the Tribunal ordered that the hate messages be removed from the site and concluded that the site created conditions that allow hatred to flourish. In its view, the "tone and expression of these messages is so malevolent in its depiction of Jews, that we find them to be hate messages within the meaning of the Act" (Citron v. Zündel, D.T. 1/02 2002/01/18).

130. Amendments to the *Canadian Human Rights Act* came into force in December 2001, clarifying the application of the Act to hate messages on the Internet. The hate propaganda provisions of the Criminal Code were also amended in December 2001 to allow for deletion of hate propaganda from the Internet (new section 320.1).

131. Since 1970, the *Criminal Code* prohibits: (a) advocating or promoting genocide against an "identifiable group"; (b) inciting hatred against an "identifiable group" by communicating in a public place statements which are likely to lead to a breach of the peace; and (c) communicating statements, other than in private conversation, to wilfully promote hatred against an "identifiable

group" (sections 318 and 319). On 29 April 2004, the definition of "identifiable group" which read "any section of the public distinguished by colour, race, religion or ethnic origin" was amended to add "sexual orientation" to the distinguishing factors.

132. The *Anti-terrorism Act* also includes specific provisions intended to send a strong message against acts of hatred and discrimination. The first is a *Criminal Code* amendment authorizing a court within its jurisdiction to order the deletion of publicly available on-line hate propaganda stored on a computer server. A second creates a specific *Criminal Code* offence of public mischief in relation to places of religious worship, or objects associated with religious worship, if the act of mischief is motivated by hatred based on religion, race, colour, or national or ethnic origin.

### Article 21. Right of peaceful assembly, and

### Article 22. Freedom of association

133. Canada's report under the *Convention against Torture* (Articles 12 and 13 - Impartial and immediate investigation and Allegations of torture or abuse by authorities) contains relevant information with respect to the freedom of peaceful assembly.

134. The *Public Service Modernization Act* (adopted in November 2003 and which will come into force in stages) now provides that all employees represented by a union have the right to vote during a strike vote. Previously it was provided that only union members could exercise their right to vote during a strike vote. The restrictions imposed apply only to federal public service employees filling senior management positions and certain non-represented employees.

**Canadian Charter of Rights and Freedoms**

135. In *R. v. Advance Cutting & Coring Ltd.*,[43] which deals with a union security regime, the Supreme Court concluded that the freedom of association includes a right not to associate.

136. In *Dunmore v. Ontario (Attorney General)*,[44] the Supreme Court of Canada concluded that the exclusion of agricultural workers from the application of the Ontario labour relations regime violates the freedom of association. While there is no constitutional right per se to protective labour relations legislation, the exclusion of a group from such legislation may substantially impact the exercise of freedom to associate. Given the historical reality of agricultural labour relations, the effect of the exclusion is to render agricultural workers substantially incapable of exercising their fundamental freedom to organize. The total exclusion of agricultural workers in all sectors of the industry and from all aspects of the statutory regime is not justifiable in a free and democratic society (s.1 of the *Canadian Charter*).

137. In *Delisle v. Canada (Deputy Attorney General)*,[45] the Supreme Court of Canada ruled that the freedom of association does not include the right to establish a particular type of association defined in a particular statute. Only the establishment of an independent employee association and the exercise in association of the lawful rights of its members are protected. Respect for freedom of association therefore does not require in this case that the appellant (a

member of the Royal Canadian Mounted Police) be included in either the regime of the *Public Service Staff Relations Act*, or any other regime, since the Charter protects Royal Canadian Mounted Police members against interference by management intended to discourage the establishment of an employee association.

## Article 23. Protection of the family, right to marriage and equality between spouses

138. The 2001 Census shows that marriage remains the predominant family structure in Canada, nonetheless Canadian families of the 21st century continue to be more diverse in how they arrange themselves and their members are more likely to undergo multiple transitions. Family is now defined by Statistics Canada for census purposes as a married or common-law opposite-sex or same-sex couple, with or without children of one or both spouses or partners, or a lone parent - regardless of that parent's marital status - having at least one child living under the same roof.

*Immigration and Refugee Protection Act*

139. In the *Immigration and Refugee Protection Act* (IRPA), which fortifies the expressed immigration objective of seeing that families are reunited in Canada, the notion of who constitutes a "family" for purposes of immigration to Canada has been modernized to extend beyond spouses to include common-law and conjugal partners of the same or opposite sex. Moreover, sponsored spouses and partners may in certain cases apply to become permanent residents from within Canada, as opposed to overseas. Sponsored spouses, partners and dependent children, and refugees, are exempted from the bar to admission with regard to excessive demand on health or social services. Children may now be sponsored for permanent residence, even if not pursuing studies, up to the age of 22 by their parents.

140. Canada also has a measure to better promote family reunification in the context of IRPA by allowing family members abroad to be processed for permanent residence to Canada at the same time as protected persons who are in Canada. Family members may now also apply, as part of the original application, for a one-year period following the granting of permanent residence to the original family member. This concurrent processing is intended to speed up family reunification of a person granted protected person status in Canada with his or her dependants.

141. The IRPA continues to allow the Minister of Citizenship and Immigration Canada to grant permanent residence or exempt individuals from requirements of the Act on the basis of humanitarian and compassionate grounds including the best interests of a child directly affected by the decision. The impact of separation of family members is one factor considered in a humanitarian and compassionate application.

### Canadian Charter of Rights and Freedoms

142. Three provinces (Ontario, Quebec and British Columbia) and one territory (Yukon) in Canada now provide equal access to civil marriage for same-sex couples as a result of court rulings based on the equality guarantees (s. 15 of the *Canadian Charter*). The Government of Canada is fully committed to both fundamental rights identified by the courts as involved here

that are guaranteed by the *Charter* - equality and freedom of religion. As a result, the government has referred four questions to the Supreme Court of Canada asking whether draft legislation that would provide equal access to civil marriage for same-sex couples across Canada is constitutional both from the perspective of the equality guarantee and from the perspective of the freedom of religion guarantee, in that it respects the religious beliefs of those called on to perform marriages under provincial jurisdiction. The reference to the Supreme Court also asks whether the opposite sex requirement for marriage is constitutional.

**Specific concern of the Human Rights Committee**

143. With respect to the Committee's Concluding observation (paragraph 15), Canada's priority for removals is criminals and security threats in particularly those who pose a danger of the security or to the public in Canada. In writing a report for removal on a permanent resident, the following non-exhaustive list of factors are taken into consideration in both criminal and non-criminal cases. The age at the time of landing (whether the permanent resident has been resident in Canada since childhood); the length of residence in Canada after the date of the admission; the extent to which family members in Canada are dependent on the permanent resident; any adverse conditions in the permanent resident's home country that would make removal problematic; the degree to which the permanent resident has firmly established himself/herself in Canada; any prior criminal convictions; and his/her current attitude and the degree to which the permanent resident cooperates with Canadian authorities.

144. Permanent residents, once issued a removal order, have an administrative right of appeal and access to the Federal Court, subject to certain exceptions.

**Article 24. Rights of the child**

145. Canada provides comprehensive information on its implementation of the rights of the child in its Reports on the *Convention of the Rights of the Child* and in the Responses of Canada to the List of Issues of the Committee on the Rights of the Child. These reports are available at http://www.pch.gc.ca/progs/pdp-hrp/docs/crc_e.cfm.

**Specific concern of the Human Rights Committee**

146. In its Concluding Observations (paragraph 18), the Human Rights Committee expressed its concern with respect to differences in the way in which the National Child Benefit Supplement for low-income families is implemented in some provinces.

147. The federal/provincial/territorial National Child Benefit (NCB) is the Government of Canada's principal child poverty initiative. Under the NCB, the Government of Canada provides income support with respect to children, whether parents are on social assistance or working, through the National Child Benefit Supplement (NCBS) component of the Canada Child Tax Benefit (CCTB). Since 1998, the Government of Canada has steadily increased its investment in children and their families through the base benefit of the CCTB and NCB Supplement. Further details are provided in the above-mentioned reports.

148. One of the strengths of the NCB is its flexibility to allow provinces and territories to meet the needs of their population while fulfilling the objectives of the initiative. In fact, in addition to services and in-kind benefits, many jurisdictions have chosen to provide additional income support through earnings supplements while others have continued to provide income support with respect to children of low-income families on social assistance. Further, programs offered by the provinces and territories are designed so that low-income families with children do not lose access to services such as assistance with child-care, early childhood services and supplementary health benefits when their parents accept a job.

149. Enriched federal income support is enabling provinces and territories to redirect some of their social assistance resources towards improving benefits and services for low-income families with children. In addition, most jurisdictions are adding new funds, beyond their social assistance savings, so that federal investments to the NCB Supplement are being complemented by additional provincial/territorial investments. Overall, provinces and territories are contributing $777 million per year in services and income support. Details on federal spending in this area are included in the reports mentioned above.

150. Federal, provincial and territorial governments are committed to accountability and transparency. Under the NCB Governance and Accountability Framework, governments have agreed to report annually to the public on the performance of the NCB initiative. Thus far, four jointly prepared NCB progress reports have been released, with a fifth progress report scheduled for release later in 2004. A comprehensive evaluation of the NCB has been conducted and future evaluation work is planned.[46]

151. The NCB is making progress toward meeting all of its goals, while providing provinces and territories and First Nations with the flexibility to meet their particular needs. For example: in 2000, there was a 5.1% reduction in the number of low-income families. These families with children saw their average disposable income increase by 7.5%. The NCB is making work financially more attractive than social assistance. This improvement was associated with a reduced dependency on social assistance among families with children.[47] The flexibility of the NCB allowed many jurisdictions to combine the NCB Supplement with provincial and territorial child benefits into a single integrated payment.

152. To inform Canadians on progress made, federal, provincial and territorial governments work collaboratively to produce an annual report. *The National Child Benefit Progress Report: 2002* was released in July 2003. This Report demonstrates that for the fourth consecutive year, the number of low income families with children has continued its downward trend (post tax LICOs).

*Aboriginal children*

153. The National Child Benefit for First Nations was implemented in July 1998 to address the issue of Aboriginal child poverty in Canada. It enables First Nations to develop innovative programs to tailor the National Child Benefit to their communities. A total of $48.76 million has been allocated to this program.

154. The National Child Benefit Reinvestment (NCBR) initiative allows First Nations to address community social development priorities for low-income families with children.

Funding is provided in the areas of: child nutrition, child care, home-work transitions, parenting skills and cultural enrichment with the goal of reducing the depth and incidence of child poverty while promoting parental attachment to the labour force. NCBR funding for 2002-2003 was $51.8 million.

**Other measures**

155. In April 2004, the Government of Canada submitted to the United Nations an action plan for children entitled *A Canada Fit for Children* in follow up to the United Nations Special Session on Children. The National Plan of Action (NPA) is a multi sectoral, long term, child centred framework for children and young people that identifies goals, strategies and actions for the coming decade. The NPA, guided by the *Convention on the Rights of the Child*, reinforces Canada's ongoing commitment to children and their families. *A Canada Fit for Children* is available at: http://www11.sdc.gc.ca/en/cs/sp/socpol/publications/2002-002483/page00.shtml.

156. The Government of Canada has implemented a number of other legislative, administrative and policy initiatives to improve the lives of children. In addition, the *Immigration and Refugee Protection Act* incorporates references to the best interest of the child throughout. Details on initiatives are included in Canada's Responses to the List of Issues of the Committee on the Rights of the Child (September 2003) and in Canada's Response to the United Nations Questionnaire for the Study on Violence Against Children (September 2004).

## Article 25. Civic responsibility and political participation

### Article 25 (a) and (b) - Right to take part in the conduct of public affairs and right to vote

157. In September 2000, a new *Canada Elections Act* replaced the previous one, retaining or revising many existing provisions. The most significant provisions modified the regime for control of third party election advertising, setting limits on such advertising expenses of $150,000 nationwide and $3,000 in a given electoral district. The legislation also established third party registration and reporting requirements.

158. On 1 January 2004, amendments to the *Canada Elections Act* came into force. It extends disclosure and registration requirements for political entities, introduces new limits on political contributions, and imposes a ban on contributions from unions and corporations to political parties and leadership contestants. The amending *Act* also provides for payment of a quarterly allowance to registered political parties, based on the percentage of votes obtained in the previous general election.

159. The *Public Service Modernization Act*[48] (PSMA), assented to on 7 November 2003, will, when it comes into force, bring changes to the provisions dealing with the political activities of public servants. Federal public servants, with the exception of deputy heads of departments and agencies, may engage in any political activity so long as it does not impair or is not perceived to impair the employee's ability to perform his or her duties in a politically impartial manner.[49] A new scheme for approving the political activities of federal public servants will be created.[50] Federal public servants who wish to seek nomination for candidacy in a provincial, territorial or federal election must first obtain the permission of the Public Service Commission. For its

determination, the Commission may have regard to the nature of the election in question, the employee's duties and the level and visibility of his or her position.[51] If a public servant is elected to federal, provincial or territorial office, she or he ceases to be a public servant on the date she or he is declared elected.[52] There are similar, but less restrictive provisions for employees wishing to participate in municipal elections (s. 115 of the new Public Service Employment Act). These provisions are aimed to uphold the principle of political impartiality in the public service.

**Canadian Charter of Rights and Freedoms**

160. The Supreme Court of Canada held in *Figueroa v. Canada (Attorney General)* that the requirement in the *Canada Elections Act* that a political party nominate candidates in at least 50 electoral districts in order to obtain and retain registered party status and specified statutory benefits was an infringement of section 3 of the *Canadian Charter*. The infringement was not justified in a free and democratic society (s.1 of the *Canadian Charter*). The Court found that the purpose of the section 3 rights to vote and to run for office was effective representation, including the right to participate meaningfully in the electoral process. For parties who failed to meet the 50-candidate threshold, the resulting denial of the rights to issue tax receipts, to retain unspent candidate election funds and to list party affiliation on ballots diminished the right of citizens to meaningful participation in the electoral process. The challenge was in relation to the Act as it read prior to amendments that took effect in 2000 and 2001.

161. In *Sauvé v. Canada (Attorney General)*,[53] the Supreme Court of Canada court struck down the disqualification in the *Canada Elections Act* of all prison inmates from voting. The subsequent amendment to the Act to disqualify only inmates serving sentences of two years or more was also challenged in *Sauvé v. Canada (Chief Electoral Officer)*,[54] and the Supreme Court of Canada held, in 2002, that this too was an unjustifiable infringement of the right to vote guaranteed by s. 3 of the *Charter*. As a result of these decisions, federally incarcerated offenders now have the right to vote in federal and provincial elections.

162. In *Harper v. Canada (Attorney General)*,[55] the Supreme Court of Canada examined a number of provisions in the *Canada Elections Act* regulating the intervention of third parties in the electoral process, as well as the prohibition on advertising on the day of the election. The Court ruled that the limits on third party election advertising expenses set out in the *Act* infringe the right to freedom of political expression but they do not infringe the right to vote protected by s. 3 of the *Charter*. Under s. 3, the right of meaningful participation in the electoral process is not limited to the selection of elected representatives and includes a citizen's right to exercise his or her vote in an informed manner. In the absence of spending limits, it is possible for the affluent or a number of persons pooling their resources and acting in concert to dominate the political discourse, depriving their opponents of a reasonable opportunity to speak and be heard, and undermining the voter's ability to be adequately informed of all views. Equality in the political discourse is thus necessary for meaningful participation in the electoral process and ultimately enhances the right to vote. This right, therefore, does not guarantee unimpeded and unlimited electoral debate or expression. Spending limits, however, must be carefully tailored to ensure that candidates, political parties and third parties are able to convey their information to the voter; if overly restrictive, they may undermine the informational component of the right to

vote. Here, the impugned provision does not interfere with the right of each citizen to play a meaningful role in the electoral process. See also *Libman v. Quebec (Attorney General)* and *Thomson Newspapers Co. v. Canada (Attorney General)* under Article 19 of the Covenant.

### Article 25 (c) - Access to public service without discrimination

163. Employment in the public service continues to be merit-based and continues to guard against political partisanship. The new *Public Service Modernization Act* aims to enhance the ambit of employment equity initiatives in the federal public service by expressly allowing employers to set membership in a designated employment equity group[56] as a criterion for being hired to a given position.[57]

*Policies - Public Service*

164. The Government of Canada is committed to establishing a representative and inclusive public service that is a workplace of choice for current and future generations of Canadians. As an employer, the federal Public Service recognizes that it has a duty to accommodate the needs of persons with disabilities in the workplace. The objective of the Policy on the Duty to Accommodate Persons with Disabilities in the Federal Public Service (http://www.tbs-sct.gc.ca/pubs_pol/hrpubs/tb_852/ppaed_e.asp) is the elimination of barriers that prevent the full participation of potential recruits and existing employees within the Public Service of Canada. Examples include: physical barriers, unnecessary job requirements and unequal access to training and development.

165. The Government of Canada is also committed to making the Canadian public service a representative workplace, reflecting the diversity of the Canadian population, by putting in place programs such as "Embracing Change", which encourages departments at meeting the benchmarks for the hiring, training, and promotion of visible minorities.

*Canadian Charter of Rights and Freedoms*

166. In *Lavoie v. Canada*,[58] the Supreme Court concluded that the preference for Canadian citizens in open competitions for employment pursuant to the *Public Service Employment Act* was contrary to the equality rights but was justified in a free and democratic society (s. 1 of the *Canadian Charter*).

### Article 26. Equality before the law

167. In 2000, the Government of Canada enacted the *Modernization of Benefits and Obligations Act*, extending 68 federal laws to common-law opposite-sex and same-sex couples. As a result, the majority of the legal consequences of marriage in federal law now also apply to all couples in committed common-law relationships of at least one year. Federal benefits and obligations available to children of married couples were similarly extended under this Act to children of common-law partners, both opposite-sex and same-sex.

168. Under the *Immigration and Refugee Protection Act*, both married couples and persons in a common-law relationship (opposite-sex and same-sex) are eligible for benefits related to immigration such as sponsoring a partner to immigrate to Canada. The *Citizenship Act* was amended to add the definition of "common-law partner" and by extending to common-law partners certain rights in relation to the residency requirement for Canadian citizenship.

**Canadian Charter of Rights and Freedoms**

169. In its landmark decision *Law v. Canada (Minister of Employment and Immigration)*,[59] the Supreme Court of Canada stated the proper test for the equality rights (s. 15 of the *Canadian Charter*). Section 15(1) requires three broad inquiries: First, whether there is an inequality determined by whether the law draws a formal distinction between the claimant and others based on one or more personal characteristics OR by failing to take account of the claimant's already disadvantaged position within Canadian society resulting in substantively differential treatment between the claimant and others on the basis of one or more personal characteristics. Secondly, whether the differential treatment is based on one or more enumerated in s. 15 or on an analogous grounds. Thirdly, whether the differential treatment discriminates in a substantive sense when measured against the purposes of s. 15. Though the list of factors is not closed, the Court identified some of the most important factors to be considered:

- Pre-existing disadvantage, stereotyping, prejudice, or vulnerability experienced by the individual or group at issue;

- The correspondence, or lack of it, between the ground or grounds on which the claim is based and the actual needs, merits, capacity, or circumstances of the claimant or others;

- The ameliorative purpose or effects of the impugned law on a more disadvantaged person or group in society;

- The nature and scope of the interest affected by the impugned law.

170. The case of *Canada (House of Commons) v. Vaid*,[60] dealt with whether the *Canadian Human Rights Act* applies to employees of the House of Commons. The case involved a racial discrimination complaint by one such employee against the then Speaker of the House. The Federal Court of Appeal concluded that the parliamentary privilege claimed in the present instance finds no application herein. The powers claimed in this case are not necessary and, consequently, not within the scope of the privilege as delimited by the doctrine of necessity. In addition, there is no clear intent of Parliament, either explicit or implicit, to shield its managerial activities from the application of the *Canadian Human Rights Act*. The Supreme Court of Canada will hear the case in fall 2004.

171. The Supreme Court of Canada released two decisions in 1999 that broadened the scope of the anti-discrimination protection provided to individuals by human rights legislation in Canada. In *British Columbia (Public Service Employee Relations Commission) v. British Columbia Government and Service Employees' Association*,[61] the Court held that the employer's defence to a claim of discrimination in employment, the bona fide occupational requirement, required proof, not only of an important employer's interest, but also that the employer had

attempted to accommodate the employee to the point of undue hardship. The Court said that employers had to build conceptions of equality into workplace standards. The Court applied the same principles in another case involving the provision of services covered by human rights legislation, more precisely in the case of the denial of a driver's licence on the basis of his physical disability (British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights).[62] The Canadian Human Rights Act anticipated this development in amendments made a year earlier.

172. In *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Montréal (City); Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Boisbriand (City)*,[63] the Supreme Court of Canada stated that a liberal and purposive interpretation and a contextual approach support a broad definition of the word "handicap", which does not necessitate the presence of functional limitations and which recognizes the subjective component of any discrimination based on this ground. Courts should adopt a multidimensional approach that considers the socio-political dimension of "handicap". A handicap may be real or perceived, and a person may have no limitations in everyday activities other than those created by prejudice and stereotypes.

## Article 27. Religious, cultural and linguistic rights

173. The Committee will find additional information in Canada's periodic reports submitted pursuant to the Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant on Economic, Social and Cultural Rights.

174. In Reference re Secession of Quebec,[64] the Supreme Court of Canada stated that the protection of minorities is an underlying constitutional principle. The principle of respecting and protecting minority rights continues to exercise influence in the operation and interpretation of our Constitution. The Supreme Court of Canada more recently said than an important feature of the Canadian constitutional democracy is respect for minorities, which includes, of course, religious minorities. The Court stated that, indeed, respect for and tolerance of the rights and practices of religious minorities is one of the hallmarks of an enlightened democracy. The Court added that respect for minority rights must also coexist alongside societal values that are central to the make-up and functioning of a free and democratic society.[65]

### Official languages (French and English)

175. The Government of Canada, through pluriannual agreements entered into with all the provinces and territories, funds part of the additional costs associated with English and French minority language education and English and French training as second languages. In addition, all the provinces and territories also have access to a cost-shared incentive program aimed at improving government services provided to official language minorities in their jurisdictions.

176. In March 2003, the federal government announced the Action Plan for Official Languages. This Action Plan, which includes an accountability and coordination framework, provides over $750 million in investments over five years in three priority areas: education, the development of communities and the public service.

177. In *R. v. Beaulac*,[66] the Supreme Court set out a new principle of interpretation of language rights and indicated that they must be interpreted purposively, in a manner consistent with the preservation and development of official language communities in Canada. The Court noted the positive nature of language rights, establishing a link with the notion favoured in the area of international law that the freedom to choose is meaningless in the absence of a duty of the State to take positive steps to implement language guarantees. In the same case, the Supreme Court of Canada ruled that the language-of-trial provisions of the *Criminal Code* (the right of any accused to have a trial before a judge, a jury and a prosecutor who speak the official language (English or French) of the accused, the right of the accused to have a judgment written in his official language, and the right of the accused, witnesses and the accused's counsel to be assisted by an interpreter) create an absolute right, provided a request is made within the time allowed. The Court confirmed that such language rights are completely distinct from trial fairness and, as such, are not contingent upon the ability of the person making the request for interpretation services to understand the proceedings in the other official language. However, several courts have found that the language provisions of the *Criminal Code* do not create language requirements governing the disclosure of evidence, documentary evidence and information.

178. In *Arsenault-Cameron v. Prince Edward Island*,[67] the Supreme Court of Canada set out the scope of the powers of management of the official language minority and indicated that right holders have the exclusive power to decide how they provide minority language educational services. Furthermore, the Court added that both a textual and purposive analysis of s. 23 of the *Canadian Charter of Rights and Freedoms* indicate that instruction should take place in facilities located in the community where children reside. Finally, the Court indicated that s. 23 of the Charter is premised on the fact that substantive equality requires that official language minorities be treated differently, if necessary, according to their particular circumstances and needs, in order to provide them with a standard of education equivalent to that of the official language majority.

**Aboriginal people**

179. In recent years, closing the gap in life chances between Aboriginal and non-aboriginal Canadians has been a key feature of Speeches from the Throne and federal budgets. The 2003 Federal Budget provided more than $2 billion in additional funds for Aboriginal programs and services in health, education, child-care, infrastructure, policing languages and culture, business development and sustainable environment. Canada's new Prime Minister, upon taking power in December 2003, has placed renewed emphasis on Aboriginal issues. To focus the government's efforts, changes to the infrastructure of government have been implemented, including a new Cabinet Committee on Aboriginal Affairs chaired by the Prime Minister.

**Specific concerns of the Human Rights Committee**

180. In its Concluding Observations (paragraph 8), the Committee asked what has been done to implement the recommendations of the Royal Commission on Aboriginal Peoples.

181. Canada responded to the Royal Commission on Aboriginal People (RCAP) in 1998 with Gathering Strength - Canada's Aboriginal Action Plan. The vision articulated in Gathering Strength is straightforward: a new partnership between Aboriginal people and other Canadians

that reflects our interdependence and enables us to work together to build a better future; financially viable Aboriginal governments able to generate their own revenues and able to operate with secure, predictable government transfers; Aboriginal governments reflective of, and responsive to, their communities' needs and values; and, a quality of life for Aboriginal people comparable to that of other Canadians.

182. As part of Gathering Strength, the Government offered a Statement of Reconciliation, which acknowledged its role in the development and administration of the residential school system. To the victims who suffered physical and sexual abuse at residential schools, the Government said that it is deeply sorry. The Government also committed $350 million in support of a community-based healing strategy to address the healing needs of individuals, families and communities arising from the legacy of physical and sexual abuse at residential schools.

183. In the same Concluding observation (paragraph 8), the Committee raised the issue of "the practice of extinguishing inherent aboriginal rights".

184. Certainty over ownership and use of lands and resources is one of the primary goals of land claims negotiations. A clear definition of the respective rights and obligations of Aboriginal groups and other citizens is needed in all aspects of the comprehensive land claims process, including the provisions of the Final Agreement.

185. In the past, the Government of Canada required Aboriginal groups to "cede, release and surrender" their undefined aboriginal rights in exchange for a set of defined treaty rights. This approach requires Aboriginal groups to give up all their Aboriginal rights, which many groups consider to be unacceptable by today's standards.

186. In recent years, new approaches to achieving certainty have been developed as a result of comprehensive land claims negotiations. These include the "modified rights model" pioneered in the Nisga'a negotiations, and the "non-assertion model". Under the modified rights model, aboriginal rights are not released, but are modified into the rights articulated and defined in the treaty. Under the non-assertion model, Aboriginal rights are not released, and the Aboriginal group agrees to exercise only those rights articulated and defined in the treaty and to assert no other Aboriginal rights.

**Land claims**

*Comprehensive Claims*

187. Sixteen comprehensive claims have been settled in Canada since the announcement of the Government of Canada's claims policy in 1973, the most recent being those of the eight Yukon First Nations, the Nisga'a Agreement, and the Tlicho Agreement.

188. The primary purpose of comprehensive land claims settlements is to conclude agreements with Aboriginal peoples that will resolve the legal ambiguities associated with the common law concept of Aboriginal rights. The objective is to negotiate modern treaties which provide certainty and clarity of rights to ownership and use of lands and resources for all parties. The process is intended to result in agreement on the rights Aboriginal peoples will have in the

future with respect to lands and resources. Through the negotiations, the Aboriginal party secures a clearly defined package of rights and benefits codified in constitutionally protected settlement agreements.

189. Comprehensive land claim agreements define a wide range of rights, responsibilities and benefits, including ownership of lands, fisheries and wildlife harvesting rights, participation in land and resource management, financial compensation, resource revenue sharing and economic development projects. Settlements are intended to ensure that the interests of Aboriginal groups in resource management and environmental protection are recognized, and that claimants share in the benefits of development.

*British Columbia Treaty Commission Process*

190. According to the BC Treaty Commission's 2004 Annual Report, there are now 55 First Nations participating in the BC treaty process (www.bctreaty.net). Because some First Nations negotiate at a common table, there are 44 sets of negotiations. There are 41 First Nations in Stage 4 agreement-in-principle negotiations. Five First Nations are in Stage 5 negotiations to finalize a treaty: the Maa-nulth First Nations, Lheidli T'enneh Band, Sechelt Indian Band, Sliammon Indian Band and Tsawwassen First Nation. The treaty process is voluntary and open to all First Nations in British Columbia.

*Specific Claims Resolution*

191. In November 2003, the *Specific Claims Resolution Act* received Royal Assent. This important piece of legislation will lead to the establishment of a new independent claims body, known as the Canadian Centre for the Independent Resolution of First Nations Specific Claims (the Centre). The Centre will help First Nations and Canada reach resolution on specific claims and bring greater transparency, efficiency and fairness to the current process.

*First Nations Land Management Act*

192. In 1996, the *First Nations Land Management Act* gave 14 participating First Nations the option of operating under their own land codes instead of *The Indians Act* and re-established power over land management. Canada has opened the Act to 30 First Nations every two years. Over 50 First Nations have already passed Band Council resolutions indicating they also want to work within this framework. The First Nations Land Management Initiative allows participating First Nations the opportunity to develop their own modern and/or traditional tools to manage and protect their reserve lands and resources.

*Treaty Commissions*

193. The federal government has recently reached agreement with First Nations for the establishment of a Treaty Relations Commission Office in the Province of Manitoba. Consistent with the existing Office of the Treaty Commissioner in Saskatchewan, the Manitoba Commission will engage in public education activities and independent research and facilitate discussions on historic treaty issues. Planning for an Alberta Treaty Relations Commission Office is underway.

194. The Treaty Relations Commissions function as independent and impartial offices, with a mandate to engage in public education activities to improve understanding of the treaty relationship and treaty-related issues, provide facilitation services for discussing treaty issues, and conduct independent research.

*The Metis*

195. The *R. v. Powley*[68] decision rendered in September 2003 was the first Supreme Court of Canada judgement to address the question of whether Metis groups can possess Aboriginal rights pursuant to section 35(1) of the *Constitution Act, 1982*. The Supreme Court ruled that the Metis community of Sault Ste. Marie possesses a constitutionally protected right to hunt for food. The Supreme Court articulated a test for Metis Aboriginal rights, thereby allowing for the possibility that Metis rights might exist elsewhere in Canada, while setting some parameters around who might exercise these rights.

196. In reacting to the Supreme Court decision, a key component of the federal response will involve participating in multilateral discussions with provinces, territories and Métis organizations. The focus of these multilateral discussions will be on harvesting and related issues (e.g. cooperative management), in accordance with the Supreme Court decision. Preparations for these discussions are well advanced. Improved relations with both Métis organizations and the provinces are anticipated as a result of the multilateral discussions and research, as any harvesting regime that is put in place through this process will be achieved through partnership and cooperative efforts among all players. The federal government is also engaged in legal and policy analysis to better understand the decision and its implications. This work will be key to addressing current gaps in knowledge with respect to Canada's Metis population. For instance, it will inform the government with respect to where Metis communities exist, which in turn will inform the identification of Metis harvesters: a priority identified in the Supreme Court decision which will be essential in establishing responsible and orderly harvesting.

*Aboriginal Languages and Cultures*

197. The Aboriginal Languages Initiative (ALI), which, since 1998, has supported community-driven activities for the protection, renewal and growth of the Aboriginal languages in Aboriginal communities and in Aboriginal homes terminates in March 2005 and will be succeeded by the Aboriginal Languages and Cultures Centre (ALCC). A Task Force of 10 Aboriginal people was established in December 2003 and is responsible for making recommendations on a sustainable national strategy for the preservation, revitalization and promotion of Aboriginal languages and cultures, a key component of which is the creation of an ALCC. The recommendations, due by the end of 2004, will be based on consultation findings, related research, and presentations made to them by experts, various Aboriginal representative groups, interested individuals and organizations, as well as on the Task Force's own collective knowledge, expertise, and experience.

198. Canada has established ongoing support for its Aboriginal Languages Accords with each of the Governments of the Northwest Territories and Yukon. Under the respective Accord, both governments agreed that the preservation, development and enhancement of the Aboriginal languages indigenous to that territory was an important mutual goal. This understanding was

extended to the Government of Nunavut in 1999. Both Nunavut and Yukon receive $1.1 million annually and the Northwest Territories $1.9 million annually to support territorial activities agreed upon under the terms of the funding agreements with each of the Territorial Governments. Through these agreements, the Territorial Governments have been focusing on the support of Aboriginal community projects and have been working closely with the Aboriginal language groups of their respective territories.

199. Additional information on other initiatives to address Aboriginal language and culture related issues such as the Urban Multipurpose Aboriginal Youth Centres Initiative, the Urban Aboriginal Strategy, the Northern Native Broadcast Program and the Aboriginal Friendship Program, may be found in Canada's reports under the ICESCR.

## Part II

## MEASURES ADOPTED BY THE GOVERNMENTS OF THE PROVINCES

### Newfoundland and Labrador

### Article 2. Equal rights and effective remedies

200. To ensure equal access to courts the Provincial Court has completed two strategic plans, the first in 1997 and the second in 2000 - they are being implemented successfully. The development of the plans was aided by input from 33 external stakeholders province-wide including aboriginal groups, John Howard Society and the Elizabeth Fry Society.

201. The Provincial Court of Newfoundland and Labrador has an active caseflow management committee working with all criminal justice stakeholders to examine court delay reduction and improve case processing times.

202. Newfoundland and Labrador Human Rights Commission has received a number of complaints on rights protected directly or indirectly by the Covenant. Here is the number of complaints received by the Commission for the fiscal year 2002-2003:

**2002 - Complaints filed**

| Ground | Number of complaints |
|---|---|
| Sex/gender | 20 |
| Marital status | 5 |
| Physical disability | 39 |
| Mental disability | 18 |
| Age | 4 |
| Sexual orientation | 2 |
| Sexual solicitation | 2 |
| Pay discrimination | 9 |
| Retaliation | 1 |
| Total complaints | 100 |

- Infant death rate by sex (per 1,000)[71]

| Year | Male | Female | Combined |
|---|---|---|---|
| 1996 | 5.0 | 4.2 | 4.6 |
| 2000 projected | 5.6 | 3.6 | 4.6 |
| 2002 projected | 4.9 | 4.3 | 4.6 |

- Death rate according to age and sex[72]

  - In men, all age groups between 20 and 49 have rates above 40 per 100,000 for the 1997-1999 period. This is at least double the average rate in Quebec. Except for the 0-14 group, boys and men have rates three to six times higher than women. Suicide is the leading cause of death in the under 45 group and leads to twice as many deaths than traffic accidents.

## Ontario

### Article 2. Equal rights and effective remedies

**Ontario Human Rights Commission**

356. Of the 1,941 complaints closed during the fiscal year 2000-2001, 1,219 complaints were mediated, settled, resolved by parties or withdrawn and the Commission made decisions on 722 of these complaints. The growing use of mediation by people on each side of a complaint, is the principal reason the Commission has significantly reduced its caseload. Specially-trained mediators offer parties the option of voluntary mediation early in the process. The mediation process is generally concluded within three to six months of filing a complaint. This year, 51 % of the Commission cases were resolved as a result of mediation services, as well as more traditional settlement techniques such as conciliation.

357. During the 2000-2001 fiscal year, the Commission made significant strides in a number of areas including caseload management and timelines in handling complaints. The Commission resolved more cases than it opened. In 2000-2001, it opened 1,775 and resolved 1,941 cases. As at 31 March 2001, the Commission's active caseload was 1,781. A comparison with earlier figures of 2,745 on 31 March 1998, 2,386 on 31 March 1999 and 1,952 on 31 March 2000, demonstrates the consistent progress the Commission continues to make in this area.

358. In the fiscal year 2001-2002, 2,438 new complaints were filed at the Commission representing a general rise in complaints across most grounds of discrimination. This amounts to an increase of 663 cases (37%) over the total 1,775 complaints filed in the previous fiscal year 2000-2001. The ground of disability and sexual orientation accounted for the largest proportion of the increase in complaints received by the Commission.

359. In the fiscal year 2002-2003, 1,776 new complaints were filed at the Commission. The Commission closed 1,954 cases, close to the same number as the previous year (1,932). Its active caseload as at 31 March 2003 was 2,137. The Commission continued to maintain a

caseload that is current, which means the average age of the cases is less than 12 months. For the 2002-2003 fiscal year, the average age of the caseload was 11.5 months, up slightly from 11 months in the previous year.

**Family initiatives**

360. In 1999, Ontario expanded the unified Family Court so that it now covers approximately 38% of the population. The Family Court provides a single point of entry for family clients into the justice system because it has jurisdiction to hear all family matters. All Family Courts provide voluntary family mediation services and parent information sessions to the public and have Family Law Information Centres. The Centres provide clients with information and general advice to assist them in the early and non-adversarial resolution of family disputes. In 2003, Ontario began work on a proposal for expansion of the Family Court across the province for submission to the federal government. Plans were also made for the expansion of Family Law Information Centres to remaining court locations.

361. Also in 1999, the Family Law Rules came into effect in two of the three trial courts that hear family cases, including the unified Family Court. They emphasize the early non-adversarial resolution of cases and include plain language rules and forms to assist access to the family court system. In 2003, Ontario's Family Rules Committee began work to expand the application of the Family Law Rules to the remaining trial court in the summer of 2004.

362. In 2002, Ontario established a Child Protection Backlog Steering Committee to address best practices in child protection cases and to respond to concerns about delays in processing these cases through the family court system. The Committee is expected to provide its final report to Ontario's 2004 Justice Summit.

**Victims' Bill of Rights**

363. In 1996, the Victims' Bill of Rights came into force. This legislation sets out the principles that apply to the treatment of victims of crime. It also amended some provisions of the *Ontario Evidence Act* making it easier for child and vulnerable witnesses to testify in civil court by:

- Changing the rules related to the competency of child witnesses;
- Eliminating the need for corroboration of a child's testimony;
- Providing accommodation measures such as screens and closed-circuit TV; and
- Providing options for reviews of the admissibility of hearsay evidence for child witnesses.

364. The Victims' Bill of Rights requires that victims are to be given access to information about:

- The services and remedies available to victims of crime;
- The provisions of the Act and of the *Compensation for Victims of Crime Act*;

- The protection available to victims to prevent unlawful intimidation;

- The progress of investigations that relate to the crime, the charges laid with respect to the crime and, if no charges are laid, the reasons why no charges are laid;

- The victim's role in the prosecution, court procedures that relate to the prosecution, the dates and places of all significant proceedings that relate to the prosecution;

- The outcome of all significant proceedings, including any proceedings on appeal, any pretrial arrangements that are made that relate to a plea that may be entered by the accused at trial, the interim release; and

- In the event of conviction, the sentencing of an accused, any disposition made under section 672.54 or 672.58 of the *Criminal Code* (Canada) in respect of an accused who is found unfit to stand trial or who is found not criminally responsible on account of mental disorder, and victims' right under the *Criminal Code* (Canada) to make representations to the court by way of a victim impact statement.

365. The Victims' Bill of Rights was amended in 2001, creating the Office for Victims of Crime, a permanent agency that provides advice to the Attorney General on issues pertinent to the protection of victims of crime.

**Environmental Bill of Rights**

366. The *Environmental Bill of Rights* (EBR) allows the public more access to the Environmental Review Tribunal to appeal the issuance or amendment of environmentally significant instruments. Section 38 allows residents in Ontario to seek leave to appeal a decision to implement an instrument for which notice was already provided for under the EBR. For example, in 2001, a citizens group made use of section 38 to challenge a water taking permit.

367. Section 84 of the EBR also permits Ontario residents to bring an action in court, in certain prescribed circumstances, against individuals or parties where an actual or imminent contravention has caused or will imminently cause significant harm to a public resource of Ontario.

**Declarations of Death Act**

368. In the wake of September 11, 2001, Ontario passed the *Declarations of Death Act*, 2002. The legislation allows relatives of people who have disappeared in disasters to apply to the courts for a declaration of death.

**Amendments to the Public Service Act**

369. Amendments to the *Public Service Act* proclaimed in June 2001 provide better protection for vulnerable persons resident in provincially operated facilities. The amendments place a limit on the authority of vice-chairs at a Public Service Grievance Board arbitration hearing to reinstate employees dismissed from employment for physically or sexually abusing a resident of a provincial facility. The amendments do not prevent a vice-chair from reinstating an employee

but do prevent a vice-chair from reinstating an employee to a position that provides him or her with an opportunity for contact with residents of a facility if the vice-chair finds that the employee did in fact physically or sexually abuse a facility resident.

370. The amendments maintain an employee's right under the *Public Service Act* to be reinstated if the vice-chair determines that dismissal from employment was not the appropriate discipline in the circumstances. At the same time, the amendments provide a further measure of protection and security for vulnerable persons resident in provincially operated facilities.

*SCC Decision in Ontario v. OPSEU*

371. Ontario successfully defended an appeal made to the Supreme Court of Canada (SCC) by a bargaining agent for provincial government employees in 2003. In the case, Ontario v. Ontario Public Service Employees Union, the SCC determined that in certain circumstances it is an abuse of process for a criminally convicted person to re-litigate the issue that was at the heart of the criminal conviction in a subsequent civil proceeding. The Supreme Court's decision in this case protects participants in the criminal trial process, especially victims of the criminal activity, from being required to participate or testify in a subsequent hearing when there is no basis to doubt the merits of the criminal conviction.

**Racial profiling**

372. In December 2002, on the eve of International Human Rights Day, the Ontario Human Rights Commission (OHRC) announced that it would conduct an inquiry into the effects of racial profiling on individual, families, communities and society as a whole. The OHRC defined racial profiling as any action taken for reasons of safety, security or public protection that relies on stereotypes about race, ethnicity, colour, ancestry, religion or place of origin rather than reasonable suspicion, to single out an individual for greater scrutiny or different treatment. Profiling occurs in many contexts, including law enforcement and criminal proceedings, the enforcement of zero tolerance policies in schools, and the actions of private security guards. Submissions were received by telephone, mail, and through an online questionnaire on the OHRC's website. The OHRC received approximately 400 responses related to racial profiling. The OHRC's report including recommendations, entitled *Paying the Price, the Human Cost of Racial Profiling*, was released in December 2003.

**Community Mental Health and Addiction Treatment Services**

373. Community Mental Health and Addiction Treatment Services have signed Transfer Payment Agreements with the Ministry of Health and Long-Term Care which contain a commitment to operate according to the manual, including:

- Complying with the Human Rights Code and other legislation;
- Providing clients information about their rights;

- Ensuring clients are aware of their right to complain or appeal an agency's decision; and

- Ensuring agencies have code of ethics posted in places accessible to clients.

374. The agencies must establish processes and procedures that demonstrate that they are providing equitable and fair access to services for the entire community.

**Ontario Works Act**

375. Recommendation #35 of the Hadley Inquest Jury Recommendations directed that "all delivery agents of *Ontario Works Act* social assistance establish a local response for the expedited intake of applicants who are fleeing situations of domestic violence." In addressing this Jury Recommendation, the government committed to providing training for Ontario Works delivery agents on abused women's issues and related supports and services. The Ministry of Community and Social Services committed to working with its municipal partners to increase staff awareness and strengthen supports in place for those fleeing situations of domestic violence.

376. Currently, Ontario Works policies are in place to assist abused women who are applying for, or already in receipt of, financial assistance. The Ministry is developing a Learning Module for Ontario Works staff on abused women's issues. The Learning Module is intended to enhance these measures by providing delivery agents with tools and targeted training to promote best practices and enhanced service in supporting abused women and their children.

## Article 6. Right to life

**Ontario rental housing tribunal**

377. The *Tenant Protection Act, 1996*, governs landlord and tenant matters in Ontario. The Act contains a legislative clause that an adjudicator of the Ontario Rental Housing Tribunal may use discretion in ordering termination of a tenancy if there is a compassionate or other reason to retain the tenancy. Adjudicators often use this clause when the only alternative is to create a homeless situation and there may be other remedies available for the landlord, i.e., mediation, establishment of a payment plan, etc.

**Supportive housing for those with mental illness**

378. In March 1999, the Ontario government announced a provincial homelessness strategy that included $45 million in each of the next three years for the Ministry of Health and Long-Term care to provide supportive housing for people with serious mental illness. The initiative is referred to as the Mental Health Homelessness Initiative, Phase 1 and Phase 2.

379. In October 1999, $24 million was awarded for Phase 1 for 962 units of supportive housing in Toronto, Hamilton and Ottawa. These three cities were targeted for Phase 1 as they had the highest emergency hostel expenditures in 1998.

380. Of the 962 housing units, 762 are in Toronto, 100 in Ottawa and 100 in Hamilton. Seven hundred and thirty-nine units are through lease agreements (apartments) and 223 units are through property purchases and renovations.

381. Phase 2 of the initiative addresses the supportive housing needs of homeless seriously mental ill persons throughout all regions of the province, including needs related to Provincial Psychiatric Hospital restructuring. Phase 2 funding of $67.6 million was announced in April 2001, for about 2,600 units.

382. There are about 3,400 units in place, with 200 remaining units under development to be completed this year. At the end of the implementation phase, this initiative (phase 1 and phase 2) will create 3,600 units of supportive housing across the province.

383. A snap-shot survey of Phase 1 has been completed and demonstrates very positive results for targeting the correct homeless population and for relatively low turnover which reinforces the idea that housing with supports can stabilize very difficult to house populations. Also, an independent research project has studied Phase 1 and provides very favourable results for the initiative.

**Ipperwash incident**

384. On 6 September 1995, Dudley George was shot by a member of the Ontario Provincial Police (OPP) during a protest at Ipperwash Provincial Park. He later died. A number of criminal proceedings resulted, including one conviction against an OPP officer and one conviction against an occupier.

385. A civil action was brought against the Crown and others. The action was settled on 1 October 2003.

386. On 12 November 2003, the Ontario Attorney General announced the appointment of Justice Sidney Linden to lead an independent, public inquiry into the events surrounding the death of Dudley George.

387. In conducting the inquiry, established under section 2 of the *Public Inquiries Act*, Justice Linden has a broad mandate to:

- Inquire into and report on events surrounding the death of Dudley George; and
- Make recommendations directed to the avoidance of violence in similar circumstances.

388. The government has indicated that it would study the report with a view of taking further steps to curb incidents of racial profiling.

**Suicide in aboriginal communities**

389. In Ontario, the issue of the high rate of suicide among aboriginal youth is being addressed through the Intergovernmental Committee on Youth Suicide, which is comprised of the federal and provincial governments working with First Nation leaders. The committee was

established in the spring of 2000, to promote positive change in northern First Nations communities so that they become safer and healthier places for children, youth and families to live. Strategies include supporting community capacity building, improving system responsiveness, better service coordination, promoting innovation, evaluating effectiveness and sharing lessons learned.

390. There were 204 suicides in Nishnawbe-Aski communities between 1986 and August 2000, with most of the individuals under 25 years of age. The annual number of suicides has diminished over each of the past three years by almost half.

## Article 7. Protection against torture

### Patient Restraints Minimization Act

391. On 27 June 2001 the government passed the *Patient Restraints Minimization Act*. The Act received Royal Assent on 29 June 2001.

392. The intent of the Act is to minimize the use of restraints and to encourage hospitals and other health care facilities to use alternative methods to prevent serious bodily harm by a patient to himself or herself or others. Under the Act, a hospital or prescribed facility may not physically, mechanically or chemically restrain a patient, or confine a patient, or use a monitoring device on a patient unless it is necessary to prevent serious bodily harm to him or her or to another person. The use of the restraint must meet other criteria prescribed by regulation, and be ordered by a physician or a person specified by regulation. The Act requires hospitals and other prescribed facilities to establish and follow policies, as prescribed in regulation, regarding restraints.

393. On 1 April 2003, regulations governing the use of physical restraints came into effect for children's residences licensed under the *Child and Family Services Act* (CFSA) and residences funded under the *Developmental Services Act* (DSA) that provide group living supports to adults with developmental disabilities.

### Long-term care system

394. In 2004, the government embarked on a comprehensive plan to reform the province's long-term care system. In December 2003, the Minister of Health and Long-Term Care appointed his Parliamentary Assistant to undertake a top-to-bottom review of the long-term care sector and to recommend practical actions to strengthen long-term care services.

395. The Ministry of Health and Long-Term Care took immediate actions to raise care standards and protection for long-term care residents. As of 1 January 2004, all annual inspections of long-term care facilities are unannounced so that the ministry can identify and act on incidents of sub-standard care, neglect or abuse more effectively. Complaint investigations are already unannounced.

396. The ministry also created a toll-free number so that long-term care residents and their families have one easy access point to seek information or lodge complaints about a long-term care facility.

397. Ministry officials are taking a number of additional medium and long-term steps to continually improve the safety and quality of long-term care services. These efforts focus on four main areas:

- Better protection for residents, improved ministry inspection and enforcement;
- Improved accountability and performance management;
- Better public reporting and greater transparency; and
- Long-term strategies to improve the facility system's capacity to deliver high quality care.

**Changes to Developmental Services Act**

398. In November 2001, as part of the Ministry of Community and Social Services' Developmental Services Multi-Year Plan, the *Homes for Retarded Persons Repeal Act*, 2001 was proclaimed, and the *Developmental Services Act* and its regulations were updated to remove outdated and insensitive language and to maintain important health and safety provisions formerly contained in the *Homes for Retarded Persons Act*. Amendments were also made to more than 30 statutes to reflect the repeal and resulting changes in language.

**Substitute Decisions Act**

399. The *Substitute Decisions Act, 1992*, protects mentally incapable people against degrading treatment by prohibiting the use of electric shock as aversive therapy. It also does not allow a substitute decision maker to consent to sterilization that is not medically required.

## Article 9. Right to liberty and security of person

400. Section 84.1 of the *Highway Traffic Act* is an example of how the Ministry of Transportation (MTO) ensures that its law does not violate the right to life, liberty and security of the person protected by section 7 of the *Canadian Charter of Rights and Freedoms*. Section 84.1, which was added to the *Highway Traffic Act* by the *Comprehensive Road Safety Act*, came into force on 3 July 1997. Section 84.1 (1) states that the operator of a commercial motor vehicle with its wheels becoming detached while on the highway is guilty of an offence. According to section 84.1 (2), due diligence is not a defence to this charge, thereby making it an "absolute liability" offence. To ensure that the absolute liability offence provision does not violate the liberty of an offender, only fines are awarded upon conviction. Section 84.1 (4) prohibits an offender being imprisoned or subject to a probation order.

401. A constitutional challenge to the validity of making the offence in section 84.1 "absolute liability", on the basis that it attracts potentially high penalties, social stigma and denies the right to a fair trial, was launched by a number of transport carriers. On 14 November 2003, the Ontario Court of Appeal ruled that section 84.1 does not violate the Charter.

## Article 10. Treatment of persons deprived of liberty

### Institutionalized adult offenders

402. The Ministry of Community Safety and Correctional Services has embarked on a review of the offender misconduct process to ensure that penalties that remove an offender's earned remission are fair and follow appropriate procedures.

403. In 2003, Correctional Services administrators underwent extensive training in the misconduct process to ensure that decisions that impact on the liberty of detained persons are made in a fair and equitable manner.

404. Offenders have the right to apply to the courts for a review of their detention. Sentenced offenders also have the right to appeal their sentence. Offenders who are charged with internal misconduct have the right to appeal any sentence that impacts on their legislated earned remission.

405. Offenders may also contact the Office of the Ombudsman of Ontario or the Ontario Human Rights Commission to investigate their concerns. There is no current data available at this time to determine how often these recourses are exercised.

### Young persons

406. Currently, Ontario does not contract out to halfway houses. However, the Ministry of Community Safety and Correctional Services has contracts with open detention and open custody residences and secure detention and secure custody facilities. Current policy and procedures are in place to ensure the rights of youth in these facilities are not violated.

407. A "Rights and Responsibilities" booklet is made available to young persons whether they are on community supervision or in a custody setting. This booklet helps them to understand their rights and responsibilities under the Youth Criminal Justice Act, the federal legislation that came into effect on 1 April 2003, as it pertains to the youth criminal justice system.

408. Training for new Correctional Services staff includes an introduction and overview on the rights of the child as expressed in the *Convention on the Rights of the Child*.

409. Young persons have the right to apply to the courts for a review of their detention. Sentenced young persons also have the right to appeal their sentence and to ask for a review of their sentence by an independent group called the Custody Review Board.

410. Young persons may also contact the Office of the Ombudsman of Ontario, the Office of Child and Family Service Advocacy of Ontario or the Ontario Human Rights Commission to investigate their concerns. In addition, the Office of the Ombudsman and the Child Advocate's Office are permitted to have access to the facilities where youth are held, in addition to any record related to a young person in the course of conducting an investigation. The youth under community supervision or in a custodial setting also have the right to initiate contact with these agencies. Young persons are protected under the *Canadian Charter of Rights and Freedoms*. There is no current data available at this time to determine how often these recourses are exercised.

411. The annual reports of the Ombudsman describe all complaints and enquiries received by that Office and summarize the results of investigations by the Ombudsman. Annual Reports by the Ombudsman Ontario are available online at http://www.ombudsman.on.ca/ann_reports.asp.

**Adult community services**

412. In Ontario, the courts make a determination as to who is placed under community supervision (i.e., probation or conditional sentence) and what conditions they must abide by.

413. The Ontario Parole and Earned Release Board (OPERB) has the legislative authority to determine who is eligible for parole and temporary absences from a correctional facility for over 72 hours and what conditions the offenders must abide by.

414. It is the mandate of Probation and Parole Services to ensure that the offenders placed under community supervision are assessed at intake for risk/needs and supervised in accordance with their level of risk under the Ministry's Service Delivery model.

415. If offenders feel they cannot comply with their conditions or feel they are not being treated fairly, they have the recourse to the courts for variation of their order, OPERB, or the Area Manager of the supervising probation office. They may also contact the Office of the Ombudsman of Ontario or the Ontario Human Rights Commission to investigate their concerns.

## Article 14. Fair trial rights

**Youth criminal justice**

416. In 1999, Ontario Youth Criminal Justice Committees began operation in six locations. They expanded in August 2001 to 22 sites. These Committees are one form of alternative measure and are mandated to deal with minor offences committed by young persons. The Committees, which include representatives from community organizations as well as criminal justice sector partners, focus on rehabilitation and reintegration, while holding young persons accountable for their crime. They provide an effective and timely response both to the offender and community, offer direct participation in resolution to victims of crime and contribute to the efficient operation of the courts.

417. Since the proclamation of the *Youth Criminal Justice Act*, the federal legislation governing the conduct of proceedings against young offenders, Ontario has developed policy and training materials for Crown counsel. Prior to the Act coming into force in April 2003, Ontario offered a two-day intensive educational program to Crown counsel.

**Ontario Rental Housing Tribunal**

418. The establishment of the Ontario Rental Housing Tribunal (website: http://www.orht.gov.on.ca) through passage of the *Tenant Protection Act*, 1996 has offered greater access to justice to both landlords and tenants in Ontario and has provided them with the means to have a quick result to their judicial disputes. It has also taken approximately 75,000 applications per year out of the judicial system and had them resolved through an administrative

tribunal, which is both quicker and less costly. Under the *Tenant Protection Act*, parties can appeal to Divisional Court only on a question of law. Appeal rates for Tribunal decisions are very low, averaging approximately one to two per cent of all Tribunal decisions.

**Elimination of the zero tolerance policy for welfare fraud**

419. In December 2003, the government of Ontario revoked the policy regarding the permanent and temporary periods of ineligibility for social assistance for those convicted of welfare fraud. People who are convicted of welfare fraud may now receive social assistance to cover their basic needs and will no longer face life-threatening circumstances. Ontario has determined that people who commit welfare fraud should be dealt with by the criminal justice system.

**Tribunal powers**

420. In *McKinnon v. The Queen*, released 23 December 2003, the Divisional Court affirmed the Ontario Human Rights Tribunal's jurisdiction to remain seized of a matter for the purpose of monitoring the implementation of its orders. It also held that once the Tribunal has found non-compliance with one of its orders, a complainant is not required to start a fresh complaint at the Commission. Rather, the Tribunal can ensure the delivery of an effective remedy by hearing evidence about implementation.

## Article 18. Freedom of thought, conscience and religion

421. On 3 April 1995 the *Substitute Decisions Act, 1992* (SDA) was proclaimed in force. The SDA governs what may happen when someone is not mentally capable of making certain decisions about their own property or personal care. Generally, the law is designed to give individuals more control over what happens to their lives if they become incapable of making their own decisions and to respect people's life choices, expressed before they become mentally incapable, and take into account their wishes. The SDA ensures that mentally incapable people will be treated in a manner consistent with their beliefs, religion and culture.

## Article 22. Freedom of association

422. In June 1994, the government passed the *Agricultural Labour Relations Act* (ALRA) to allow agricultural workers to unionize. Prior to the passage of the ALRA, workers in agriculture had been excluded from organizing and collective bargaining under a statutory labour relations regime. The ALRA extended the statutory right to organize to these workers, but prohibited strikes in favour of an interest arbitration regime as the dispute resolution mechanism.

423. The ALRA was repealed by the *Labour Relations and Employment Statute Law Amendment Act, 1995*, which restored the exclusion of agricultural workers from provincial labour relations legislation. The reasons given for the restoration included the unique characteristics of farming and the economic vulnerability of Ontario's agricultural sector. With the repeal of the ALRA, unions that had been certified under the ALRA were "decertified".

424. The United Food and Commercial Workers' union (UFCW) challenged the repeal of the ALRA, alleging violation of the freedom of association and of the equal protection of the law guaranteed under the *Canadian Charter of Rights and Freedoms*. The UFCW pursued this Charter challenge to the Supreme Court of Canada (SCC), where the case was heard in February 2001.

425. On 20 December 2001, in *Dunmore v. Ontario (Attorney General)*, the SCC declared that the exclusion of agricultural workers from the *Labour Relations Act, 1995* (LRA) was unconstitutional in the absence of any other statutory protection of their freedom to associate. The Court held that, at a minimum, a statutory freedom to organize must be extended to agricultural workers along with protection judged essential to its meaningful exercise. (The Court did not rule on the UFCW's arguments that the repeal of the ALRA allegedly violated the right to equal protection of the law under the Charter.)

426. The SCC suspended its decision for 18 months (until 19 June 2003) to allow Ontario to develop a legislative response.

427. In response to the Dunmore decision, the government introduced on 7 October 2002 Bill 187, the Agricultural Employees Protection Act, 2002 (AEPA), which was passed by the Legislature and received Royal Assent on 19 November 2002. The AEPA was proclaimed into force on 17 June 2003.

428. Recognizing the unique characteristics of agricultural production, the AEPA provides for the following rights of agricultural employees:

- To form or join an employees' association;
- To participate in its lawful activities;
- To assemble;
- To make representations to their employer; and
- To protect against interference, coercion or discrimination in the exercise of their rights.

### Article 23. Protection of the family, right to marriage and equality between spouses

429. The *Family Responsibility and Support Arrears Enforcement Act, 1996*, expanded the tools available in Ontario to enforce support orders. The Family Responsibility Office, which enforces support provisions in court orders and domestic contracts, can report defaulting payors to the credit bureau, suspend defaulting payors' drivers' licences, garnish joint bank accounts, and even obtain court orders against third parties who shelter assets on behalf of a defaulting payor.

## Article 24. Rights of the child

### Early Childhood Development Initiative

430. The Ministry of Health and Long-Term Care has funded 17 projects as part of Ontario's Early Childhood Development Initiative to develop services for substance-involved pregnant and parenting women and their children under six years of age. The 17 different sites across the province are engaged in a range of activities from direct treatment services to needs assessments. The scope of Early Childhood Development Addictions Project activities include: substance abuse treatment; ancillary programming such as childcare, life skills, parenting skills, improved client access and linkages to health care, housing and social services and some public education regarding fetal alcohol syndrome/fetal alcohol effects (FAS/FAE).

## Article 26. Equality before the law

431. The *Ontarians with Disabilities Act* (ODA)*, 2001*, was passed in December 2001. The ODA requires that the provincial government and all of Ontario's municipalities, school boards, hospitals, public transportation providers, colleges and universities prepare annual accessibility plans for the removal of physical, attitudinal and policy barriers in order to ensure greater accessibility and opportunities to all citizens of the province.

432. The Act established the Minister's Accessibility Advisory Council of Ontario to advise the Minister of Citizenship and Immigration on accessibility and effective implementation of the ODA.

433. The Act also established the Accessibility Directorate of Ontario to support and manage the implementation of the ODA and to support and review the progress of organizations with legal obligations under the ODA. The Accessibility Directorate of Ontario also works in partnership with organizations, businesses and interested individuals to develop voluntary accessibility standards and provides public education and community-based accessibility programs to raise awareness and create a greater understanding of the need for accessibility and inclusion throughout the Province.

## Article 27. Religious, cultural and linguistic rights

434. French-language colleges of applied arts and technology have been established by regulations made under the *Ministry of Colleges and Universities Act* (now the *Ministry of Training, Colleges and Universities Act*). At present, there are two active French-language colleges of applied arts and technology in Ontario: Collège Boréal (established in 1993) and La Cité Collégiale (established in 1989).

435. The Ministry of Community and Social Services (MCSS) is responsible for the Violence Against Women Program that includes province-wide crisis telephone counselling to provide women with information and support 24 hours a day, 365 days of the year. To further the objectives of the *French Language Services Act*, MCSS, as of 1 April 2003, has provided funding to enhance existing Francophone crisis line services to provide province-wide coverage 24 hours a day, 365 days of the year. Two Francophone crisis lines are fully operational in both southern and northern Ontario.