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

Fourth periodic reports of States parties due in 1995

Addendum

CANADA*

[1 April 1997]

* For the third periodic report submitted by the Government of Canada, see CCPR/C/64/Add.1; for its consideration by the Committee, see CCPR/C/SR.1010 to SR.1013 and Official Records of the General Assembly, Forty-sixth session, Supplement No. 40 (A/46/40), paras. 45-101.

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A. Case citations
B. Code of discipline, standards of professional conduct
C. Correctional Service Canada

These annexes areavailable for consultation in the files of the secretariat.

Introduction

A. General

1. The present report outlines measures adopted in Canada from 1990 to 1994 to implement the International Covenant on Civil and Political Rights and relevant case law, with occasional references to developments of special interest since that time.

B. Constitutional developments

1. The amendment process

2. There have been two constitutional accords proposing reform to the Constitution of Canada since 1982, when Canada obtained its own domestic constitutional amendment formula. This formula, set out in Part V of the Constitution Act, 1982, requires a high threshold of consent for major amendments. Part V of the Constitution Act, 1982 provides for a constitutional conference in 1997, where the Prime Minister of Canada and provincial first ministers will review the amending provisions.

3. The 1987 Constitutional Accord (the Meech Lake Accord), referred to in paragraph 11 of Canada's second report, did not result in constitutional amendment, because it did not obtain the unanimous consent of provincial legislative assemblies (two withheld consent) within the three-year period specified in the Constitution.

4. In 1992, renewed efforts for constitutional reform, which included extensive public consultations, culminated in a new constitutional accord (the Charlottetown Accord), with the support of the federal Government, the governments of the 10 provinces and two territories, and the leaders of Canada's four national Aboriginal associations. Of special relevance in the context of human rights was the recognition of Quebec as a distinct society within Canada, and of the inherent right of self-government of the Aboriginal peoples of Canada, to be implemented through negotiated agreements, and the inclusion of a Social and Economic Union, committing governments in Canada to certain policy objectives of an economic, social and cultural nature. The Accord also dealt with such other matters as Senate reform, and rebalancing the roles and responsibilities of federal and provincial governments.

5. The Canadian public voted in a national referendum on the Charlottetown Accord in October 1992, and most Canadians - Aboriginal and non-Aboriginal -voted against the proposed constitutional reforms. Although the Charlottetown Accord did not result in constitutional amendment, the referendum and the public discussions preceding it gave Canadians an opportunity to participate fully in the democratic process, and consider and debate issues of national concern. After the referendum, constitutional reform debates were put aside for the time being, while governments turned their attention to pressing economic and other issues.

6. Section 35 of the Constitution Act, 1982 recognizes and affirms the "existing Aboriginal and treaty rights of the Aboriginal peoples of Canada". After the 1993 federal election, the Government of Canada expressed its intention of acting "on the premise that the inherent right of self-government of the Aboriginal peoples of Canada is an existing Aboriginal and treaty right". There are now ongoing discussions with Aboriginal people on the implementation of the inherent right of self-government.

7. In 1994, the Parti Québecois was elected to govern the Province of Quebec. The Parti Québecois government supports the separation of Quebec from Canada and the recognition of Quebec as an independent State. On 30 October 1995, the Quebec government held a referendum on this issue, and the proposal to establish a sovereign state of Quebec was defeated.

2. Canadian Charter of Rights and Freedoms

Covenant as an aid to interpreting the Charter

8. Since Canada's second and third reports on the Covenant there have been many cases relying upon the Covenant as an aid to interpreting the Canadian Charter of Rights and Freedoms, both for the purpose of determining the ambit of Charter rights and freedoms, and whether limitations on them are acceptable within the terms of section 1 (reasonable limits) of the Charter.

9. For example, in R. v. Brydges, the Supreme Court of Canada referred to article 14 (3) (d) of the Covenant in concluding that section 10 (b) of the Charter, which guarantees the right to retain and instruct counsel, includes the right to be informed of the availability of legal aid counsel (see annex 1 for case citations). In R. v. Keegstra, the Court referred to articles 19 and 20 to conclude that the prohibition against the wilful promotion of hatred in the Criminal Code was a reasonable limit on the Charter guarantee of freedom of expression. The Court pointed out that "a value enjoying status as an international human right is generally to be ascribed a high degree of importance under s. 1 of the Charter" (p. 750).

Limitations on rights

10. Section 1 of the Charter expressly requires that limitations on Charter rights and freedoms be prescribed by law and be demonstrably justifiable in a free and democratic society, and has been interpreted by the courts to require that limitations serve an objective of sufficient importance and do so in a proportionate manner, with the burden of proof on the party defending the Charter limit. The requirement pursuant to section 1 of the Charter that objectives be achieved in a proportionate manner is parallel to the requirement in the limitation clause of various articles of the Covenant that limitations be "necessary in a democratic society in the interests of ...".

11. Although section 1 of the Charter does not specify the objectives that a limitation must serve to be acceptable, it has generally been applied in a manner compatible with the limitation clauses contained in the Covenant, which refer to such objectives as public safety, order, health or morals, and the protection of the rights and freedoms of others. Thus, limits on Charter rights serving the purposes of protecting public health (Ontario (Attorney-General) v. Dieleman); public safety (R. v. Morales, re right to bail); public order (Edwards Books and Art Ltd. v. R., re freedom of religion); and the rights and freedoms of others (R. v. Keegstra, re freedom of speech) have been upheld.

12. Indeed, on occasion, the courts have referred to the limitation clauses in the Covenant as an aid in assessing whether a limitation on a Charter right or freedom was acceptable. For example, in Ontario (Attorney-General) v. Dieleman, the Ontario Court (General Division) referred to the objective of protecting public health included in the limitation clauses in articles 18, 19, 21 and 22 of the Covenant in concluding that protecting the health of women seeking abortions was an objective of sufficient importance to justify limiting the freedom of expression of anti-abortion activists outside abortion clinics.

13. In regard to considerations of morality, the Supreme Court of Canada has stated that the advancement of conventional moral views, or a particular conception of morality, is not an objective of sufficient importance for section 1 purposes; however, the social harm associated with "immoral" conduct may provide a basis for a section 1 defence (R. v. Butler). The Supreme Court has stated that legislation permitting restrictions on Charter rights on the basis of considerations of "public interest" is unconstitutional, because this criterion is too vague (Morales).

14. There has also been a tendency on the part of Canadian courts to regard administrative inconvenience as not providing an adequate justification for limiting Charter rights and freedoms (C.(J.) v. Forensic Psychiatric Commission; Dartmouth/Halifax County Regional Housing Authority v. Sparks). In regard to financial considerations, the courts have regarded them as sufficient for purposes of section 1 of the Charter only in limited circumstances (Singh v. Minister of Employment and Immigration; Sutherland v. Canada). Fiscal considerations are relevant in determining the appropriate remedy, where there is a Charter breach (Schachter v. Canada), and the courts have asked to be apprised of the full context, including fiscal, to enable them adequately to assess Charter issues (Symes v. Canada).

15. Several articles of the Covenant require that interferences with certain forms of conduct should not be arbitrary or unreasonable. Some sections of the Charter expressly exclude arbitrary conduct, and the courts have stated that one of the relevant considerations in determining whether a limitation is unacceptable under section 1 of the Charter is whether it is arbitrary, unfair or based on irrational considerations (R. v. Oakes).

Practical exercise of rights and freedoms

16. The Supreme Court of Canada has, in a number of cases, stated that the Charter protects individuals not just from laws or policies which, on the face of it, infringe Charter rights and freedoms or have the purpose of infringing them, but also those which have the effect of doing so. Thus, adverse effects discrimination is prohibited by section 15 (equality rights) (Symes v. Canada); laws which have the effect of impeding the exercise of the fundamental freedoms guaranteed by section 2 are contrary to the Charter (R. v. Big M Drug Mart Ltd.); practical impediments to the right to vote are contrary to section 3 (democratic rights) (Hoogbruin and Raffia v. A.G.B.C.); and similarly to the right to security of the person as guaranteed by section 7 of the Charter (R. v. Morgentaler).

C. Monitoring mechanisms

17. The question of ensuring implementation of international human rights treaties and, in particular, that there is adequate follow-up to the concluding observations of United Nations committees on Canada's reports on implementation of such treaties, is increasingly a matter of attention and priority in Canada.

18. Copies of the concluding observations of the Human Rights Committee on Canada's second and third reports were provided to all relevant federal departments after they were received. The summary records and a summary of the questions raised by the Committee were provided to all officials participating in the preparation of the present report, at the federal, provincial and territorial levels, with a request that questions and concerns of the Committee be taken into account in preparing the present report.

19. The Continuing Committee of Officials on Human Rights, which is the federal-provincial-territorial committee responsible for maintaining collaboration and consultation among governments in Canada with respect to implementation of international human rights instruments that Canada has ratified, is currently considering how better to achieve adequate follow-up to the concluding observations of United Nations committees on human rights matters, and has agreed that the question of implementation of human rights treaties should be a standing item on the agenda for its meetings.

I. MEASURES ADOPTED BY THE GOVERNMENT OF CANADA

Article 1

20. Canada subscribes to the principles set forth in this document.

Article 2

General

21. Information relating to the equal rights protection of section 15 of the Canadian Charter of Rights and Freedoms is provided under article 26. Certain Charter rights (electoral rights (sect. 3), mobility rights (sect. 6) and minority-language educational rights (sect. 23)) are guaranteed only to Canadian citizens (or, in the case of internal mobility rights, to Canadian citizens and permanent residents (sect. 6 (2)). For the most part, however, rights under the Charter are guaranteed in general terms to "everyone", "every individual" or "anyone".

22. The Canadian Charter of Rights and Freedoms, which is part of the Constitution of Canada and applies to all governments in Canada, is not a direct incorporation of the Covenant into domestic Canadian law. There are differences in both structure and substance between the two documents. However, the rights recognized in the Covenant are protected in Canada by a combination of constitutional, legislative and other measures. As Canada is a federal State, different aspects of human rights fall within the jurisdiction of the

different levels of government (federal, provincial, territorial). There are a number of mechanisms that promote coordination and consistency between jurisdictions. See also paragraphs 276-278.

23. There are three remedy provisions in the Canadian Constitution, which together provide effective remedies for violations of human rights. Subsection 24 (1) of the Canadian Charter of Rights and Freedoms enables anyone whose Charter rights or freedoms have been infringed to apply to a court of competent jurisdiction for an appropriate and just remedy. Among other things, this section may permit courts to award monetary damages (RJR-Macdonald Inc. v. Canada (Attorney-General); R. v. Mills; R. v. Nelles) and injunctions (Operation Dismantle Inc. et al. v. The Queen; Metropolitan Stores (MTS) Ltd. et al. v. A.G. Manitoba). A court is of competent jurisdiction for the purposes of section 24 (1), if that court has jurisdiction over the person, the subject matter, and the remedy sought (Mills, Douglas/Kwantlen Faculty Assn. v. Douglas College and Cuddy Chicks Ltd. v. Ontario (Labour Relations Board)).

24. In Kourtessis v. M.N.R., the Supreme Court of Canada discussed the availability of the remedy of seeking a declaration of unconstitutionality as a separate collateral action. The Court held that separate collateral actions should not be widely used to create an automatic right of appeal where Parliament has, for sound policy reasons, provided a reasonably effective review procedure. However, where legislative provisions do not provide an adequate means for the constitutional review of, in this case, a search warrant, an action for a declaration is available before a superior court of inherent jurisdiction.

25. Subsection 24 (2) of the Charter provides for the exclusion of evidence, where there is violation of a Charter right and where, having regard to all the circumstances, the admission of the evidence would bring the administration of justice into disrepute.

26. Section 52 of the Constitution Act, 1982 states that the Constitution is the supreme law of Canada and that any law that is inconsistent with the Constitution is of no force or effect to the extent of the inconsistency. This section permits courts to declare entire statutes or individual provisions invalid or, in special cases, to delete or add words to remedy a provision that is found contrary to the Charter (Schachter v. Canada). A declaration of invalidity may be temporarily suspended, where it is considered necessary to allow time for the legislature to amend the law.

27. Courts have held that corporations are not entitled to claim, in their own right, rights and freedoms, which are guaranteed only to individuals (for example, the section 15 guarantee of equality) or which only natural persons are able to possess (such as freedom of religion and conscience (sect. 2 (a)) and life, liberty and security of the person (sect. 7)) (R. v. Big M. Drug Mart Ltd.; Irwin Toy v. Attorney-General Quebec; Edmonton Journal v. A.G. Alberta et al; Canada (A.G.) v. Central Canada Cartage Co.). In some circumstances, however, Charter claims can be advanced even by persons who are not themselves entitled to rely upon the rights in question. First, it is always open to a defendant to challenge the constitutional validity of a generally applicable legislative enactment (Big M. Drug Mart). Second, Canadian courts have recently expanded the rules for public interest standing, enhancing the ability of persons not directly affected by government action to pursue Charter claims (Borowski v. A.G. Canada et al; Canadian Council of Churches v. The Quee).

28. In addition to these constitutional avenues for remedies, there are administrative and judicial avenues for the redress of rights protected by legislative or other measures. Human rights tribunals, the Federal Court of Canada and the provincial superior courts all have jurisdiction over various aspects of human rights protection in Canada.

Factors and difficulties

29. Canada views its system of administrative tribunals and courts as providing effective and independent authorities for the provision of remedies. In many cases, there is more than one avenue of review and, at times, confusion or preferences can develop within the legal community. In R. v. Reza, the Supreme Court of Canada upheld the exercise of discretion by a provincial superior court judge to decline jurisdiction to hear Charter arguments, where the judge was of the opinion that the matter was better placed before the Federal Court of Canada. Counsel for the appellant had argued that Reza should be entitled to bring his Charter challenge to provisions of the Immigration Act before the superior court in Ontario. The Supreme

Court of Canada did not accept that the appellant could not obtain an effective remedy in the Federal Court.

Specific concerns of the Human Rights Committee

30. The Committee has asked whether the Aboriginal peoples of the Yukon and Northwest Territories may go before the Canadian Human Rights Commission. While there are two broad qualifiers, they may. Section 67 of the Canadian Human Rights Act exempts the Indian Act, and provisions made under it, from the application of the Act. Section 63 limits the scope of complaints to acts or omissions in the Yukon and Northwest Territories to which the Act would apply, if those acts or omissions occurred in a province. That is, Aboriginal peoples in the territories of Canada have the same access to the Canadian Human Rights Commission as Aboriginal Canadians in other parts of Canada. The Yukon and the Northwest Territories both have human rights legislation, which covers those acts or omissions falling within what would be provincial spheres of influence if the territories were provinces. Although Aboriginal Canadians cannot bring complaints of discrimination concerning the Indian Act before the Commission, they can commence a Charter challenge in the courts for the protection of their equality rights.

31. In its General Comment 3, the Committee suggests that the Covenant should be publicized in all official languages of the State, and steps should be taken to familiarize administrative and judicial authorities with its contents as part of their training. Federally and provincially appointed judges in Canada receive training in such international human rights instruments as the Covenant in the context of training with respect to the Canadian Charter of Rights and Freedoms. One of the important effects of the Charter on the Canadian legal landscape has been the growing awareness on the part of lawyers, judges and tribunal members of international human rights instruments generally. Training with respect to these instruments has tended to develop in response to this awareness.

Article 3

32. For information on the equal rights of men and women to enjoy Covenant rights, including positive measures to advance the position of women in society and case law on anti-discrimination legislation (human rights codes) and section 15 (equality rights) of the Canadian Charter of Rights and Freedoms, see the section of this report concerning article 26 of the Covenant. Section 28 of the Charter, which guarantees Charter rights and freedoms equally to men and women (parallel to the requirement in article 3 regarding Covenant rights), has not as yet been applied in conjunction with other provisions of the Charter to find a Charter breach, independently of section 15 (see paras. 199 and 242 on the Native Women's Association of Canada case).

Article 4

General

33. Section 33 of the Charter permits Parliament or a provincial legislature to declare legislation to operate notwithstanding the guarantee of certain Charter rights - namely, the fundamental freedoms (sect. 2), the legal rights guarantees (sects. 7-14, including the right to life, liberty and security of the person) and the guarantee of equality (sect. 15). Democratic rights (sects. 3-5), mobility rights (sect. 6) and official-language and minority-language educational rights (sects. 16-23) are not subject to the section 33 override. A declaration made under section 33 automatically lapses five years after coming into force (or earlier if specified in the legislation), although it may, at that time, be re-enacted by the legislative body in question.

34. To date, the Government of Canada has never sought to invoke the override power contained in section 33. The provision has been used by two provinces - Saskatchewan and Quebec. At this point, given the infrequency with which the provision has been invoked and the resultant absence of jurisprudence, the precise effects of section 33 remain uncertain. The only guidance thus far comes from a Supreme Court of Canada decision holding that a reference to the Charter provision(s) sought to be overridden is sufficient for

an enactment to qualify under section 33, but that section 33 does not allow Parliament or a legislature to enact retroactive override provisions (Ford v. A.G. Qué.). Beyond this, it remains uncertain what, if any, limitations beyond those set out in the provision itself (i.e. the requirement of express declaration and the five-year limitation rule) the courts may see fit to impose upon the use of the notwithstanding clause.

35. As discussed in previous reports, the Emergencies Act, which is federal legislation, permits the Governor in Council to take "special temporary measures" at times of "public welfare emergency", "public order emergency" or "international emergency". This Act has never been invoked. In the period covered by this report, the Government of Canada has not had occasion to declare an emergency or use emergency measures or to derogate from any Covenant rights.

36. During the events at Oka, which are discussed in paragraphs 297-298 of this report, the Canadian military were used in aid of the civilian power at the request of the Province of Quebec. The use of the military in this way is authorized under the National Defence Act. No state of emergency was declared, and there was no derogation from Covenant rights.

Specific concerns of the Human Rights Committee

37. The Committee, in response to Canada's third report, asked whether the reference in section 4 (b) of the Emergencies Act only to citizens and permanent residents offended article 4, paragraph 1, of the Covenant. This provision was inserted in the Emergencies Act for historical reasons and is meant to ensure that Canada will never again engage in practices such as those used against Canadians of Japanese origin during the Second World War. This provision does not mean that Canada could treat persons who are not citizens or permanent residents in a discriminatory manner.

Article 5

38. See paragraphs 11-16 on section 1 (reasonable limitations) of the Charter, and paragraphs 203-205 on implementation of article 20 of the Covenant.

Article 6

General

39. Section 7 of the Charter guarantees "the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice".

40. Federal legislation protects the right to life. Provisions of the Criminal Code make it an offence to murder, even if the motive is to end life for reasons of mercy. It is also an offence to assist others to commit suicide. The death penalty provisions of the National Defence Act (sentence of death possible for very serious offences) are under review. The death penalty has not been sought during the period covered in this report.

Canadian Charter of Rights and Freedoms

41. In Kindler v. Canada and Reference re Ng Extradition, the Supreme Court of Canada considered decisions by the Minister of Justice to extradite two fugitives to the United States. These decisions were challenged as being violations of section 7 (right to life, liberty and security of the person) and section 12 (protection against cruel and unusual treatment or punishment) of the Charter on the basis that the Minister of Justice had not sought assurances that the death penalty would not be imposed. The Court stated that, while section 12 did not apply to the decision to extradite, the protection against cruel and unusual treatment was to be considered as an aspect of section 7. It also stated that the question to be answered was whether the circumstances facing the fugitive in the requesting State would "shock the

conscience". The Court held that the decisions to return Kindler and Ng to the United States to face the possible imposition of the death penalty as punishment for crimes committed there did not offend the principles of fundamental justice in section 7. In coming to its decision, the Court considered international law on the use of the death penalty and concluded that the death penalty in certain circumstances was not contrary to international law.

42. In Rodriguez v. British Columbia, the Supreme Court of Canada stated that section 7 of the Charter protects the sanctity of life. Section 241 (b) of the Criminal Code, which prevents a physically disabled person from obtaining medical assistance in committing suicide, was found to be consistent with section 7 of the Charter. The Code provision was held to be grounded in the State's interest in protecting life and to reflect the policy of the State that human life should not be depreciated by allowing life to be taken. The Court noted that this State interest is also found in other provisions of the Code which prohibit murder and other violent acts notwithstanding the consent of the victim.

Legislative and other developments

43. In 1994, section 25 of the Criminal Code was amended with respect to the use of deadly force by peace officers and anyone lawfully assisting them. The provision that justifies the use of deadly force (that is force intended or likely to cause death or serious bodily harm to a person) against a person fleeing from an arrest requires that the peace officer believe, on reasonable grounds, that the suspect poses a threat of serious harm or death to that officer or the public, and that no other reasonable or less violent means exists to prevent escape. Subsection 25 (5) provides that all necessary measures must be taken to stop an escape in progress from maximum- and medium-security institutions, when there are reasonable grounds to believe that the escapee poses a threat of serious harm to someone in the community, and no other reasonable interventions would prevent escape.

Follow-up action to Committee decisions

44. Following the decisions of the Committee in Kindler v. Canada, Ng v. Canada and Cox v. Canada, which raised articles 6 and 7 of the Covenant, the Minister of Justice takes into consideration the protection afforded by the Covenant in decisions on extradition requests that raise the issue of the death penalty.

Specific concerns of the Human Rights Committee

45. In General Comment 6 on article 6, the Human Rights Committee refers to the adoption of positive measures by States to reduce infant mortality and to increase life expectancy through the elimination of malnutrition and epidemics.

46. Following the 1990 World Summit on Children, the Government of Canada began to work toward the development of national child health goals through the Children at Risk Initiative Programme. Between December 1992 and February 1994, a series of four consensus conferences were held at which national goals and objectives for the control of vaccine-preventable diseases of infants and children were formulated.

47. In 1991, a Canadian Expert Working Group for Breastfeeding, made up of health professionals, breastfeeding advocates, non-governmental organizations and government representatives, was formed to work cooperatively to promote breastfeeding within Canada as the optimal method of infant feeding. The Government of Canada supports the World Health Organization (WHO) International Code of Marketing of Breast-milk Substitutes. A five-year social marketing strategy for the promotion of breastfeeding has been developed.

48. In 1994, the Government of Canada introduced the Canada Prenatal Nutrition Programme to support comprehensive community-based services designed to build upon existing prenatal health programmes across Canada. The Programme aims include: a reduction in the incidence of low birth weight and the promotion of the growth of healthy babies; improved health of pregnant women; increased support for new parents, and increased community resources and programmes to address the needs of mothers and infants at risk from pre-conception through infancy, including access to culturally and linguistically sensitive

programming.

Article 7

General

49. Section 12 of the Charter protects everyone against cruel and unusual punishment or treatment. The right to security of the person under section 7 of the Charter also provides protection against torture and other inhumane treatment in certain contexts. While the law on consent to medical treatment has largely developed as an aspect of the common law, the application of the Charter to government action means that section 12 and section 7 are important additions to the protection of rights in respect of medical treatment or scientific experimentation.

50. There is no legislation at the federal level that specifically regulates medical research involving human beings. In rare circumstances, the provisions of the Criminal Code relating to assault, criminal negligence and murder may apply in the biomedical context. The Medical Research Council, a federal body, maintains policy guidelines governing medical and scientific research. Similarly, the Drugs Directorate at Health Canada has developed guidelines governing clinical trials of new drugs. The National Research Council has established a Human Subjects Research Ethics Committee.

51. As noted in the third report, Canada ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 26 January 1990.

Canadian Charter of Rights and Freedoms

52. In Steele v. Mountain Institution, the Supreme Court of Canada held that 37 years of incarceration had long since become a grossly disproportionate punishment for the inmate in the circumstances of his case and therefore a violation of section 12 of the Charter. The Court did not find fault with the dangerous-offender sentencing provisions under which the inmate was being held but rather found that the Parole Board had failed, in his case, to carefully apply the criteria for release (maximum benefit from incarceration, furtherance of rehabilitation through parole and risk to society).

53. In Kindler v. Canada and Reference re Ng Extradition, referred to under article 6, the Supreme Court of Canada commented, in obiter, that a governmental decision to return (extradition context) a person to another country to the possibility of torture would violate section 7 of the Charter. The Federal Court of Canada has expressed the view, also in obiter, that removal (immigration context) of a person to a country to face torture would violate section 12 of the Charter (Nguyen (Van Hung) v. M.E.I.).

54. In R. v. Goltz, the Supreme Court of Canada affirmed the analysis of section 12 of the Charter, which it had adopted in R. v. Smith (mentioned in Canada's second report). Treatment or punishment which is grossly disproportionate to the offence or the offender will violate section 12. Particular attention must be paid to circumstances or characteristics of the individual or group affected.

Other jurisprudence

55. In Engel v. Salyn, the Supreme Court of Canada, in a civil case raising the issue of mitigation of damages, stated that the inviolability of the human body is a fundamental legal principle and the onus for proving the need for medical testing lies on those seeking to perform that testing.

56. In Norberg v. Wynrib, the Supreme Court of Canada held that the defence of consent to an allegation of the tort of battery was not available, where "consent" to a sexual relationship with a doctor was given by a woman dependent on drugs in order to obtain drugs. The Court stated that there was a marked inequality in bargaining power between the doctor and the patient in these circumstances, and the doctor exploited this.

57. In Nancy B. v. H_tel Dieu de Québec, the Quebec Superior Court held that a women with a serious neurological disorder had the right to decline medical treatment in the form of the continued use of a respirator, even though death would result. The Court stated that the right of the individual to decline treatment is almost absolute, subject only to a limitation regarding the life and health of others. This decision may be contrasted with the decision of the Supreme Court of Canada in Rodriguez v. British Columbia discussed under article 6.

Legislative and other developments

58. Among a number of strategic priorities set for the Royal Canadian Mounted Police (RCMP) in the 1990 Commissioner's Directional Statement were the development of community policing, policing services for Aboriginals and policing services for visible minorities. Since that time, the RCMP has developed an affirmative action plan to attract visible minority recruits and has developed contacts with advisory committees and consultative groups with representatives of Aboriginal and visible minority communities. The RCMP is a member of the Canadian Centre for Police Race Relations.

59. The Canadian Centre for Police Race Relations was formed in 1991. The Centre, together with the Police Multicultural Liaison Committee, works toward the development of national understanding and proactive measures in police race relations. A First Nations Policing Policy and Programme now exists to negotiate new policing arrangements for the First Nations of Canada to provide policing for First Nations that is sensitive to the cultural needs of those communities.

60. The Corrections and Conditional Release Act (CCRA) came into force on 1 November 1992, repealing and replacing the Parole Act and the Penitentiary Act. Section 69 of the new Act provides that no person shall administer, instigate, consent to or acquiesce in any cruel, inhumane or degrading treatment or punishment of an offender who is or has been incarcerated in a penitentiary.

61. Other policies of the Correctional Service of Canada (CSC) require the placement of community observers in institutions following a serious incident that involves violence against staff. CSC policy and section 174 of the CCRA allows the Correctional Investigator or a representative to be present as an observer during an emergency situation. Post-emergency policy also explicitly states that inmates are to be treated fairly and humanely, and provides for a thorough investigation into all aspects of the incident.

62. Section 9 of the Commissioner's Directive 800 relates to the participation of medical personnel in interrogations and provides that medication shall be provided to inmates only when clinically indicated and not for restraint or security purposes. Section 88 of the CCRA ensures the offender's right to accept or refuse any medical treatment. Section 89 of the CCRA prohibits the force-feeding of an inmate who had the capacity to understand the consequence of fasting at the time the decision to fast was made.

63. All new correctional officers in CSC receive a 10-week training programme which includes training with respect to the Charter, the Criminal Code, the Corrections and Conditional Release Act, the duty to act fairly and the use of force. Staff may be held criminally and civilly liable for any excessive use of force. Relevant provisions of the Code of Discipline, as well as a booklet outlining the principles to be observed by CSC employees, are attached as annex 2.

64. In 1994, the guidelines developed to assist immigration officers acting as post-claim determination officers with the interpretation of regulations governing the Post-Determination Refugee Class in Canada were expanded. Under this class, failed refugee claimants are permitted to remain in Canada, if, on return to their country, they would face an objectively identifiable risk of extreme sanctions or inhuman treatment. The expanded guidelines are meant to assist immigration officers to apply the regulations governing the class in a manner consistent with article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as well as Canada's other international human rights obligations.

Factors and difficulties

65. In 1993, members of the Canadian Airborne Regiment were stationed at Belet Huen as part of the United Nations efforts in Somalia. A Somali male was beaten to death, after he was found and apprehended

inside the Canadian compound. The Canadian Armed Forces charged eight individuals under the National Defence Act as a result of this death. Charges ranged from murder and torture in the beating to death of the Somali youth to unlawfully causing bodily harm and negligent performance of duty. Many of these actions are now at the appeal stage.

Article 8

General

66. Section 7 of the Charter guarantees everyone the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

67. The provisions of the Criminal Code discussed in previous reports are still applicable.

Canadian Charter of Rights and Freedoms

68. The case of Tuppatsch v. U.I.A. involved an unemployment insurance benefit claimant who had worked seven weeks (40 hours a week) during his benefit period in a job-creation programme. The Canada Employment and Immigration Commission sought repayment of the benefit when it was learned that, through an error, the claimant had worked only 19 weeks (the qualifying period was 20 weeks). The Umpire granted relief from repayment finding that repayment of what are wages amounts to slavery and would be inconsistent with Charter values.

Factors and difficulties

69. A recurring problem for Canada is that of the prostitution of children. In addition to the indictable offences in the Criminal Code (section 212 (1) procuring and section 212 (2) living off the avails of a prostitute under 18 years), Canada is pursuing a multidisciplinary approach to address the issue of juveniles involved in prostitution.

70. In the fall of 1992, a Federal-Provincial-Territorial Working Group on Prostitution was established. This working group of deputy ministers is considering, inter alia, the adequacy of federal and provincial legislation relevant to prostitution, the role of municipalities, law-enforcement issues and possible partnerships between departments of justice and other government agencies in addressing problems posed by prostitution. Recommended options are being developed to address juvenile prostitution, identified as a priority area.

71. The Police and Security Branch of the Department of the Solicitor General, with funds from the "Brighter Futures Initiative", is also focusing on the issue of juvenile prostitution and child pornography, and is consulting extensively with the policing community. As well, the Department of the Solicitor General and the Department of Justice are jointly undertaking a research study, entitled "Violence against street prostitutes".

Article 9

72. The rights protected by article 9 of the Covenant are protected in the Charter by section 7 (right to life, liberty and security of the person), section 9 (protection against arbitrary detention), section 10 (rights upon arrest or detention) and section 11 (rights of persons charged with an offence). The cases discussed below demonstrate the extent to which progress on the protection of rights has been achieved under the Charter.

Liberty and security of the person

Canadian Charter of Rights and Freedoms

73. In R. v. Swain, the Supreme Court of Canada struck down as unconstitutional the provision of the

Criminal Code, which required the trial judge to order the detention of a person found not guilty by reason of insanity. The Court found that the automatic ordering of "strict custody" required by the provision without any hearing on the issue of the person's current mental state directly affected the liberty interest of the person and offended the principles of fundamental justice contrary to section 7 of the Charter. In addition, detention under the provision was found to be arbitrary in violation of section 9 of the Charter.

74. As a result of its decision in R. v. Vaillancourt, there was reason to believe that the Supreme Court of Canada favoured subjective mens rea as the foundation of its conception of the constitutional requirement of fault for Criminal Code offences. However, in R. v. Wholesale Travel Group Inc., Desousa v. The Queen and Hundal v. The Queen, the Court allowed that objective standards of fault can be incorporated in criminal legislation, provided that the stigma and penalty involved in the offence do not otherwise require fault based on a subjective standard. A person may be held criminally liable for negligent conduct but this alone does not violate the principle of fundamental justice that the moral fault of the accused must be commensurate with the gravity of the offence and its penalty.

75. R. v. Creighton (unlawful act manslaughter), R. v. Finlay (careless use of firearms), R. v. Gossett (unlawful act homicide involving the careless use of a firearm) and R. v. Naglik (failure to provide the necessities of life) are four more recent cases handed down by the Supreme Court of Canada that further clarify the issue of the requisite mens rea. In each of these cases, an objective standard was found to be applicable without thereby occasioning a breach of Charter protections. The Court held that there is no general constitutional principle requiring subjective foresight for criminal offences. However, the principles of fundamental justice require, for certain crimes, a mens rea reflecting the particular nature of the crime, the special nature of the stigma that attaches to a conviction, or the available penalties.

76. In R. v. Heywood, the Supreme Court of Canada struck down as unconstitutional a provision of the Criminal Code, which subjected a person convicted of certain sexual offences to a lifetime prohibition not to commit vagrancy by loitering near playgrounds, schoolyards or parks. The Court held that the provision, which was meant to protect children from becoming victims of sexual offences, affected the liberty interest and infringed principles of fundamental justice, because it restricted liberty far more than necessary to accomplish its goal. The section was found to be overly broad in its geographical ambit and in the fact that it applied for life with no possibility of review. It was found to be over-inclusive, as it applied to all persons convicted of listed offences, without regard to whether they constituted a danger to children. The absence of notice was also held to offend the principles of fundamental justice.

77. In R. v. Daviault, the Supreme Court of Canada held that the common-law rule, which stated that drunkenness cannot be a defence for general intent offences, violated the Charter as being contrary to both the principles of fundamental justice (sect. 7 (liberty interest)) and the presumption of innocence (sect. 11 (d)). The Court stated that, while the mental element in general intent offences may be minimal, the substituted mens rea of an intention to become drunk cannot establish the mens rea to commit assault, as it cannot be assumed that all the consequences of voluntary intoxication are themselves either voluntary or predictable. As the case involved sexual assault, the Court noted that ordinarily in such cases mens rea can be inferred from proof that the assault was committed by the accused. The Court held, however, that the defence of drunkenness could only be put to a jury in general intent offences if it was demonstrated that there was such extreme intoxication that there was an absence of awareness, akin to a state of insanity or automatism. The defence must be established by the accused on a balance of probabilities, rather than by simply raising a reasonable doubt.

Legislative and other developments

78. Following upon the decision of the Supreme Court of Canada in R. v. Swain, discussed in paragraph 73 above, the Criminal Code was amended to provide that, where a verdict of not criminally responsible for reason of mental disorder is rendered against a person charged with a criminal offence, the court or a Review Board will hold a hearing to determine the appropriate disposition. The person may be given an absolute discharge, a conditional discharge or be ordered detained in custody in a mental health facility. The court or Review Board must impose a disposition that is the least onerous and least restrictive to the accused, taking into consideration the need to protect the public from dangerous persons, the person's mental condition, his or her reintegration into society and any other needs of the person.

79. Following the Court of Appeal's decision in R. v. Heywood, discussed in paragraph 76 above, section 161 of the Criminal Code was enacted. This new provision provides that a judge may make an order prohibiting an offender from attending parks or swimming areas where persons under age 14 are present, or from working in jobs that involve being in a position of trust or authority over persons under age 14. The order may be made in respect of persons convicted of sexual offences against children, and may be for life or for any shorter duration.

Measures foreseen

80. Following the decision of the Supreme Court of Canada in R. v. Daviault, discussed in paragraph 77 above, the public expressed concerns that this decision would open the floodgates to claims of drunkenness as a defence to charges of sexual assault, reverse gains achieved over the years in the reform of the law of sexual assault and resurrect previously discredited approaches favouring the accused. This led the Minister of Justice to table corrective legislation on 24 February 1995. This bill proposes an amendment to the Criminal Code to provide that intoxication is not a defence to any general intent crimes of violence (e.g. assault and sexual assault). The bill creates a "standard of care" that would be breached by anyone who becomes extremely intoxicated and who causes harm to another person while in that State. A person departing from this standard will be unable to rely upon the defence of extreme intoxication akin to automatism.

Factors and difficulties

81. The issue of high-risk offenders has generated significant social and political comment over the past two years. As was discussed in Canada's second report, the Criminal Code sentencing provisions for dangerous offenders were upheld under the Charter by the Supreme Court of Canada in 1987. The present controversy relates to convicted offenders who are still considered dangerous but who were not prosecuted as dangerous offenders at the time of sentencing. A variety of approaches are under consideration for addressing the concerns surrounding the release of persons at high risk of committing crimes dangerous to the public. The potential for using provincial mental health legislation to civilly commit certain offenders is being assessed. In addition, the legal and constitutional implications of detaining such persons under the criminal-law power at the expiry of their sentences are being studied. It will be several years before any policy or legislative initiatives are developed.

Arbitrary detention

82. In Cunningham v. Canada, the Supreme Court of Canada upheld the validity of a provision in the Parole Act (now found in the Corrections and Conditional Release Act), which permits the denial of early release on conditions of mandatory supervision, where there are reasonable grounds to believe that the inmate is likely to commit an offence causing death or serious bodily harm. The Court held that, although the deprivation of liberty was sufficiently serious to engage section 7 of the Charter, the changes to the Parole Act effected by the 1986 amendments did not violate the principles of fundamental justice. These principles were found to include not only the interests of the individual who asserts a violation of rights but also the protection of society. The procedures and requirements (a hearing, representation for the prisoner, limitations on the material to be consulted, etc.) provide adequate safeguards against arbitrary or capricious orders, and ensure that denial of release on mandatory supervision occurs only where necessary to protect the public and only after due regard has been paid to the prisoner's interest in obtaining his release.

83. In R. v. Storrey, an 18-hour delay in charging an accused after his arrest was held not to be unreasonable or contrary to section 9 of the Charter in the particular circumstances of the case. The delay was occasioned by the necessity to await the victim's arrival from outside the jurisdiction to view the accused's line-up and determine whether or not the accused would be identified. The accused in this case was charged and taken before a Justice of the Peace immediately after his identification in the line-up.

84. There is no doubt that a person is detained once the police stop and question a motorist under routine check and random-stopping programmes that are authorized by motor vehicle legislation. Consequently, where any questioning or searching goes beyond the purpose of the legislation (which is to check licences and insurance, the sobriety of the driver or the fitness of the vehicle) the person consenting to answer

questions or permitting the search must be properly informed and fully aware of his rights, or a violation of the Charter will have occurred and the evidence so gathered will be excluded (R. v. Mellenthin).

Right to be informed of charges

85. In a case where a suspect was tricked into providing a blood sample for DNA analysis ostensibly in relation to one sexual assault investigation, where the police were in fact seeking the evidence for another undisclosed investigation, the Supreme Court of Canada found a violation of section 10 (a) (as well as section 10 (b) and section 8) of the Charter, and the evidence was excluded under section 24 (2) (R. v. Borden).

Trial within a reasonable time

86. The Charter's guarantee of trial within a reasonable time in section 11 (b) has had a substantial effect on Canadian practices. In R. v. Askov, the Supreme Court of Canada expounded at length on the meaning of this provision. As a result of this case, thousands of criminal charges across the country were thrown out because of unreasonable delay. The case reiterates the significance of four factors previously identified in the assessment of whether a delay has been unreasonable: (1) the length of the delay; (2) the reason for the delay, including limits on institutional resources and the inherent time requirements of the case; (3) waiver of time periods; and (4) prejudice to the accused. The controversy that ensued in the aftermath of this decision stemmed primarily from the Court's statement that systemic delays will not be lightly tolerated.

87. Cases subsequent to Askov have clarified that ruling and ensured that there has been no creation of a judicially developed limitation period that is to be mechanically applied, whenever there is systemic delay. In every case, the court is required to weigh the four factors described above (R. v. Morin). Morin also stands for the proposition that pre-charge delay may, in certain circumstances, have a bearing or influence on the overall determination as to whether post-charge delay is unreasonable, but, of itself, it is not counted in determining the length of the delay.

88. The trials of young people involve contingencies having a bearing on trial within a reasonable time. As with all cases, charges against young offenders must be proceeded with promptly. However, in some cases, what is a reasonable delay will be affected by the inherent time requirements involved in seeking transfers to adult court and appeals in relation thereto (R. v. D.(S.)).

89. In R. v. CIP Inc., the Supreme Court of Canada determined that a corporate accused charged with a regulatory offence has a right to be tried within a reasonable time.

90. The right to trial within a reasonable time under section 11 (b) has been held by the Supreme Court of Canada not to apply to appellate delay, regardless of whether it is the accused or the Crown who is appealing (R. v. Potvin). The Court found support for this position in the jurisprudence of the European Court of Human Rights, which has limited the interpretation of article 5 (3) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which deals with expeditious justice, to trials of first instance. The Court noted in contrast that article 6 (1) of the European Convention, which addresses fair trial considerations, has been interpreted to extend to the supervision of appellate delay. In parallel fashion, Potvin asserts that, in extraordinary circumstances, section 7 of the Charter may command a consideration of appellate delay, if the fairness of trial will be adversely affected.

Release pending trial

Canadian Charter of Rights and Freedoms

91. The pre-trial detention (bail release) provisions of the Criminal Code (sects. 515 (6) (a), 515 (6) (d) and 515 (10) (b)) were challenged as violating sections 7, 9 and 11 (e) (right to bail) of the Charter in the cases of R. v. Pearson and R. v. Morales. Section 515 (6) of the Code (persons charged with drug offences shall be detained pending trial, unless they can show cause why detention is not justified) was upheld in Pearson. Although persons were "detained" under that provision, the Supreme Court of Canada concluded that they were not detained "arbitrarily". A discretion is arbitrary if there are no criteria to guide its exercise.

This provision sets out a process with fixed standards, and the process created is in no way characterized by unstructured discretion. Specific conditions for bail are set out, and the process itself is subject to exacting procedural guarantees including review by a superior court. In Morales, the adequacy of two criteria justifying detention - "public safety" and "public interest" - in section 515 (10) of the Code was considered by the Court. The "public safety" component was found not to violate the Charter for reasons similar to those set out in Pearson, but the "public interest" component was held to be unconstitutionally vague, and incapable of guiding and structuring discretion in this context.

Legislative and other developments

92. Bill C-42, a miscellaneous criminal law amendment bill, received Royal Assent on 15 December 1994. Its provisions are in force as of 1 April 1995. This bill gives the police the power to release an arrested person on certain conditions restricting liberty. This power of conditional release provides the police with a third option in addition to the previous choices of releasing unconditionally or detaining in custody until a hearing before a Justice of the Peace. The bill also permits a Justice of the Peace to conduct a hearing on release from custody by telephone. It is thought that these new provisions of the Criminal Code will reduce the number of persons held in custody following arrest and will reduce the period of time that persons are held in custody pending a hearing before a Justice of the Peace.

Detention review

General

93. As was noted in previous reports, section 10 (c) of the Charter provides the right to have the validity of a detention determined by way of habeas corpus. The Immigration Act, which permits the detention of persons in certain circumstances, provides an automatic detention-review mechanism.

Legislative and other developments

94. As part of the amendments to the Criminal Code dealing with verdicts of "not criminally responsible" (discussed in paragraph 78), annual reviews of dispositions by the court or Review Board are mandatory, and more frequent reviews can be initiated at the request of the person or the administrator of the institution in which the person is placed. Disposition reviews are open to the public, the person may be represented by counsel and there is a right of appeal.

95. The detention provisions of the Immigration Act were amended in 1993 by Bill C-86 (which is discussed more generally under article 13). Section 103 of the Act expressly provides that detention reviews are to be conducted in public, unless the adjudicator is satisfied that there is a serious possibility that the life, liberty or security of the person detained would be endangered by a public hearing. Detention reviews for persons held under section 103 (persons detained for an examination, hearing or removal on the basis that they pose a danger to the public or would be unlikely to appear) must be held initially within 48 hours. A second review must be held within 7 days. However, subsequent reviews need only be held at least once every 30 days. Section 103.1 now provides that detention reviews shall be held in camera in respect of persons detained at the border for inability to establish their identity or where the Deputy Minister or Minister of Citizenship and Immigration has reason to suspect that the person has been, may be or will be engaged in espionage, terrorism, acts of violence, war crimes or crimes against humanity (sect. 19 (1) (e), (f), (g), (j), (k) or (l)) but only where the Minister of Justice has certified in writing that an additional period of detention is required to investigate these matters. In such cases, detention reviews must be conducted every 7 days.

Article 10

General

96. Section 12 of the Charter provides protection against cruel and unusual treatment or punishment.

97. As noted in earlier reports, jurisdiction over correctional institutions is shared between the federal Parliament and the provincial legislatures. Relevant federal legislation includes the Corrections and Conditional Release Act (CCRA), which is also discussed under article 7, and the Young Offenders Act (YOA), which is discussed more fully under paragraphs 159 to 171. The CCRA enacts a policy approach in which it is recognized that public safety, which is the paramount consideration in the corrections process, is best protected through the rehabilitation of offenders, including the preparation of offenders for safe reintegration into the community.

Canadian Charter of Rights and Freedoms

98. In A.G. (Canada) v. Daniels, the Saskatchewan Court of Appeal set aside, on the basis of lack of jurisdiction, an order of a trial judge that a sentence not be served in the Prison for Women at Kingston. The case raised the question of whether an order of committal, which would result in a woman of Native ancestry from the prairie provinces being incarcerated far from her community violated sections 7, 12, 15 and 28 of the Charter. At the time, Kingston was the only penitentiary for women in Canada. See below, at paragraph 107, the discussion of the new federal correctional institutions for women.

99. In Conway v. R., the Supreme Court of Canada held that frisk searches and security patrols of inmates' living quarters in male penitentiaries by female guards did not infringe the inmates' right to privacy under section 7 or section 8 of the Charter or their equality rights under section 15. The Court held that the prison setting entails a substantially reduced level of privacy, as it requires surveillance, searching and scrutiny for the security of the inmates, other prisoners in the institution and the public. Thus, inmates do not have a reasonable expectation of privacy with respect to the practices in question, such that sections 7 and 8 are not implicated.

Legislative and other developments

100. On 1 November 1992, the Corrections and Conditional Release Act (CCRA) came into force. The CCRA, the regulations enacted thereunder and the Directives of the Commissioner of Corrections govern matters relating to the treatment, health care and living conditions of inmates of federal penitentiaries. A number of these provisions are highlighted below.

101. Section 70 of the CCRA requires the Correctional Service of Canada (CSC) to take reasonable steps to ensure that the penitentiary, the penitentiary environment and the living and working conditions of inmates are safe, healthy and free of the practices that would undermine a person's sense of dignity.

102. Subsection 71 (1) of the CCRA provides that "in order to promote relationships between inmates and the community, an inmate is entitled to have reasonable contact, including visits and correspondence, with family, friends and other persons from outside the penitentiary, subject to such reasonable limits as are prescribed for protecting the security of the penitentiary or the safety of persons". Inmates are encouraged to maintain and develop family ties through written correspondence, telephone communications and visits, which will assist to prepare them for reintegration as law-abiding citizens.

103. Section 75 of the CCRA provides that "an inmate is entitled to reasonable opportunities to freely and openly participate in, and express, religion or spirituality" subject to the same limitations as contained in section 71. Section 83 provides, "for greater certainty, that Aboriginal spirituality and Aboriginal spiritual leaders have the same status as other religions and other religious leaders".

104. The Interfaith Committee on Chaplaincy is a national advisory body mandated to advise the CSC on matters related to religion. Over the period covered by this report, this advisory body has been expanding its membership to include members of more faith groups. Chaplains from minority-faith groups are on contract with the CSC, where numbers in a particular region warrant. Multifaith issues are an integral part of the orientation and training of chaplains, and all personnel are encouraged to attend activities that promote understanding of diverse religious traditions.

105. In 1991, an Aboriginal Corrections Unit was established within the Department of the Solicitor General to undertake innovative research and evaluation, development and communications projects.

106. In 1993, the Correctional Service introduced a random urinalysis and drug-testing programme in an effort to reduce substance abuse by inmates and the violence associated with the drug trade. The British Columbia Supreme Court has dismissed a challenge to the programme brought on the basis of sections 7 and 8 of the Charter. The Court of Appeal has stayed the use of the programme, pending resolution of an appeal.

107. There is currently only one federal penitentiary for women (at Kingston). Since 1973, about one third to one half of women sentenced to federal penitentiary have been able to serve their sentence in their home province under federal-provincial transfer arrangements. In 1990, on the recommendation of a national Task Force on Federally Sentenced Women, the Government of Canada decided to replace the existing system with five new facilities across the country. One of these facilities will be a healing lodge for Aboriginal women. While there have been unanticipated delays in site selection and the consultation process, the current schedule anticipates that all these facilities will be operational in 1996-1997.

108. A comprehensive mother-child programme is under development for the correctional facilities for women that are under construction. The programme is premised on ensuring that any institutional residential arrangement for newborn children of inmates, whether full- or part-time, is in the best interests of the child. At present, pregnant inmates receive comprehensive counselling and assistance, and their wishes respecting the custodial arrangements for their newborns are respected to the extent possible. Prenatal care is provided, and arrangements are made to permit birth to occur in hospitals outside correctional facilities. Since the current penitentiary for women is not a suitable environment for children due to its age and design, the Correctional Service arranges for transfers to provincial correctional facilities for women who wish to retain custody of their newborn children.

109. In 1992, amendments were made to the Young Offenders Act to deal with the question of the detention of young persons who were transferred to ordinary (adult) court. Section 16.1 states that persons under the age of 18 who are to be held in custody pending trial in ordinary court shall be held separate and apart from any adult in custody, unless the youth court judge is satisfied that the young person, in the best interests of that person and the safety of others, cannot be detained in a place of detention for young persons. Section 16.2 provides extensive guidelines for the sentencing judge on the choice of placement of a young person (a place of custody for young persons, a provincial facility for adults or a penitentiary) for the purpose of serving a sentence of imprisonment.

110. As noted under article 14, paragraph 160, the Young Offenders Act applies to youths 12 years or older but under 18 years. Pre-trial detention would not be authorized for youths under 12 who are involved in criminal activity. Instead, they may be found to be children in need of protection under child-protection legislation.

Factors and difficulties

111. Canada is currently facing, at both the federal (sentenced to two years or more) and provincial (sentenced to less than two years) levels, a rapidly increasing inmate population and, therefore, a growing problem of crowding and double-bunking in its correctional facilities in a time of financial constraint. A number of measures are being pursued to attempt to deal with this problem. Renovations to existing structures will add 3,500 beds. Access to surplus provincial facilities is pursued through leasing arrangements and exchange-of-service agreements. Inmates are transferred within the federal system to less crowded institutions. Where double-bunking is necessary, accommodation policies provide that smaller cells are not used for this purpose and that it should be avoided for offenders with special needs and those with long-term sentences. It is recognized that, in the final analysis, the problem of crowded prisons requires fundamental changes to sentencing and progress in crime-prevention strategies.

112. In April 1994, inmates at the Prison for Women in Kingston assaulted six correctional officers, seriously injuring two. (Five inmates were subsequently convicted of assault, attempted hostage-taking, attempted escape and assaulting a peace officer.) As a result of this incident, the inmates were placed in segregation and, when seriously disruptive behaviour continued in segregation, the Institutional Emergency Response Team (IERT) was brought in from Kingston Penitentiary. Over the course of eight hours, all the inmates in segregation were placed in restraint equipment, stripped of regular clothing and placed in paper gowns by

female officers in the presence of and, when required, with the assistance of the all-male emergency response team. The treatment of the inmates was subsequently investigated by an internal Board of Investigation convened by the Commissioner of Corrections and by the Correctional Investigator, an ombudsman for inmates in federal correctional institutions. The reports of these two investigations differed both on matters of fact and interpretation of the findings. In April 1995, the Solicitor General of Canada appointed a judicial officer to conduct an independent inquiry, which is expected to report in 1996. Independent of this inquiry, the service effected immediate changes to its policies and training of IERT who are to intervene in female facilities. In particular, every reasonable step shall be taken to remove male IERT members from the presence of female offenders who are being stripped.

Article 12

General

113. The right of persons to move across Canada's international borders and to remain in Canada is governed by section 6 of the Canadian Charter of Rights and Freedoms and by the Immigration Act and Immigration Regulations. Section 6 (1) of the Charter provides that only Canadian citizens have a constitutional right to enter, remain in and leave Canada. As was discussed in previous reports, this constitutional right of citizens is subject to Canada's international extradition obligations. Under section 4 of the Immigration Act, persons with permanent resident status have a legal right to enter and remain in Canada. The Immigration Act governs the granting of permanent resident status, the ability of visitors to enter Canada and the protection of refugees consistent with Canada's obligations under the Convention relating to the Status of Refugees.

114. Liberty of movement within Canada is governed by section 6 (2) and section 6 (3) of the Charter and by legislative and other measures. Subsection 6 (2) gives citizens and persons with permanent resident status the constitutional right to move to and take up residence and pursue a livelihood in any province. This subsection of the Charter reflects the fact that Canada is a federal State and gives expression in the Constitution to rights that have long been exercised. Canadian legislation does not restrict, on the basis of immigration status, the liberty of movement of any individuals within the country nor does it restrict the right of persons to choose where they will reside.

Canadian Charter of Rights and Freedoms

115. In U.S.A. v. Cotroni, the Supreme Court of Canada expanded its analysis of the application of the Charter to the extradition of a Canadian citizen to face trial in another State for a crime that could be prosecuted in Canada. The Court applied section 1 of the Charter to find that the extradition of Cotroni was a reasonable limit on his right as a citizen to remain in Canada. Although Canada could take jurisdiction for the prosecution of his alleged criminal conduct, the requesting State in this case was in the better position to prosecute.

Article 13

General

116. The administrative and judicial decision-making processes that govern the removal of aliens from Canada are found in the Immigration Act and the Immigration Regulations. Removal decisions are subject to the application of the Canadian Charter of Rights and Freedoms. In particular, section 7 of the Charter requires that decisions be consistent with the principles of fundamental justice where they affect an individual's life, liberty or security of the person. Immigration decisions also must be consistent with section 15 (equality rights) of the Charter.

Canadian Charter of Rights and Freedoms

117. In Chiarelli v. Minister of Employment and Immigration, the Supreme Court of Canada considered the constitutionality of provisions of the Immigration Act governing the deportation of persons with permanent resident status based on convictions for serious crimes. The Court held that the principles of the fundamental justice requirement of section 7 of the Charter was not infringed by a provision of the Act that denied an appeal on equitable grounds against an order of deportation to persons against whom there was an outstanding certificate issued by the Governor in Counsel stating that they were likely to engage in organized crime or other very serious crimes. The legislation did provide a right of appeal on grounds of fact, law or mixed fact and law. The Court also considered the mechanism by which the certificate was issued. It held that the hearing on the issue of whether there were reasonable grounds to believe a person will engage in organized crime did not infringe the principles of fundamental justice. The Security Intelligence Review Committee had given Chiarelli a summary of evidence, which it had received in camera and ex parte given the need to protect the sources of the information. The Court held that the process was acceptable in the context and found that he had been given an adequate amount of information to enable him to meet the case against him.

118. In Dehghani v. Minister of Employment and Immigration, the Supreme Court of Canada held that persons awaiting an interview with an immigration officer (secondary examination) at ports of entry were not detained within the meaning of section 10 (b) of the Charter (right to retain counsel on detention) and, therefore, the right to retain and instruct counsel did not arise. Assuming that section 7 (right to life, liberty and security of the person) of the Charter was engaged, where a refugee claimant is being interviewed at a point of entry, the Court held that the principles of fundamental justice do not require that the claimant be provided with counsel at the pre-hearing stage of the refugee determination process.

Legislative and other developments

119. Following the decision of the Supreme Court of Canada in Dehghani v. M.E.I., discussed in paragraph 188 above, immigration officers were reminded that, where they decided to detain an individual under the Immigration Act, that person was entitled to be informed promptly of the reasons for detention, informed of the right to retain and instruct counsel and given a reasonable opportunity to exercise the right to counsel. Immigration officers were also instructed that, even in cases where the right to counsel did not arise, persons may be allowed the assistance of counsel or an adviser, provided that person is ready and able to proceed immediately.

120. In 1993, Bill C-86 became law, ushering in a comprehensive set of amendments to the Immigration Act. The Immigration Regulations were amended in three stages to complement the changes to the Act. Among the major policy changes affecting the removal of aliens were changes to the definitions of classes of persons inadmissible on the basis of criminality, a streamlining of the refugee determination process, changes to the process for applications for landing on humanitarian and compassionate grounds, and the creation of a class of persons who can apply for landed immigrant status from within Canada, in contrast to the general rule that requires persons to apply for landing from outside the country. In addition, senior immigration officers were given the authority to issue administrative removal orders in cases that raised no significant question of fact. Previously, all removal orders were issued by independent adjudicators on the basis of a formal hearing.

121. Amendments to the Immigration Regulations following upon Bill C-86 created the "post-determination refugee claimants in Canada class". The objective of this aspect of the amendments is to provide a "safety net" for persons who might fail to meet the definition of Convention refugee but who nonetheless face an objectively identifiable risk of serious harm if removed from Canada. There are a number of eligibility requirements including, for example, the requirement that the person has not left Canada. An assessment of the need for protection is done in the case of an unsuccessful refugee claimant, whether or not that person seeks an assessment. Decisions under this class are made by specially designated immigration officers whose training includes instruction on administrative law concepts of fair decision-making as well as on the Charter and Canada's international human rights obligations, including the Covenant.

122. The Immigration Regulations have been amended to add two other classes of persons who may seek landing within Canada. One is the "live-in caregivers in Canada class" which is designed to permit qualified persons who are admitted as temporary entrants and reside in the household of their employer in Canada

to apply for permanent residence from within Canada after two years of employment. The other class, the "deferred removal orders class", was created to regularize the immigration status of certain persons who have had their claim to refugee status rejected but have not been promptly removed from Canada because of the Government's unwillingness or inability to return them to their country of origin due to conditions existing in that country at the time.

Measures foreseen

123. Bill C-44 proposes a number of amendments to the Immigration Act. The provisions determining the eligibility of persons convicted of serious crimes in Canada or elsewhere to claim refugee status will be refined. Senior immigration officers will be given the authority to inform the Immigration and Refugee Board concerning the serious criminality of a person claiming status at any time in the process. The Board will have the authority to terminate the refugee-determination process on the basis of ineligibility at that point. Immigration officials will be given the legislative authority to seize false travel documents or fraudulent passports which are found in transit to Canada by mail. The grounds for appeal to the Immigration Appeal Division will be restricted, and in some cases removed, for certain classes of persons involved in serious criminal behaviour. Instead, the Minister of Citizenship and Immigration or a delegate will consider humanitarian and compassionate grounds in the process of assessing serious criminality and certifying that a person is a danger to the public.

Article 14

124. Sections 7 through 14 of the Charter provide guarantees of fair process. In addition, section 15, the equality rights provision of the Charter, has application to criminal and civil processes.

Equality before the courts

Canadian Charter of Rights and Freedoms

125. In R. v. S.(S.), the Supreme Court of Canada upheld the validity of section 4 of the Young Offenders Act, which was challenged under the equality rights provision of the Charter. The Court concluded that federal legislation, which permitted provincial differences in "alternate measures" programmes for dealing with a young offender who is alleged to have committed an offence, created a distinction in the law that was not discriminatory. The distinction was based on place of residence rather than on personal characteristics.

126. In R. v. Seaboyer, the Supreme Court of Canada found a provision of the Criminal Code, which restricted the right of the defence on a trial for a sexual offence to cross-examine and lead evidence of the victim's sexual conduct on other occasions, to violate sections 7 and 11 (d) of the Charter. The provision had been enacted to prevent the potential for a judge or jury to draw illegitimate inferences from the evidence of past sexual behaviour and to deal with an existing problem of a significant percentage of victims choosing not to report sexual behaviour. The Court held that the provision violated the Charter, because it created the potential for the exclusion of evidence that was relevant to the defence and whose probative value was not substantially outweighed by the prejudices to the trial process.

127. In R. v. Osolin, the Supreme Court of Canada upheld a provision of the Criminal Code, which imposes an "air of reality" test as a threshold to be met before the issue of mistaken belief in consent can be left to the jury in trials for sexual assault. The right to cross-examine has never been unlimited. It is a basic principle that evidence must be relevant to be admissible. In addition, the probative value of the evidence must be weighed against its prejudicial effect. The constitutionality of a limit to the scope of the cross-examination of a victim in a sexual assault trial should be assessed in light of the guarantee of equality to women and men in sections 15 and 28 of the Charter.

128. In R. v. Généreux, the application of a military system of justice to a member of the military charged with an offence under the Criminal Code was held not to violate the accused's equality rights under section

15 of the Charter.

Legislative and other measures

129. Following the decision of the Supreme Court of Canada in R. v. Seaboyer, which is discussed in paragraph 126, the Criminal Code was amended in 1992 to provide guidelines for judges on the admissibility of the past sexual history of victims of sexual offences. This amendment addressed an equality rights problem in Canada, wherein the defence of persons accused of sexual offences often seemed to place the victims themselves "on trial". The new provision outlines the procedure that must be followed in admitting such evidence, defines the notion of consent to sexual activity and restricts the defence of mistaken believe in consent in sexual assault cases. This last aspect of the amendment was upheld by the Court in R. v. Osolin discussed in paragraphs 127 and 150.

130. The National Judicial Institute offers training programmes on gender and multicultural sensitivity to provincially and federally appointed judges. Committees with members representative of their communities exist in each province to advise the federal Minister of Justice on judicial appointments. In the period covered by this report, increased efforts have been made to appoint women and members of minorities as federal judges. The percentage of federally appointed judges who are women has risen to over 14.4 per cent.

131. Members of administrative tribunals receive in-house training on cross-cultural awareness and gender issues. In addition, courses promoting awareness of equality issues are available from such organizations as the Council of Canadian Administrative Tribunals, the Canadian Institute for the Administration of Justice and the National Institute for the Administration of Tribunals.

Competent, independent and impartial tribunal

General

132. The right to a competent, independent and impartial tribunal is protected in Canadian law by a combination of section 7 (the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice) and section 11 (d) (the right to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal) of the Charter, various legislative provisions and administrative law principles.

Canadian Charter of Rights and Freedoms

133. In R. v. Lippé, the Supreme Court of Canada considered the constitutionality of a provision in legislation governing municipal court judges, which permits part-time judges to continue to practise law. The Court concluded that section 11 (d) of the Charter (guarantee of an independent and impartial tribunal) does not prohibit part-time judges but does guarantee that they will not engage in activities that are incompatible with their duties as judges. The provision was upheld on the basis that the legislation provided for a judicial oath, judicial immunity, a Code of Ethics, a public complaints system that could result in the removal of judges and the requirement that judges remove themselves from cases in specified circumstances.

134. In R. v. Bain, the Supreme Court of Canada held that the then existing jury-selection provisions of the Criminal Code violated section 11 (d) of the Charter, the right to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal. The Court found that the numerical disparity between the Crown's and the accused's right to challenge jurors gave an appearance of unfairness or bias against the accused.

135. In R. v. Généreux, the Supreme Court of Canada found that the military system of justice at the time of the accused's trial infringed the right to trial by an independent and impartial tribunal guaranteed by section 11 (d) of the Charter. The Court found that the essential conditions of judicial independence were not met. The main factors affecting the Court's decision included: the insufficient security of tenure of the military judge (judge advocate); the appointment of judges by a member of the executive of the military

(Judge Advocate General) rather than by an independent and impartial judicial officer; and the lack of sufficient financial security of the members of the General Court Martial.

Legislative and other developments

136. In 1992, the Criminal Code was amended to provide that the prosecution and the defence in a criminal jury trial would have an equal number of peremptory challenges. This change was made to enhance the fairness of the jury-selection process consistent with the reasoning in R. v. Bain.

137. Amendments to the National Defence Act and its regulations have reinforced the institutional independence and impartiality of the General Court Martial through greater guarantees of security of tenure and financial security.

Press exclusion and publicity bans

Canadian Charter of Rights and Freedoms

138. In Dagenais v. CBC and R. v. S.(T.) (cases decided concurrently in 1994), the Supreme Court of Canada concluded that the right to a fair trial protected by section 11 (d) of the Charter and freedom of expression in section 2 (b) of the Charter are of equal importance under the Charter. It modified the common-law rule concerning publication bans for criminal trials. The new test is as follows: a publication ban should only be ordered when such a ban is necessary to prevent a real and substantial risk to the fairness of the trial, and the salutory effects of the publication ban outweigh the deleterious effects to the free expression of those affected by the ban.

Presumption of innocence

139. In cases surveyed in previous reports by Canada, the Supreme Court has held that the guarantee of the presumption of innocence in section 11 (d) of the Charter requires the prosecution to prove each of the essential elements of a criminal offence beyond a reasonable doubt. There had been uncertainty as to whether a reversal of the burden of proof of a defence infringes section 11 (d). This issue was resolved in the cases of R. v. Whyte and R. v. Keegstra, so that it is now clear that the distinction between elements of the offence and other aspects of the charge is irrelevant. The real concern is not whether the accused must disprove an element or prove an excuse, but that an accused may be convicted, while a reasonable doubt exists. When that possibility exists, the presumption of innocence is infringed.

140. In R. v. Downey, the Supreme Court of Canada held that the presumption of innocence is infringed whenever the accused is liable to be convicted despite the existence of a reasonable doubt. The Criminal Code provision presuming, in the absence of evidence to the contrary, that a person who lives with a prostitute lives off the avails of prostitution, was unanimously found to contravene the presumption of innocence but was upheld, per minority (4:3), as justifiable under section 1.

Information on the nature of the charge

141. Section 11 (a) of the Charter is framed in terms of the rights of a person upon being charged with an offence. It is, in the context of a criminal investigation, linked chronologically to the rights arising on arrest or detention that are conferred under section 10 of the Charter respecting the provision of the right to counsel and the right to be informed of that right. Jurisprudence under section 10 indicates that, where special circumstances exist (for example, language difficulties indicating a lack of understanding), the police have a special obligation to ensure that the accused understands the information that is being conveyed (R. v. Black). A person who does not understand the right to counsel cannot be expected to assert it (R. v. Evans).

Counsel of choice/funded counsel

General

142. Section 10 (b) of the Charter guarantees everyone the right on arrest or detention to retain and

instruct counsel without delay, and to be informed of that right. There are constitutional obligations that the State must assume to ensure the adequate provision of counsel pursuant to section 10 (b), and these may include the provision of State-funded counsel. As well, while sections 7 and 11 (d) of the Charter do not entrench a right to funded counsel, they do guarantee a right to a fair trial, and funded counsel may be necessary in order to secure that right (Deutsch v. Law Society Legal Aid Fund; R. v. Rowbotham). Access to State-funded legal assistance for impecunious individuals is governed by legislation.

143. The delivery of legal aid services is the responsibility of the provincial governments. The federal Government cannot impose on the provinces a requirement that they provide legal aid. In practice, with the financial support of the federal Government, each of the provinces has implemented comprehensive legal aid programmes.

144. The Government of Canada shares with the provinces and territories the cost of providing free legal advice and representation to indigent persons accused of serious criminal offences. Federal-provincial-territorial cost-sharing agreements set minimum standards for the provision of eligible persons accused of indictable or summary offences, where, upon conviction, imprisonment or the loss of a means of livelihood would likely result. Under the Canada Assistance Plan, the Government of Canada provides financial support to the provinces for their civil legal aid programmes. Provincial programmes normally cover such family matters as separation and divorce, custody and access to children, support obligations and spousal abuse. These plans also include such matters as credit or debt collection, housing, complaints about the police and claims under social benefit programmes.

Canadian Charter of Rights and Freedoms

145. In R. v. Brydges, the Supreme Court of Canada imposed an obligation on the police to inform a detainee of the existence and availability of the applicable systems of duty counsel and legal aid in the jurisdiction to give the detainee a full understanding of the right to retain and instruct counsel (see also paragraph 9 on the Brydges case). Subsequent cases have clarified this ruling and have held that there is no constitutional requirement that provinces establish and maintain a system of 24-hour access to duty counsel (Prosper; Bartle; Pozniak; Matheson; Harper; Cobham). In Prosper, the majority of the Court decided that the State had to delay obtaining evidence if free preliminary legal advice was not immediately available. It is too soon to know what impact this case will have on the provision of legal aid.

Factors and difficulties

146. Many provinces are experiencing increasing demands for legal aid services in a time of general financial restraint. A national review of the state of legal aid is under way, led by provincial and territorial governments. The principal areas under examination are funding, service-delivery models and the determination of the appropriate level of coverage. In addition, provincial legal aid plans are experimenting with innovative and cost-effective ways of providing legal aid services.

Full examination of all witnesses

147. In R. v. Stinchcombe, the Supreme Court of Canada held that section 7 of the Charter gave persons accused of criminal offences the right to full disclosure by the Crown. Full disclosure includes provision of the statements of all persons who have provided relevant information to the authorities. In Stinchcombe, the Court fastened on the "overriding concern that failure to disclose impedes the ability of the accused to make full answer and defence". Full disclosure, thus, is the condition precedent to full and complete access by the defence to all relevant witnesses. The remedies available to an accused, if full disclosure is not provided, range from adjournments to prepare the defence following disclosure to a stay of proceedings.

148. In order to encourage full and candid testimony, section 486 (2.1) of the Criminal Code permits a complainant in a sexual assault case who is under the age of 18 to testify outside the courtroom or behind a screen or device that would prevent a view of the accused. The constitutionality of this provision was upheld in R. v. Levogiannis. The Court reasoned that the limited and discretionary use of a screening device in no way restricts or impairs the ability to cross-examine the complainant and, since it is designed to elicit a full and candid account of the acts complained of, it may be of real assistance in securing a fair trial.

149. Section 715.1 of the Criminal Code allows for the admission of the videotaped testimony of a complainant under the age of 18 with regard to certain listed sexual offences, provided that the complainant, while testifying, adopts the contents of the videotape. In R. v. L.(D.O.), the Supreme Court of Canada unanimously upheld the validity of this provision, finding that it neither offends the principles of fundamental justice nor violates the right to a fair trial. Cross-examination at trial is sufficient to remedy the absence of opportunity to cross-examine at the time of making the initial statements. Possible prejudice is prevented as well by a power in the trial judge to strike out or edit statements, where necessary.

150. In R. v. Osolin, the Supreme Court of Canada found that the trial judge restricted the ability of the accused in a sexual assault trial to cross-examine the complainant on certain medical records, which were placed in evidence on the issue of her competence to testify. Defence counsel sought to cross-examine the victim on a notation in her medical records describing reactions and attitudes that may have had an influence on the accused's behaviour. The Court held that the right to cross-examine is fundamental to providing a fair trial to the accused.

Assistance of an interpreter

Canadian Charter of Rights and Freedoms

151. In Tran v. R., the Supreme Court of Canada made several statements on the scope of section 14 of the Charter: (a) courts have an independent responsibility to ensure that their proceedings are fair and in accordance with the principles of natural justice and, therefore, to protect an accused's right to interpreter assistance, irrespective of whether the right has actually been formally asserted; (b) particularly with the elevation of the right to the level of a constitutional norm, courts should be generous and open-minded when assessing an accused's need for interpreter assistance, without granting such assistance systematically; (c) section 15 (equality rights), section 25 (Aboriginal rights) and section 27 (multicultural heritage) of the Charter also speak to the importance of the right to interpreter assistance in Canadian society (insofar as a multicultural heritage is a multilingual one, it follows that a multicultural society can only be preserved and fostered if those who speak languages other than English and French are given real and substantive access to the criminal justice system); (d) the right to interpreter assistance in the criminal context should be considered a "principle of fundamental justice" within the meaning of section 7 of the Charter; and (e) the standard of interpretation under section 14 is not one of perfection, but one of continuity, precision, impartiality, competency and contemporaneousness.

Legislative and other developments

152. Since 1990, the language-of-trial provisions of the Criminal Code have been in force in all provinces and territories. Those provisions include 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 judgement written in his official language, and the right of the accused, the witnesses and the accused's counsel to be assisted by an interpreter. The Criminal Code also provides, since 1988, that all pre-printed forms prescribed by the Code must be printed in both English and French. Court challenges are currently taking place in different provinces and territories as to the exact scope of those provisions.

153. Under section 15 (1) of the Official Languages Act (in force since 1993), every federal court has a duty to ensure that any witness can be heard in the official language of his or her choice, and that in so being heard the person will not be placed at a disadvantage by not being heard in the other official language. Section 15 (2) of the Act states that every federal court has the duty to ensure, at the request of any party, that facilities are made available for the simultaneous interpretation of proceedings. Section 16 of the Act states that all federal courts and tribunals of Canada, except the Supreme Court of Canada, have the duty to ensure that every judge or other officer who hears proceedings is able to understand the official language(s) chosen by the parties without the assistance of an interpreter.

Protection against self-incrimination

154. In Prosper v. The Queen, one of the cases mentioned in paragraph 145 above dealing with the right to funded counsel, the Supreme Court of Canada noted that the privilege against self-incrimination is a

basic tenet of the Canadian criminal justice system and, therefore, a principle of fundamental justice under section 7 of the Charter. The Court asserted that the right to retain and instruct counsel, which is protected by section 10 (b) of the Charter, serves to protect the privilege against self-incrimination.

155. In a series of cases, the Supreme Court of Canada examined the scope of the principle against self-incrimination in greater detail. In R. v. S.(R.J.), the Court held that a person separately charged with an offence was compellable as a witness in the trial of another person charged with the same offence. Evidence which would not have been obtained but for the compelled testimony could be subject to exclusion at any subsequent trial of the charged person who was compellable as a witness.

156. In Crawford v. R., the Supreme Court of Canada held that an accused may cross-examine a co-accused on his or her pre-trial silence for the purpose of impeaching his or her credibility but not for the purpose of incriminating the co-accused. This approach was seen as balancing two competing rights protected by section 7 of the Canadian Charter of Rights and Freedoms: the right to pre-trial silence and the right to make full answer and defence.

157. In B.C. Securities v. Branch, the Supreme Court of Canada upheld the constitutionality of a provision of the Securities Act of British Columbia which permitted directors to be subpoenaed to testify at a public inquiry into the operations of their company. The Court held that testimony and the production of company documents were compellable. Section 13 of the Canadian Charter of Rights and Freedoms protects a witness against the use of any incriminating evidence in future proceedings. As was held in R. v. S.(R.J.), which is discussed in paragraph 155, derivative-sue immunity would be available in subsequent trial for any evidence which could not have been obtained but for the compelled testimony or production. The Court also indicated that judges had a discretion to exempt individuals from testifying at a public inquiry if the predominant purpose for seeking the evidence was to obtain incriminating evidence against them.

158. In R. v. Fitzpatrick, the Supreme Court of Canada held that the principle against self-incrimination is not infringed by the use of statutorily required records in the prosecution of regulatory offences. The statutory scheme required the production of fishing records independent of any investigation. The rationale of protection against unreliable confessions and abuse of power by the State which underlies the principle against self-incrimination is not engaged in the context of a detailed regulatory regime that governs the management and conservation of a fishery by the State and fishermen acting as partners.

Prosecution of juveniles

General

159. As was noted in Canada's second report, the rights of young persons charged with criminal offences are protected by the Canadian Charter of Rights and Freedoms and the provisions of the Young Offenders Act, federal legislation that governs their treatment within the criminal justice system. Section 3 of the Act outlines the policy of the Government of Canada with respect to young offenders and includes recognition for the special needs of young persons, particularly for guidance and assistance, and indicates that their accountability for their actions may differ from that of adults.

160. The Young Offenders Act applies to youths who are 12 years of age and older but under the age of 18. Youths under age 12 who are involved in criminal activity may be found to be children in need of protection under provincial child welfare or child-protection legislation.

Case law

161. In an effort to address the confusion in case law about the applicability of sentencing principles such as denunciation and deterrence in young-offender sentencing, the Supreme Court of Canada rendered its decision in R. v. J.J.M. The Court acknowledged the existence of a philosophical inconsistency between the various principles governing sentencing set out in section 3 of the Act. The Court held that this ambivalence was inevitable in order to provide the required degree of flexibility in fashioning dispositions aimed at rehabilitating offenders. Of particular significance was the Court's assertion that rehabilitation is the ultimate aim of youth sentencing.

Legislative and other developments

162. There have been three main legislative developments affecting young offenders in the period covered by this report. An Act to Amend the Criminal Code (Bill C-12) was proclaimed in force on 15 May 1992. The legislative provisions introduced a number of changes, chief of which pertained to modifications to the provisions relating to transfer to adult court. A new subsection 16 (1.1) was introduced, which clarified that, if the court came to the conclusion that public protection and the offender's rehabilitation could not be reconciled in the youth court system, then the former principle was paramount and necessitated a transfer.

163. Another significant change introduced by the former Bill C-12 was a change in the penalty structure for murder offences in the youth-court system. The penalty was changed from a maximum of three years closed custody, to a sentence comprised of two parts. The custodial portion of the sentence could be for a period of up to three years. This was then to be followed by a period of conditional supervision in the community for a maximum period of two years less one day. In situations where the youth court was satisfied that there were reasonable grounds to believe that the young person was likely to cause death or serious harm to another person if released, it could order the person to remain in custody for the balance of the sentence.

164. A further significant change introduced in 1992 was a modification to the Criminal Code through the enactment of section 742.1. That section provides that persons under age 18 who have been convicted of first- or second-degree murder in adult court are eligible for parole, after they have served a term of between 5 and 10 years, as specified by the sentencing court.

Measures foreseen

165. In 1994, the Minister of Justice tabled Bill C-37, a further Act to amend the Young Offenders Act in the House of Commons. Bill C-37 proposes to modify the statement of purposes and principles in section 3 of the Act by clarifying that public protection is one of the primary objectives of the youth-justice system. Another proposed amendment to section 3 acknowledges that crime prevention is essential to the long-term protection of society and requires addressing the underlying causes of crime by young persons and developing multidisciplinary approaches to identifying and effectively responding to children and young people at risk.

166. Bill C-37 will require young persons aged 16 or 17 years, who have been charged with murder, attempted murder, manslaughter or aggravated sexual assault, to apply to remain in youth court. If they can show that protection of the public and rehabilitation can be achieved by their remaining in the young offender system, the court must order that they be deal with in youth court. If the two objectives cannot be met in youth court, a youth must be transferred to adult court.

167. Bill C-37 proposes increases to the sentences for murder under the Young Offenders Act. The maximum sentence for first-degree murder will be increased to 10 years with a maximum of 6 years to be spent in custody and the remaining 4 years under supervision in the community. For second-degree murder, the maximum sentences will be 7 years with a maximum of 4 years to be spent in custody. In exceptional cases, it will be possible for a youth to spend the total period of the sentence in custody.

168. Bill C-37 contains measures to facilitate the sharing of information. It will be possible for professionals to share information for the purposes of enforcing court orders and of securing the safety of individuals. Information-sharing with select members of the public will be possible only by court order and where there is a risk to public safety.

169. Bill C-37 proposes to restrict the use of custody as a sentencing measure and proposes changes to section 24 of the Act, which governs the imposition of custodial dispositions. The suggested section 24 (1.1) prohibits the use of custody as a substitute for appropriate child protection, health and other social measures. It also indicates that a young person who commits an offence that does not involve serious personal injury should be held accountable to the victim and to society through non-custodial dispositions, whenever appropriate. A final principle in the new section restricts the use of custody to situations where all available alternatives to custody that are reasonable in the circumstances have been considered.

170. In addition to Bill C-37, further changes to the Young Offenders Act may result from a review of the Act conducted by a federal-provincial-territorial Task Force of Senior Officials and an upcoming parliamentary review. This second phase of legislative review will consider such issues as the age jurisdiction of the Act; the causes of youth crime and how youth crime can best be prevented; and the relationship between the provincial child welfare and child protection systems, and the youth justice system. In the course of this review, a parliamentary committee will seek the views of concerned citizens, victims' groups, professionals working with children and youth, academics and others interested in these important policy matters.

Factors and difficulties

171. Public opinion has been divided on the effectiveness of the Young Offenders Act. In response to media coverage of violent crimes committed by young persons, a significant percentage of the Canadian public has complained recently that the penalty structure of the Act is insufficiently broad to deal adequately with the more serious criminal offences. When asked in opinion polls, however, the public seems to favour rehabilitation for young people. The tension between the goal of rehabilitation of young offenders and the preservation of public confidence in the youth-justice system will be an important consideration for the Phase II review noted above.

Rights on miscarriage of justice

172. Compensation for wrongful conviction and miscarriage of justice is largely dealt with by the exercise of executive discretion. Miscarriage of justice is potentially actionable under the Canadian law of malicious prosecution or breach of statutory duty.

173. Canada's second report mentioned guidelines governing the compensation of persons wrongfully convicted and imprisoned. Those guidelines were adopted by the federal and provincial governments in 1988 and are still applicable. Compensation has been granted in two provincial cases since the guidelines were adopted (Donald Marshall; Richard Norris).

Double jeopardy

174. In R. v. Van Rassel, the accused, a former RCMP officer, could not rely on section 11 (h) (the Charter's double jeopardy provision) on the basis of acquittals in the United States of charges arising out of disclosure of confidential information gained when he was involved in a joint investigation with United States officials. The United States charges and the Canadian charges, also based on disclosure, were different, because they were based on duties of a different kind. These were two aspects to the accused's conduct: first, wrongdoing as a Canadian official with a special duty to the Canadian public and, second, wrongdoing as an American official temporarily subject to American law. The accused was required to account for his conduct to the Canadian public.

175. In R. v. Shubley, the Supreme Court of Canada revisited the issue decided previously in Wigglesworth, namely the relationship between disciplinary proceedings and subsequent criminal trials for purposes of the Charter's double jeopardy protection. In this case, the accused was charged with a criminal assault after being found guilty of internal prison disciplinary proceedings for the same incident. No violation of section 11 (h) was found to exist on the basis of the principles enunciated in Wigglesworth.

Article 15

General

176. As discussed in Canada's second report, section 11 (g) of the Charter protects persons from retroactive penal law, unless the act or omission was, at the time, a crime under Canadian or international law or was criminal according to the principles of law recognized by the community of nations. In addition, section 11 (i) provides that persons found guilty of an offence are entitled to benefit from a lesser punishment, if such

becomes law before sentencing.

Canadian Charter of Rights and Freedoms

177. In R. v. Finta, the Supreme Court of Canada upheld the constitutionality of provisions of the Criminal Code governing the prosecution of war criminals in a case involving a prosecution for actions outside Canada during the Second World War. Subsection 7 (3.74) of the Code, which removed a defence of obedience to de facto law, was found not to violate the Charter. The war crimes and crimes against humanity provisions of the Code were also found not to violate section 11 (g) of the Charter (the protection against retroactive penal law).

Article 16

178. In R. v. Salituro, the Supreme Court of Canada changed the common-law rule prohibiting spouses of accused persons from being witnesses for the prosecution to permit separated spouses to give evidence. The Court stated that it had a duty to ensure that the common law develops in a manner compatible with Charter values, and that the rule in question was not compatible with the importance now given sexual equality.

Article 17

Canadian Charter of Rights and Freedoms

179. Section 8 of the Charter guarantees the right to be secure against unreasonable search and seizure. It has been interpreted by the courts to provide protection against unjustified State intrusions on the reasonable expectations of an individual to privacy (R. v. Simmons). Relevant considerations include the purpose of the search or seizure, and the extent of the intrusion on privacy. Thus, for example, it is more difficult to justify a search or seizure in the regulatory and administrative context (e.g. inspections) than in the criminal-law context. Other relevant considerations are whether the search is of the dwelling place of an individual (R. v. Silveira), or the seizure relates to matters of a personal or confidential nature (R. v. Plante). Section 8 also covers the acquisition of confidential information about a person in a manner analogous to a search and seizure (Plante).

180. In R. v. Dersch, the Supreme Court held that it was contrary to section 8 for the police to obtain information about the results of a blood test from a hospital without the patient's consent. In R. v. Baron, the Supreme Court of Canada concluded that section 231.3 of the Income Tax Act, which stated that the judge "shall issue" a warrant, if certain conditions were met, breached section 8 of the Charter, because its mandatory language did not permit the courts to take into account all relevant factors (this provision was subsequently amended to use the phrase "may issue").

181. In R. v. Plante, the Supreme Court held that conducting an on-line search of public utility records stored in a computer that was not privately maintained to obtain information about the electricity consumption of the accused relevant to a charge of growing marijuana in a basement, did not involve a breach of section 8. See also Conway, paragraph 99.

182. In R. v. O'Connor, in the context of an application in a sexual assault case to obtain the sexual assault counselling and medical records of complainants, the Supreme Court of Canada said that there was a two-stage procedure in determining whether production should be ordered. First, the applicant must establish that the documents are likely to be relevant to his or her case. If so, the documents should be produced to the court. Second, the court must review the documents to determine whether they should be produced to the accused, taking into account a number of factors, including the right of the accused to make a full answer and defence and that of the complainant to privacy.

183. In terms of section 1 (reasonable limits) of the Charter, the courts have accepted respect for privacy as an objective of sufficient importance for purposes of justifying limits on Charter rights and freedoms. For example, in Ontario (Attorney General) v. Dieleman, the Ontario Court (General Division) concluded that an interlocutory injunction prohibiting anti-abortion activity near abortion clinics and the residences and offices of health care providers was a reasonable limit on free expression because of the need to protect, inter alia, the privacy of health care providers and their families. The Court made specific reference to article 18 (see paragraph 12).

Legislative and other developments

184. A concern for privacy was manifested in a series of Supreme Court of Canada cases dealing with electronic surveillance, which resulted in the invalidation of several aspects of relevant provisions of the Criminal Code (see paragraph 22 of Canada's third report). In 1993, amendments to the Criminal Code were enacted to restore to law enforcement officials their ability to use electronic surveillance methods in a manner consistent with the Charter. The amendments permit electronic surveillance where the police or other agents of the State are in potentially dangerous situations; provide judges with the authority to permit surveillance where there is consent of one of the participants or where serious crimes are involved; and authorize Justices of the Peace to grant warrants for surveillance in limited circumstances. They also extend protection to cellular phones, and make provision for video surveillance and the use of electronic tracking devices.

185. The use of Social Insurance Numbers (SIN) in Canada is restricted to specific Acts of Parliament, regulations and related programmes. All new uses of the SIN for administrative purposes must be legislated. The right to be given access to personal information under the Privacy Act extends to all citizens and permanent residents of Canada, and to all individuals present in Canada. The right to be given access to records under the control of federal government institutions under the Access to Information Act extends to all citizens and permanent residents of Canada, and to all individuals and corporations present in Canada (see paragraph 79 of Canada's second report). In 1992, the Access to Information Act was amended to allow those with physical disabilities to have access to government records in alternative format.

186. In 1992, the Corrections and Conditional Release Act was enacted. Section 71 (1) provides that a penitentiary inmate is entitled to have reasonable contact, including visits and correspondence, with family, friends and other persons from outside the penitentiary, subject to such reasonable limits as are prescribed for protecting the security of the penitentiary or the safety of persons. Under the regulations, correspondence with legal counsel and certain other privileged correspondence must be forwarded unopened.

Measures foreseen

187. Proposed amendments to the Young Offenders Act (Bill C-37) would permit the sharing of information about young offenders between professionals and the public, when public safety is at risk.

188. Amendments have been proposed to the Immigration Act to maintain the effectiveness and integrity of the Canadian immigration system (Bill C-44). These amendments would regulate the international movement of documents relating to status or identity which are addressed or being sent to persons not legally entitled to them and which would furnish evidence relevant to proceedings under the Immigration Act, or have been or are likely to be used in a manner inconsistent with the Act.

Article 18

Canadian Charter of Rights and Freedoms

189. Section 2 (a) of the Charter guarantees freedom of conscience and religion. The Supreme Court of Canada has interpreted section 2 (a) to protect individuals from substantial interferences with conduct based on the tenets of their faith. In Roach v. Canada, the Federal Court of Appeal stated that a breach of

section 2 (a) might also be found on the basis of governmental interference with strongly held moral views of right and wrong (although not on the facts under consideration in that case). Infringements on freedom of conscience and religion will require justification under section 1 of the Charter.

190. At this stage of Charter jurisprudence, cases in which breaches of section 2 (a) have been found have involved legislation with an effect on conduct closely tied to religion, such as religious education in the schools or observance of days of worship. For example, in Canadian Civil Liberties Association v. Ontario (Minister of Education), the Ontario Court of Appeal held that a requirement that there be religious education in the public schools where, in fact, it was the majority religion that was taught, breached section 2 (a).

191. In Young v. Young, the Supreme Court of Canada considered provisions of the Divorce Act requiring that judicial decisions regarding custody and access be made "in the best interests of the child", in the context of a claim by a parent with visiting rights to involve his children in his religion as a Jehovah's Witness, against the wishes of the custodial parent. The Court concluded that these provisions of the Divorce Act did not infringe section 2 (a) (freedom of religion), section 2 (b) (freedom of expression), section 2 (d) (freedom of association) or section 15 (1) (equality rights) of the Charter. In regard to section 2 (a), the Court stated that freedom of religion is not absolute and is limited by a number of considerations, including the rights and freedoms of others.

192. In B.(R.) v. Children's Aid Society of Metropolitan Toronto, the Supreme Court of Canada considered the question of whether a provision of the Ontario Child Protection Act enabling the Children's Aid Society to obtain wardship of a child for purposes of administering a blood transfusion infringed the guarantee of freedom of religion in the Canadian Charter of Rights and Freedoms. The Court stated that the right of parents to rear their children in accordance with their beliefs, including choosing medical treatment, is a fundamental aspect of freedom of religion. However, in the circumstances under consideration, the limitation on this right served the important objective of protecting children at risk, and was therefore justifiable within the terms of section 1 of the Charter.

Other cases

193. In Lakeside Colony of Hutterian Brethren v. Hofer, the Supreme Court of Canada assumed jurisdiction to determine membership in a religious organization where property and civil rights depended on membership, and concluded that the manner of expulsion of the respondents from the Hutterian Brethren was not consistent with the principles of natural justice. See also paragraph 254 on the duty of reasonable accommodation under human rights codes.

Legislative and other developments

194. In 1990, the Divorce Act was amended to deny a civil divorce under the Divorce Act to anyone refusing to remove a religious barrier to remarriage (paragraph 28 of third report). The major impact of the amendment has been on the granting of the Jewish Get. A study conducted in 1992 by the Department of Justice indicates that the amendment has been effective in preventing a spouse from utilizing the Get as a negotiating tool during divorce proceedings.

195. See also paragraphs 104-105 on freedom of religion of prison inmates.

Specific concerns of the Human Rights Committee

196. In General Comment No. 22 on article 18, the Human Rights Committee specifically requests information on provisions relating to blasphemy and conscientious objection to military service. Section 296 (1) of the Criminal Code makes the publication of blasphemous libel a criminal offence, with subsection 3 providing that it shall not be considered to be blasphemous libel, in good faith and decent language, to express an opinion or argument about religion. The issue of conscientious objection to military service does not arise in Canada, because there is no conscription.

Factors and difficulties

197. The 1992 Final Report of the Canadian Panel on Violence against Women contains a discussion, in a chapter entitled "Under-Acknowledged Forms of Violence", of its findings regarding the problem of ritual abuse of women and children in Canada. Ritual abuse is defined in the report as severe physical, sexual, psychological and spiritual abuse of a systematic nature, in combination with symbols, ceremonies or group activities with a religious, magical or supernatural connotation. The report notes the difficulty of obtaining precise information about the extent of such abuse. However, on the basis of testimony made to the Panel, the report describes the problem as one that "urgently requires recognition in Canada".

Article 19

198. Section 2 (b) (freedom of expression) of the Charter protects all forms of activities which convey or attempt to convey a meaning, regardless of content (R. v. Butler), and includes the right of members of the public to receive information pertaining to judicial proceedings, subject to overriding public interests (Dagenais v. CBC).

199. Freedom of expression is not absolute, and it excludes violent forms of expression (Keegstra). Section 2 (b) does not place a positive obligation upon Government to fund the expression of views by individuals or groups, except perhaps in exceptional circumstances (Native Women's Association of Canada v. Canada). The underlying values for the protection of freedom of expression are the pursuit of truth, social and political participation, and self-fulfilment (Rocket v. Royal College of Dental Surgeons), and it will be less difficult, within the terms of section 1 of the Charter, to justify incursions on expression such as commercial advertising that are not closely related to these values.

200. In Rocket v. Royal College of Dental Surgeons, the Supreme Court held that the prohibition on advertising by dentists in the Quebec Health Disciplines Act breached section 2 (b) of the Charter. For other breaches of section 2 (b), see Committee for the Commonwealth of Canada, paragraph 208; R. v. Zundel, paragraph 204; Canada (Canadian Human Rights Commission) v. Taylor, paragraph 205; Dagenais v. CBC, paragraph 138; and Osborne v. Canada (Treasury Board), paragraph 241.

201. In R. v. Butler, the Supreme Court of Canada held that the prohibition of obscene publications in the Criminal Code involved a reasonable limit on freedom of expression within the terms of section 1 of the Charter. In Haig v. Canada, the Supreme Court held that residency requirements in federal and Quebec referendum legislation, the combined effect of which was to exclude persons who had recently moved to Quebec from voting in the referendum on the Charlottetown Accord, was justifiable under section 1 of the Charter. See also Keegstra, paragraph 203 and Lavigne v. Ontario Public Service Employees Union, paragraph 211.

202. In RJR-MacDonald Inc. v. Canada (Attorney General), the Supreme Court of Canada held that the Tobacco Control Act, which regulated the advertisement of tobacco products and required unattributed health warnings (that is, not attributed to Government) to be placed on them did not involve a reasonable limit within the terms of section 1 on the guarantee of freedom of expression in section 2 (b) of the Canadian Charter of Rights and Freedoms. All judges acknowledged that protecting the health of Canadians was an objective of sufficient importance for section 1 purposes. However, the Court held that there was insufficient evidence that an absolute prohibition of tobacco advertising was necessary to achieve this objective, and that attributed health warnings would be less effective than unattributed ones. The Court referred to a number of international documents, including directives of the European Commission and the European Council, and resolutions of the United Nations Economic and Social Council and World Health Assembly.

Article 20

Canadian Charter of Rights and Freedoms

203. Section 319 of the Criminal Code prohibits the wilful promotion of hatred against any identifiable group, with "identifiable group" defined as any section of the public distinguished by race, colour, religion or ethnic origin. In R. v. Keegstra, the Supreme Court of Canada held that section 319 involved a reasonable limit on freedom of expression within the terms of section 1 of the Charter.

204. In R. v. Zundel, the Supreme Court of Canada considered the constitutional validity of section 181 of the Criminal Code, which prohibits the spreading of false news, in the context of a charge relating to the publication of a pamphlet claiming that the holocaust was a myth. The Court stated that freedom of expression includes the expression of unpopular views, and, further, that section 181 of the Code was based on the outdated objective of protecting the nobles of the realm from slander and, therefore, did not serve an objective of sufficient importance to justify an infringement of freedom of expression within the terms of section 1 of the Charter.

205. Section 13 of the Canadian Human Rights Act prohibits communication by telephone of any matter that is likely to expose persons to hatred or contempt on the basis of a prohibited ground of discrimination. In Canada (Human Rights Commission) v. Taylor, the Supreme Court of Canada concluded that section 13 was a reasonable limit on freedom of expression. The Court stated that hate propaganda undermines the dignity and worth of individuals and contributes to disharmonious relations. Furthermore, the international commitment to eradicate hate propaganda in the present Covenant and the International Convention on the Elimination of All Forms of Racial Discrimination magnified the weightiness of Parliament's objective in enacting section 13. The Court also referred to the decision of the Human Rights Committee in Taylor and Western Guard Party v. Canada, Communication No. 104/1981.

Measures foreseen

206. In 1994, amendments to the Criminal Code (Bill C-41) were proposed which would include in the Code a statement of purpose and principles with respect to sentencing for the guidance of the courts. The proposed Statement of Purpose and Principles of Sentencing specifies that aggravating or mitigating circumstances should be taken into consideration, and that evidence that the offence was motivated by bias, prejudice or hate based on race, nationality, colour, religion, sex, age, mental or physical disability, or sexual orientation of the victim shall be deemed to be an aggravating circumstance.

Factors and difficulties

207. The Canadian Human Rights Commission is encountering difficulty in stopping hate messages involving new technology - that is facsimile machines and computers, including on Internet. It is much more difficult to determine who is responsible for a message on a computer network, and, if they originate outside Canada, the Act does not apply.

Article 21

208. In Committee for the Commonwealth of Canada v. Canada, the Supreme Court of Canada held that freedom of expression includes the right of groups to use public property such as streets and parks for purposes of disseminating views on public matters subject to reasonable limitation to ensure their continued use for the purposes for which they are dedicated. The Court concluded that the distribution of political pamphlets at an airport by the group in question was not incompatible with the airport's primary function and was, therefore, protected by the Charter. See also Dieleman, paragraph 12.

Article 22

209. The right to freedom of association guaranteed by section 2 (d) of the Charter protects the right of individuals to join together to pursue common goals. It includes the right to establish and maintain associations and trade unions, and to belong to them and participate in their activities without fear of

reprisal. Section 2 (d) does not, however, protect the objects, goals or activities of a particular association as distinct from the right to associate for the purposes of pursuing them. It does not, therefore, guarantee the right to strike, lock out or bargain collectively (Reference Re Public Employees Relations Act, paragraph 102, second report).

210. The right to freedom of association is public and collective in nature, and does not protect every relationship - some common purpose is required. It does not extend to individual relationships such as those between family members, or doctor-patient or teacher-pupil relationships (Re Catholic Children's Aid Society).

211. In I.W.L.U., Local 500 v. Canada, the Supreme Court of Canada held that section 2 (d) of the Charter was not infringed by back-to-work legislation ending a labour dispute involving longshoremen by forbidding strikes or lock outs. In Lavigne v. Ontario Public Service Employees Union, the Supreme Court held that section 2 (d) of the Charter was not infringed by a requirement that a non-member pay dues to a trade union pursuant to a mandatory dues check-off clause in the collective agreement, where a portion of the dues collected was contributed to a political party that the employee in question did not support. The Court did not decide whether freedom of association included the right not to associate.

Article 23

General

212. The term "family" does not have a single legal definition in Canada, and is infrequently used in statutes. It is defined according to the specific context, both in case law and statute law. For the most part, legislation refers to specific relationships, relevant to the purpose of the legislation in question, sometimes with the additional phrase "or other relatives permanently residing in the employee's household" to ensure flexibility.

213. Protection and assistance are provided to the family in Canada by a variety of legislative and policy measures. For example, the Income Tax Act contains many provisions assisting individuals with children from an economic perspective (see paragraphs 235-236 below). At the federal level, the Department of Health has primary responsibility for policy coordination regarding the family. As indicated below, the Canadian Charter of Rights and Freedoms and human rights codes may also be utilized to protect the family.

214. In 1992, the Government of Canada established the Federal Secretariat for the International Year of the Family, at the Department of Health, to coordinate and promote federal activities celebrating the International Year of the Family, 1994 (IYF). The Secretariat encouraged initiatives promoting public awareness of the importance of families, and increasing understanding of families and strengthening them, and has worked in partnership with other levels of government and non-governmental organizations. The Government of Canada also funded the Canada Committee for the IYF, an independent organization with a mandate to assist in activities in the public and private sector to celebrate the IYF.

Canadian Charter of Rights and Freedoms

215. The Supreme Court of Canada has stated that section 15 (equality rights) of the Charter extends to grounds analogous to those enumerated within it. In Miron v. Trudel, the Supreme Court of Canada concluded that marital status was an analogous ground, so that discrimination against common-law spouses is contrary to section 15 and requires justification under section 1 (reasonable limits) of the Charter. In Egan v. Canada, the Supreme Court of Canada concluded that sexual orientation was also an analogous ground under section 15.

216. In the lower courts, section 15 of the Charter has been held to preclude discrimination against members of the following additional groups: unwed mothers and illegitimate children (Panko v. Vandesype), and single female parents (R. v. Rehberg).

Human rights legislation

217. The Canadian Human Rights Act prohibits discrimination on the basis of marital or family status. In Canada (Attorney General) v. Mossop, the Supreme Court of Canada held that it was not discrimination on the ground of family status contrary to the Act to deny bereavement leave to the homosexual partner of someone whose father had died, where such leave would have been available to a spouse.

Legislative and other developments

218. In 1990, the Unemployment Insurance Act was amended to allow natural and adoptive parents 10 weeks of parental leave. Natural mothers remain eligible to receive 15 weeks of maternity benefits, and may combine them with parental and sick benefits, for a maximum of 30 weeks. As a result of the Druken case (paragraph 36, third report), where the ineligibility for unemployment insurance of a former employee of a spouse was held to breach the Canadian Human Rights Act, the Unemployment Insurance Act was amended to provide for a rebuttable presumption that employees not in an arm's length relationship to their employer are ineligible for unemployment insurance.

219. In 1991, section 29 of the Canada Labour Standard Regulations was amended so that a period of leave for child-care responsibilities is deemed not to interrupt continuity of employment for purposes of calculating entitlement and benefits under the Canada Labour Code, such as vacations, maternity leave and sick leave.

220. In 1991, the Government of Canada announced a four-year $136 million Family Violence Initiative involving seven federal departments and agencies. The key elements are: increasing public awareness and community action in prevention; strengthening the framework for dealing with family violence; establishing services on Indian reserves and in Inuit communities; strengthening criminal justice, health and social service intervention and treatment services for victims and offenders; increasing longer-term housing alternatives for victims of family violence and continuing to make available emergency shelters; enhancing national information on the extent and nature of family violence; and sharing information and solutions across Canada through the National Clearinghouse on Family Violence.

221. In 1993, the Canada Labour Code was amended to provide the following additional protection to pregnant employees and those with child-care responsibilities: an employee whose job function poses a health risk because she is pregnant or nursing may request a job modification or reassignment; employers are obligated to grant such a request, where reasonably practicable, or grant unpaid leave (paid leave may be granted while the employer reaches a decision); an employee may obtain leave for inability to work by reason of pregnancy or nursing; and medical opinions in support of requests are conclusive proof of the statements in them.

222. Bill C-86, which was enacted in 1993, amended the Immigration Act to enable all Convention refugees so found to apply for permanent resident status on behalf of themselves and their dependents, whether the dependents are in Canada or abroad (sect. 46.04 (3)). Previously, a Convention refugee had to have been granted permanent resident status prior to being able to sponsor dependents. In addition, Convention refugees and their dependents are subject to less stringent requirements for admissibility (i.e. medical and criminal inadmissibility are not barriers to being granted permanent resident status). This amendment to the Act will speed up processing times, so that family members can be reunited more quickly. In addition, in regard to all prospective immigrants, the 1995 Immigration Plan (that is the Annual Report of the Minister of Citizenship and Immigration to Parliament) gives priority to the reunification of immediate family members. All sponsored spouses and dependent children who apply will be processed, subject to the usual medical and security requirements. The Immigration Plan continues the commitment to six-month processing of routine cases.

223. The Women's Bureau at Human Resources Development Canada has undertaken a number of initiatives to support the family in the context of enabling persons with family responsibilities to work in the paid labour force. It has published pamphlets providing information on job-sharing arrangements, work-related child care, relocation policies, occupational health and safety concerns of Canadian women, family-related leave and benefits, and women and the Canada Labour Code.

224. The Community Mental/Child Development component of the Child Development Initiative (see paragraph 236) promotes family unity among Aboriginal peoples by providing information and resource material to assist Aboriginal communities to develop comprehensive mental health programmes with a child-development component. Community workers advise that parents are eager to obtain parenting and child-development information and will participate in sessions centred around creating better lives for their children much more willingly than in mental health programmes designed for adults.

225. See also paragraph 108 on the mother-child programme in federal penitentiaries for women.

Article 24

226. Canada ratified the Convention on the Rights of the Child on 13 December 1991, and submitted its initial report on implementation of the Convention to the United Nations Committee on the Rights of the Child in June 1994. The initial report provides detailed information on measures of protection for children adopted by all governments in Canada. The present report will highlight measures of particular interest since 1990.

Canadian Charter of Rights and Freedoms

227. There have been no decisions by the Supreme Court of Canada finding discrimination against children, either on the basis of age or other prohibited grounds of discrimination, contrary to section 15 (equality rights) of the Charter. There have, however, been some relevant lower-court cases. For example, in Clemons v. Winnipeg, the Manitoba Court of Queen's Bench held that section 15 was breached when family maintenance was denied to a 17-year-old living away from home with her common-law husband and child, in circumstances where it would not have been denied to an adult.

228. There are a number of cases where the Supreme Court of Canada has relied upon the objective of protecting children as a vulnerable group to conclude that limits on Charter rights were acceptable within the terms of section 1 of the Charter (Butler, paragraph 201). See also R. v. L.(D.O.), paragraph 149; Young, paragraph 191; and Dagenais, paragraph 138.

Legislative and other developments

229. Since 1987, the Government of Canada has made contributions of approximately $17 million to more than 100 projects through the Child Care Initiative Fund to develop culturally sensitive Aboriginal child care and to re-establish the tradition of community responsibility for children. Aboriginal communities have used this funding to test various models of service, develop culturally appropriate programming and training, and use child-care services both at a national and a local level.

230. In 1991, the Government of Canada, after extensive consultations with relevant individuals and groups, finalized an Extraordinary Assistance Plan of $8.5 million for persons born with disabilities as a result of thalidomide (about 100 individuals qualified under the Plan). The Government of Canada also made a contribution of $1 million to two national charitable organizations to support counselling and other non-monetary services to thalidomide victims in Canada. Specifically, $800,000 were allocated to the Thalidomide Victims Association of Canada and $200,000 to the Fondation québecoise des victimes de la thalidomide.

231. In 1991, section 11 of the Labour Standard Regulations was amended to preclude the payment of less than minimum wages to workers under the age of 17 years, except for apprentices registered under provincial apprenticeship legislation, who are paid in accordance with the schedule of rates established under such legislation.

232. As part of the Family Violence Initiative established in 1991 (para. 220), the Government of Canada, in cooperation with other levels of government, community groups, professional associations and others, has undertaken a range of initiatives to better protect children from sexual exploitation, physical and mental

abuse, and neglect.

233. In 1992, the Government of Canada published Brighter Futures: Canada's Action Plan for Children, which is its response to the World Summit for Children in 1990. Brighter Futures supports a broad range of initiatives focused on preventing problems and difficulties of children, particularly those up to eight years of age, and has a budget of $459 million over five years. The Government of Canada created the Children's Bureau to coordinate this comprehensive programme. A major project pursuant to Brighter Futures is the Child Development Initiative, which is a group of long-term programmes designed to address conditions of risk during the earliest years of a child's life. The Initiative operates on four guiding principles: prevention, promotion, protection and partnership.

234. In 1993, the family allowance, refundable child tax credit and dependent tax credit were replaced by an enriched Child Tax Benefit. The benefit was set at $1,020 per child, and was increased by $75 for the third and subsequent child in the family, and by $213 per child under age seven, where no child-care expenses are claimed. For low-income working families with children, the Child Tax Benefit also includes a new earned-income supplement of up to $500 per family to provide an incentive to work. The measure increased benefits to families by about $0.4 billion annually to roughly $5.0 billion.

235. Beginning in 1993, the child-care expenses deduction under the Income Tax Act was raised from $4,000 to $5,000 for dependants under age 7 or who are disabled, and from $2,000 to $3,000 for dependants between ages 7 and 14 or who have a mental or physical infirmity. This measure increased tax benefits to families by about $40 million annually to roughly $300 million.

236. In 1993, as part of the Child Development Initiative, Bill C-128, an Act To Amend the Criminal Code and Customs Tariff (child pornography and corrupting morals) was proclaimed in force. Bill C-128 defines child pornography to include any visual representation showing a person under 18 years of age engaged in, or depicted as being engaged in, sexual activity, or depicting a sexual organ or anal region of such person. Bill C-128 creates new offences prohibiting the possession and importation of child pornography, and increases the maximum sentences for production, sale and distribution of child pornography, and possession for such purposes, from 2 to 10 years.

237. See also paragraphs 45-48 on child health, paragraphs 69-71 on child prostitution, and paragraphs 88, 109-110 and 159-171 on children in the juvenile justice system.

Article 25

Canadian Charter of Rights and Freedoms

238. Section 3 of the Charter guarantees every citizen the right to vote in federal and provincial elections. In Reference Re Provincial Electoral Boundaries (Sask), the Supreme Court of Canada stated that section 3 does not guarantee absolute equality of voting power, but rather the right to effective representation. Section 4 of the Charter requires federal and provincial elections to be held at least once every five years.

239. The right to vote guaranteed by section 3 of the Canadian Charter of Rights and Freedoms does not apply to other than federal and provincial elections (e.g. to municipal or band council elections) or to referendums. However, even where section 3 does not apply directly, its underlying values may be invoked in asserting claims under section 2 (b) (freedom of expression) or section 15 (equality). The Supreme Court of Canada has repeatedly emphasized in this regard the fundamental importance of political expression in a democratic society (Haig v. Canada).

240. In Sauvé v. Canada (Attorney General), the Supreme Court of Canada held that the disqualification in the Canada Elections Act of all prison inmates from voting was an unjustifiable infringement of section 3 of the Charter. Since then, the Act has been amended to disqualify only those inmates serving sentences of two or more years. The amended provision is currently being challenged in the courts on Charter grounds.

241. In Osborne v. Canada (Treasury Board), the Supreme Court of Canada held that the prohibition in the Public Service Employment Act against public servants engaging in work for or against a political candidate or party was not a reasonable limit on freedom of expression as guaranteed by the Canadian Charter of Rights and Freedoms, in that it applied to all public servants regardless of their type of work or their role, level or importance in the public service hierarchy. The prohibition was upheld only with respect to the most senior members of the Public Service.

242. In Native Women's Association of Canada v. Canada, the Supreme Court of Canada considered a claim by the Native Women's Association of Canada (NWAC) that section 2 (b) (freedom of expression), section 15 (equality) and section 28 (equal guarantee of Charter rights to men and women) were breached when the federal Government did not provide NWAC with funding to take part in constitutional discussions where other Aboriginal groups alleged to be male-dominated were funded. The Court noted that there was no evidence that the funded groups were less representative of the views of women than of men, and stated that freedom of expression does not generally include the right to receive positive assistance from Government in making one's views known.

243. Section 3 of the Charter guarantees every citizen the right to be qualified for membership in the federal House of Commons and the provincial legislative assemblies. Various federal and provincial statutes disqualify persons on certain limited grounds from such membership. A provincial law prohibiting persons convicted of illegal election practices from sitting in the provincial legislature is currently being challenged on Charter grounds in a case pending before the Supreme Court of Canada (Harvey v. A.G. New Brunswick).

Legislative and other developments

244. In 1992, Bill C-78, an Act to Amend Certain Acts with Respect to Persons with Disabilities, was enacted. The Act includes provisions to ensure that premises utilized through an election event, including polling stations, are accessible; that those in need of assistance at polling stations receive help; that voters with a visual disability receive special aids to enable them to vote; and that "personal expenses" includes expenses incurred by a disabled candidate.

245. In 1993, Bill C-114, an Act to Amend the Canada Elections Act, was enacted. It extends the right to vote to Canadians temporarily residing outside Canada, and makes the process of registering and voting more accessible to the voter. It removes the disqualification to vote for judges, people who are restrained in their liberty of movement or management of their property by reason of disability, and inmates in correctional institutions serving less than two years. Bill C-114 also allows the Chief Electoral Officer to implement public education programmes relating to the electoral process. In the 1992 federal referendum, the Office of the Chief Electoral Officer undertook an extensive voter education programme, with an emphasis on the promotion of voter participation by cultural minorities and Aboriginal people through the publication of material in their own languages.

246. In 1993, the Public Service Reform Act came into force. It constitutes the first major set of amendments to staffing legislation in the federal Public Service in 25 years. The amendments simplify and improve the staffing process. The merit principle and the preference for veterans and Canadian citizens (when appointments are made from outside the Public Service) are retained, and also the requirement that public servants obtain a leave of absence if they wish to seek political office, but not the restriction on their right to work for or against a political candidate or political party (see Osborne, paragraph 241). The Public Service Commission may hold investigations and audits into any matter within its jurisdiction and take corrective action. Furthermore, the Treasury Board and deputy heads of department may request the Commission to implement employment equity programmes.

Article 26

Canadian Charter of Rights and Freedoms

247. Section 15 (equality) of the Charter has been interpreted in a manner compatible with General Comment No. 18 (non-discrimination) of the Human Rights Committee. Thus, it precludes adverse-effect discrimination (Symes v. Canada) and discrimination in the administration as well as in the content of the law (Law Society of British Columbia v. Andrews, R. v. Smith). Although the list of grounds enumerated in section 15 differs slightly from that in article 26 of the Covenant, it extends to analogous grounds - that is, to characteristics associated with disadvantage and prejudice, and that touch on the essential dignity and worth of the individual (Miron v. Trudel, paragraph 215). The Supreme Court of Canada has held that citizenship, family status and sexual orientation are analogous grounds to those enumerated in section 15 (see paragraph 217). Section 15 does not require identical treatment (Conway v. Canada, paragraph 99). By virtue of section 15 (2), affirmative action to remedy the situation of disadvantaged groups is permitted.

248. In Tetreault-Gadoury v. Canada (C.E.I.C.), the Supreme Court of Canada held that the ineligibility under the Unemployment Insurance Act of persons 65 years of age or older for unemployment insurance benefits infringed section 15 of the Charter and was not justifiable within the terms of section 1. See also R. v. Salituro, paragraph 178).

249. In Miron v. Trudel, the Supreme Court of Canada held that section 15 of the Charter was breached when a common-law spouse was excluded from motor vehicle accident benefits under the standard automobile policy prescribed by the Ontario Motor Vehicle Accident Claims Act. The Court concluded that the appropriate remedy was for the new definition of "spouse" adopted in 1990, which includes heterosexual couples who have cohabited for three years or who have lived in a permanent relationship with a child, to be retroactively "read in" to the impugned legislation.

250. In the following cases, the Supreme Court of Canada held that challenged laws or policies were not discriminatory within the terms of section 15 of the Charter, or involved a reasonable limit on section 15 rights within the terms of section 1:

(a) The deportation pursuant to the Immigration Act of immigrants convicted of a serious criminal offence (Chiarelli v. M.E.I.);

(b) The exclusion of same-sex couples from the definition of "spouse" in the Old Age Security Act, so that a same-sex partner was not eligible for a spousal allowance under the Act (Egan v. Canada, paragraph 215);

(c) The trial and conviction of a member of the Canadian Forces for an offence under the Narcotic Control Act by way of a General Court Martial (R. v. Généreux);

(d) The offence in the Criminal Code of engaging in sexual intercourse with a female person under the age of 14 years (R. v. Hess);

(e) The limited application of the Ontario Human Rights Code to persons under 65 years of age (in regard to a university's mandatory retirement policy for professors also considered in the case, the Court held that the Charter did not apply because the university was not Government within the terms of section 32 of the Charter) (McKinney v. University of Guelph);

(f) The disallowance of a claim of child-care expenses as a business deduction under the Income Tax Act, where a limited amount could be claimed under a provision specifically on child-care expenses, on the ground that it was not demonstrated in this case that the relevant provisions had a disproportionate effect on women (Symes v. Canada); and

(g) The taxation under the Income Tax Act of child support paid to custodial parents (Thibaudeau v. Canada).

See also Conway v. Canada (Attorney General), paragraph 99; and Native Women's Association of Canada v. Canada, paragraph 242.

251. At the Court of Appeal level, two significant cases are Haig and Sparks. In Haig v. Attorney General of Canada, the Ontario Court of Appeal held that the omission of sexual orientation from the list of prohibited

grounds of discrimination in the Canadian Human Rights Act violated section 15 of the Charter, and that this ground should be "read into" the Act (no appeal). Since that time, the Canadian Human Rights Commission has accepted complaints alleging discrimination based on sexual orientation. In Dartmouth/Halifax County Regional Housing Authority v. Sparks, the Nova Scotia Court of Appeal held, on the basis of statistical information about public tenants, that provisions of the Nova Scotia Residential Tenancy Act, which gave residential tenants security of tenure after five years' possession but denied the benefit to public housing tenants, amounted to discrimination on the basis of sex, race and income (no appeal).

252. Among the grounds of distinction that, at the lower court level, have been held to be analogous to those enumerated in section 15 of the Charter are income (Sparks, paragraph 251) and disadvantage such as being a former prisoner or about-to-be-released prisoner (Alcoholism Foundation of Manitoba v. Winnipeg (City)). See also paragraphs 215-217 above on grounds related to family or marital status, including illegitimacy and sexual orientation.

Cases under anti-discrimination legislation

253. In Central Alberta Dairy Pool v. Alberta Human Rights Commission, the Supreme Court of Canada held that in cases of adverse-effect discrimination, employers must take steps to accommodate employees except where it would cause undue hardship, even where there is a bona fide justification for the differential treatment. The Supreme Court of Canada expressly overruled its earlier decision on this point in Bhinder v. Canadian National Railways, where it had stated that there was no duty to accommodate under the Canadian Human Rights Act, if the employment rule in question was a bona fide occupational requirement (paragraph 130, second report). In two subsequent decisions, the Court applied the duty of accommodation to unions and collective agreements, and emphasized that it means making genuine efforts, beyond mere negligible effort, and may involve minor inconvenience to other employees (Central Okanagan School District No. 23 v. Renaud; Commission scolaire régionale de Chambly v. Bergevin).

254. In University of British Columbia v. Berg, the Supreme Court of Canada gave human rights legislation a broad application in one of the main areas covered by it, the provision of goods, services and facilities available to the public. The Court stated that it encompasses not just services and facilities available to all members of the public, but also to smaller, more restricted "public" groups - for example, in the circumstances of that case, to services and facilities provided by a university to its students.

255. From 1990 to 1994, the Supreme Court of Canada held that the following policies did not involve a breach of anti-discrimination legislation:

(a) A mandatory retirement policy for university professors (Dickason v. University of Alberta);

(b) An insurance policy charging higher insurance premiums for young unmarried male drivers, where current statistics indicated that they were more likely to have automobile accidents (Zurich Insurance Co. v. Ontario (Human Rights Commission)); and

(c) The denial of a claim by an employee for bereavement leave to attend the funeral of his homosexual partner's father (where the complainant alleged that same-sex relationships came within the ground of family status) (Canada (Attorney General) v. Mossop).

Legislative and other developments

General

256. In 1993, there were 1,214 complaints of discrimination to the Canadian Human Rights Commission, relating to the following grounds of discrimination: disability (30 per cent); sex (25 per cent); age (12 per cent); family or marital status (9 per cent); national or ethnic origin (8 per cent); race or colour (6 per cent); religion (2 per cent); and pardon (less than 1 per cent).

257. Under the Employment Equity Act, employers must file annual statistical reports on the results of their

employment equity programmes (see paragraph 136 of second report and paragraph 41 of third report). Employer data from 1988 to 1992 indicate some progress for women into non-traditional jobs and higher-paying positions, significant gains for members of visible minority groups, and little progress for Aboriginal peoples or persons with disabilities.

258. In 1991, as required by the Employment Equity Act, a Special Committee of the House of Commons commenced a comprehensive review of the provisions and operations of the Employment Equity Act, including consultations with many groups and individuals. The Special Committee concluded that the legislation had made further progress toward equity in the workplace, and made recommendations on improving its effectiveness. In 1994, the Government of Canada introduced Bill C-64, an Act to Amend the Employment Equity Act. The Bill extends employment equity legislation to employers in the federal Public Service; creates an enforcement mechanism; provides the Canadian Human Rights Commission with authority to conduct audits to verify compliance; and enables the appointment of a Canadian Human Rights Tribunal to adjudicate cases of non-compliance.

259. The Federal Contractors Programme, which applies to companies with 100 or more employees who obtain contracts valued at $200,000 or more from the Government of Canada, requires such companies to achieve and maintain a fair and representative workforce (see paragraph 137 of second report and paragraph 42 of third report). Human Resources Development Canada monitors compliance with the Programme. As of 1994, 688 federal contractors had been reviewed, with 564 found in compliance. Representation rates of the four designated groups under the Programme (women, Aboriginal peoples, persons with disabilities and visible minorities) have improved by approximately 15 per cent among the contractors reviewed. About 28 per cent show improvement for women and visible minorities. Very few contractors have been able to increase representation of persons with disabilities or Aboriginal peoples.

260. In 1993, the Government of Canada announced that the Court Challenges Programme, which funded court challenges of federal and provincial legislation, and policies based on section 15 (equality rights) or sections 16-23 (language rights) of the Canadian Charter of Rights and Freedoms, would be reinstated (as it had been discontinued in 1992). In 1994, a Contribution Agreement was signed between the federal Government and the Court Challenges Programme Corporation, which is composed of representatives from the private bar, non-governmental organizations and academics. The Corporation administers the Programme, with an annual budget of $2.75 million for the next three years. The Programme funds court challenges involving: (i) official-language rights guaranteed under section 93 or 133 of the Constitution Act, 1867, section 23 of the Manitoba Act, 1870, sections 16-23 of the Canadian Charter of Rights and Freedoms or parallel constitutional provisions, or the clarification of the linguistic aspect of freedom of expression in section 2 (b) of the Canadian Charter of Rights and Freedoms; and (ii) equality rights guaranteed in sections 15 and 28 of the Canadian Charter of Rights and Freedoms or the clarification of section 2 (fundamental freedoms) or section 27 (multicultural heritage) when invoked in support of section 15 arguments.

Aboriginal peoples

261. As discussed in paragraphs 131, 132 and 146 of the second report, paragraph 45 of the third report and paragraph 38 of document CCPR/C/SR.1010, in 1985, Bill C-31, the Act to Remove Sexual Discrimination from the Indian Act was enacted, and women, who had lost their status as a result of past discrimination together with their first-generation descendants, became entitled to regain their status and, upon application, to become Band members. In 1990, a major evaluation study on the effects of Bill C-31 was completed and tabled in Parliament. Among its findings were that the majority of those who gained Indian status were women; most lived off reserve and did not intend to move to communities on reserve; and programme benefits were well recognized by registrants. As of December 1994, some 96,000 people had acquired Indian status as a result of the amendments. The question of whether the limitation of Bill C-31 to first-generation descendants is consistent with the Canadian Charter of Rights and Freedoms is currently before the courts.

262. In 1991, the Government of Canada established the Aboriginal Justice Initiative (AJI), a five-year initiative with a budget of $26.4 million. The AJI is an advocacy programme aimed at consulting Aboriginal groups on justice reform, and sponsoring research and pilot projects by Aboriginal groups and

communities. It has funded over 60 projects across Canada, which have built awareness of Aboriginal needs and aspirations and have provided valuable ideas and experience for Aboriginal people.

Disabled persons

263. In 1991, the National Strategy for the Integration of Persons with Disabilities was established, with a $158 million budget over a five-year period. The National Strategy involves 10 federal departments and agencies working in collaboration with the disabled community toward the goals of equal access, economic integration and effective participation.

264. In 1992, as part of the National Strategy, Bill C-78, an Act to Amend Certain Acts with Respect to Persons with Disabilities, was enacted. Bill C-78 amends six laws to improve the lives of persons with disabilities in the following areas: access to Canada's national transportation system, acquisition of citizenship, ability to testify in criminal courts, access in alternative formats to records and personal information under the control of the Government; and improved access to the electoral process (see paragraphs 244-245).

265. In 1992, a working group was established to review the Canada Occupational Safety and Health Regulations and to identify systematic barriers to the employment of persons with disabilities. The working group has conducted extensive consultations and has proposed amendments to the Regulations to make the workplace safer and more accessible for disabled persons.

266. In 1993, the Canada Labour Code was amended to contain specific protection for workers temporarily disabled by reason of work-related illness or injury, including: job protection; wage replacement; assignment upon return to the same work, where practicable; reassignment, where the employee is unable to do the same work; and continuation of pension, health and disability benefits, and seniority. See also paragraph 230 on the Extraordinary Assistance Plan.

Immigrants and refugee claimants

267. In 1993, Bill C-86, the Act to Amend the Immigration Act, came into force. It retains the medical inadmissibility provisions of the Immigration Act, according to which prospective immigrants may be denied admission to Canada if they would place excessive demands on health and related social services or would be a threat to public health and safety. However, there is now a requirement that "excessive demands" be defined in the Regulations enacted pursuant to the Act, and the reference to disabled persons has been deleted. Refugees so found are not subject to the medical inadmissibility provisions. However, all refugee claimants are required to take a medical examination.

268. In 1993, the Immigration and Refugee Board adopted Guidelines on Women Refugee Claimants Fearing Gender-related Persecution. These guidelines recognize severe sexual discrimination as "persecution" within the definition of a Convention refugee in the Immigration Act, and state that "social group" in that definition extends to women subjected to sexual discrimination on the basis of religious, social or cultural norms. The guidelines also seek to ensure that the specific needs and concerns of women refugee claimants are met during the hearing process.

269. In Canada (Attorney General) v. Ward, the Supreme Court of Canada considered the question of whether a person belonging to a paramilitary terrorist group in Ireland was the member of a "particular social group" within the definition of a Convention refugee. The Supreme Court concluded that a particular social group includes three categories - groups defined by an innate, unchangeable characteristic; those whose members voluntarily associate for reasons so fundamental to their human dignity that they should not be forced to forsake the association; and groups associated by a former voluntary status, unalterable due to its historical permanence. The Court concluded that the claimant was not a member of a "particular social group" and, in particular, that the objective of obtaining specific political goals by any means, including violence, was not so fundamental to human dignity as to fit into the second category. Following the Ward decision, the Federal Court and the Immigration and Refugee Board have identified sex and sexual orientation, in addition to already recognized grounds such as membership in the family, as examples of immutable characteristics that identify a "particular social group".

Women

270. In 1991, a Human Rights Tribunal was appointed pursuant to the Canadian Human Rights Act to deal with a complaint on the part of 82,000 federal employees and their unions that adjustments made by the Treasury Board in 1990 (which included a lump-sum payment of $317 million and payments of $181 million annually) did not entirely remove the wage discrimination between men and women identified in a five-year union-management study (see paragraph 38 of the third report). A decision is expected in 1996. Other tribunals are hearing similar cases affecting smaller numbers of federal public servants.

271. Between 1975 and 1993, the number of women employed in the paid work force rose from 3.4 to 5.6 million. By 1993, just over half of all women aged 15 and over were working outside the home, and women made up 45 per cent of those with jobs. The recessionary period of the early 1990s resulted in a slight decrease in employment among women (from 54 per cent in 1990 to 51 per cent in 1993), which was less than that experienced by men (from 71 per cent to 65 per cent). However, the proportion of men employed outside the home (65 per cent) remains significantly greater than that of women (51 per cent).

272. The elimination of violence against women is a priority of the Government of Canada. In 1993, the Canadian Panel on Violence against Women published its final report, and Statistics Canada published a Violence against Women Survey. In 1994, the Ministers of Justice, Health and Status of Women held consultations on violence against women with relevant women's groups. Also in 1994, a public awareness and community action campaign on violence against women was launched in partnership with the Canadian Association of Broadcasters, and a National Crime Prevention Council and a National Information System of Child Sex Offenders were announced. The Women's Bureau at Human Resources Development Canada has undertaken initiatives to counter the inhumane treatment and sexual harassment of women in the workplace, including producing a fact sheet on sexual harassment and a collection of essays entitled "From Awareness to Action: Strategies to Stop Sexual Harassment in the Workplace".

273. At the international level, the United Nations Declaration on the Elimination of Violence against Women was a Canadian initiative, and Canada participated in drafting the Inter-American Convention on the Prevention. Punishment and Eradication of Violence against Women. As a result of a resolution introduced by Canada, the United Nations Commission on Human Rights at its fiftieth session unanimously agreed to appoint a Special Rapporteur on violence against women.

Measures foreseen

274. In 1992, the Government of Canada introduced amendments to the Canadian Human Rights Act, including changes to the substantive legal obligations, process and procedures, and remedies. Before these changes could be enacted, Parliament was prorogued for the 1993 federal election. The Government announced in its 1994 Speech from the Throne at the opening of Parliament that amendments to the Canadian Human Rights Act will be proposed. See also paragraph 258 above on the proposed Act to Amend the Employment Equity Act.

Specific concerns of the Human Rights Committee

Immigrants and refugee claimants

275. The Human Rights Committee, in its consideration of Canada's second and third reports, requested information about what steps have been taken to ensure that immigrants and asylum seekers are accorded their Covenant rights without discrimination. Immigrants and asylum seekers in Canada have the protection of the Canadian Charter of Rights and Freedoms. They have the right to attend school, to be eligible for provincial social assistance and, generally, to receive medical care. If provincial authorities responsible for health services do not provide refugee claimants with health services, the federal Government assumes responsibility for ensuring that they receive essential medical care. Furthermore, the Canadian Human Rights Act applies to all persons lawfully present in Canada.

Uniformity of protection across Canada

276. At the presentation of Canada's second and third reports to the Human Rights Committee, concerns were expressed by members of the Committee about the relationship of federal and provincial laws in the human rights area. It is important to note that Canada's federal, provincial and territorial human rights codes primarily implement the requirement in article 26 of the Covenant that "the law prohibit discrimination", rather than guaranteeing all rights covered by the Covenant.

277. The following factors serve to ensure that the division of responsibility in Canada in the human rights area does not impede protection against discrimination in Canada: the basic similarities between federal, provincial and territorial human rights codes; the role of the Supreme Court of Canada in interpreting them, thus contributing to their consistent application across Canada; and the application of the Canadian Charter of Rights and Freedoms to all human rights codes.

278. In practice, there has been little conflict between the Charter and Canada's human rights codes. There have been cases where the Charter has been invoked to broaden the scope of human rights code protection (see McKinney, paragraph 250; Haig, paragraph 251), and also cases dealing with the relationship between freedom of expression and the right not to be subjected to discrimination (see Taylor, paragraph 205). For the most part, the Charter and human rights codes have worked together to promote the protection of human rights in Canada.

Factors and difficulties encountered and progress made

279. The Canadian Human Rights Commission, in the section of its 1994 Annual Report on Aboriginal peoples, stated as follows:

> "Twenty-five years after the White Paper [that is, the 1969 Statement on Indian Policy], the situation of the Native peoples remains the most pressing human rights issue facing Canadians. But, despite the gravity of the problems that remain, it must be said that the last 25 years have also been a period of considerable progress. The Aboriginal peoples -Indian, Inuit and Métis - have dramatically altered both their claims on and their place in Canadian society" (p. 27).

The Annual Report of the Canadian Human Rights Commission then went on to refer positively to governmental initiatives relating to the inherent right to self-government, and to Aboriginal education and health care.

280. In regard to the status of women in Canadian society, there are many Charter cases dealing with the rights of women. There are also a number of other Supreme Court of Canada decisions reflecting an increasing appreciation of the perspective of women. For example, in R. v. Lavallée, the Supreme Court of Canada broadened the interpretation of self-defence to include circumstances where a woman kills an abusive spouse. In Moge v. Moge, it relied upon evidence that divorce and its economic effects are contributing to the feminization of poverty in Canada to conclude that a divorced wife was entitled under the Divorce Act to continue to receive support from her husband for an indefinite period. On the other hand, concerns have been expressed by women's groups about judicial decisions permitting the disclosure of therapeutic records of sexual assault victims (see also paragraphs 77 and 80 on Daviault and paragraph 185 on O'Connor).

281. There are at present 4 Aboriginal persons and 20 women represented in the Senate of the Parliament of Canada, out of a total membership of 102 (with two vacancies). There are 3 Aboriginal persons and 54 women in the House of Commons, out of a total membership of 295.

282. The Canadian Human Rights Commission has urged the following amendments to the Canadian Human Rights Act: that the Commission report directly to Parliament, to enhance its independence, and that it be granted additional authority and means so that it can more effectively carry out its mandate; that Tribunal members be appointed on a full-time basis; that the "equal wages" section of the Act be augmented to impose affirmative duties on employers; that there be an express inclusion in the Act of the duty of reasonable accommodation and of sexual orientation as a prohibited ground of discrimination; and that the existing exemptions from the application of the Act on mandatory retirement and matters falling under the Indian Act be removed.

283. In the consultations conducted with non-governmental organizations by the Government of Canada on the present report, EGALE (Equality for Gays and Lesbians Everywhere) expressed the view that there was inadequate protection against discrimination on the basis of sexual orientation in Canada, noting, inter alia, that this issue was not addressed in previous reports, that sexual orientation is not expressly included as a ground of discrimination in the Canadian Human Rights Act and that federal benefits are not provided to same-sex spouses. The Canadian Human Rights Foundation also submitted that there was inadequate protection on the ground of sexual orientation at the federal level. See paragraph 215 on Egan, and paragraph 217 on Mossop, for recent jurisprudential developments on sexual orientation.

Article 27

General

284. Section 27 of the Canadian Charter of Rights and Freedoms requires that it be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians. The Supreme Court of Canada has relied upon section 27 in cases dealing with freedom of religion (R. v. Gruenke), freedom of expression (see Keegstra, paragraph 203; and Zundel, paragraph 204), the right to an interpreter (see Tran, paragraph 151) and equality and minority-language educational rights (Reference re Public Schools Act (Man.), paragraph 302).

285. Under the Multiculturalism Act, the Government of Canada has adopted the policy of promoting the full participation in Canadian society of minorities, rather than to marginalize them or adopt a "melting-pot" approach (see paragraph 149 of second report and paragraphs 52-54 of third report). The preamble to the Act recognizes the diversity of Canadians as regards race, national or ethnic origin, colour and religion.

Aboriginal peoples

General

286. Aboriginal peoples have a special status in Canada, recognized in the Constitution. There are a number of cases under appeal to the Supreme Court of Canada on the scope of section 35 (1) of the Constitution Act 1982, which recognizes and affirms their existing Aboriginal and treaty rights.

287. The Royal Commission on Aboriginal Peoples was established by the Government of Canada in 1991. The Royal Commission has a broad mandate to:

> "... investigate the evolution of the relationship among Aboriginal peoples, the Canadian Government and Canadian society as a whole. The Commission is to propose specific solutions to problems ... based on developing a new relationship between Canada's Aboriginal and non-Aboriginal peoples, which is based on trust, understanding and mutual respect."

The Royal Commission on Aboriginal Peoples is expected to examine a number of issues, including historical relations and social, economic and social issues. The Commission conducted four rounds of hearings in 1992 and 1993. Its final report will be coming out in stages, with the first volume expected in 1995 and the remaining volumes in 1996.

Convention on the Rights of the Child

288. The Government of Canada conducted consultations with national Aboriginal groups before ratifying the Convention on the Rights of the Child in 1991. As a result of these consultations, a statement of understanding was made upon ratification of the Convention to the effect that the Government of Canada should take into account Aboriginal linguistic, cultural and religious rights in adopting measures dealing with Aboriginal children, and a reservation was made to protect the practice of customary care arrangements among the Aboriginal peoples of Canada.

Criminal justice system

289. The 1992 Corrections and Conditional Release Act enables arrangements with Aboriginal communities, so that they can provide correctional services for Aboriginal offenders, and provides for the establishment of a National Aboriginal Advisory Committee to the Correctional Service of Canada.

Land claims

290. Pursuant to section 35 (3) of the Constitution Act, 1982, modern comprehensive land claim agreements are protected as treaty rights under section 35 (1). Since 1990, seven major comprehensive land claim settlements have been reached across northern Canada, based on the continuing Aboriginal title to lands and natural resources, and address issues of management, resource royalties, environmental-impact assessment, and land and waters regulation. The settlement policy for comprehensive land claims has undergone major changes in recent years, including the elimination in 1990 of the previous limit of six claims that could be negotiated at once. In 1992, the British Columbia Treaty Commission was established to coordinate land claims in that province.

291. Since the beginning of the Specific Claims policy in 1973, 127 specific claims have been settled, 83 of them since 1990. The value of all 127 settlements is $296 million from the federal Government and $58 million from provincial governments. Associated with these agreements is the transfer of title for 181,035 hectares (447,000 acres) of land to the First Nations involved.

292. In 1992, the Government of Canada, the Province of Saskatchewan and 26 Saskatchewan First Nations signed a Treaty Land Entitlement Framework Agreement, which will provide $450 million to the First Nations over 12 years. They may also buy up to 607,500 hectares (1.5 million acres) of land to add to their Indian reserves.

293. The Indian Specific Claims Commission was established by the Government of Canada in 1991 as an independent body to inquire into and report on disputes between First Nations and the Government of Canada over the rejection of a specific claim, or on disagreement between the parties on the compensation criteria.

Languages

294. The Canada-Northwest Territories (NWT) Cooperation Agreement on French and Aboriginal Languages enables the provision of governmental services in the six Aboriginal languages recognized in the NWT, and encourages their use in the home, school and community. The Agreement has been renewed for three years (to 1996/97). Of the total budget of $28 million, $11.2 million are allocated to Aboriginal languages programmes, and $6.8 million to French-language programmes. In addition there is a ministerial understanding to provide $2 million toward Aboriginal-language development relating to national parks and historic sites in the Northwest Territories.

295. The Canada-Yukon Cooperation and Funding Agreement on the Development and Enhancement of Aboriginal Languages is a five-year agreement (1994/95-1996/97) of about $4 million. It provides supplementary funding to the Yukon Territory to expand and enhance Aboriginal-language programmes and services in the eight Aboriginal languages recognized there. The Aboriginal community works with the Government of the Yukon in developing these programmes. Under the two territorial agreements, educational materials have been developed in Aboriginal languages that are used by children and adults.

296. The Northern Native Broadcast Access Programme, which was established in 1982, provides funding ($20 million for 1994-1996) and assistance to 13 Aboriginal communications societies for production and distribution of Aboriginal radio and television programming, reaching approximately 40 Aboriginal communities and serving 250,000 Aboriginal people. These Aboriginal communications societies are located in the two Territories and the northern regions of nine provinces.

Oka situation

297. In the summer of 1990, there was an armed confrontation between the Mohawks of Kanesatake and Kahnewake, and Quebec police and neighbouring communities with barricades raised and one police officer killed (the Oka situation) (see CCRPIC/SR.1010, paragraph 93; SR.1012, paragraphs 33, 36-37, 43; SR.1013, paragraphs 4-5). The Canadian Forces were called in to supervise the situation. The barricades were removed after negotiations brought about a peaceful resolution.

298. A parliamentary committee investigated the Oka situation and issued a report. Its recommendations for a Royal Commission on Aboriginal Peoples, for measures to resolve internal governance issues and for community healing have been implemented. Trials have been held for those charged with offences. The Royal Commission on Aboriginal Peoples has conducted extensive consultations and is expected to produce its final report in 1996.

Self-government

299. See paragraph 7 on recognition by the Government of Canada of the inherent right of Aboriginal peoples of Canada to self-government. A policy framework is being developed for negotiations on implementation of the right to self-government, which may involve treaties with constitutional status. This process replaces the community-based self-government process described in paragraph 144 of the second report and paragraph 63 of the third report, and will cover more issues and be larger in scale.

300. In 1993, the Nunavit Act came into force. It provides for the establishment by 1999 of the territory of Nunavit in the eastern Arctic, where the Inuit make up the large majority of the population, and for a transition process.

Heritage languages

301. The Heritage Cultures and Languages Programme provides support for the promotion of learning heritage languages, primarily by the production of Canadian curricular materials and teacher-training opportunities. This programme also recognizes the benefits of the linguistic and cultural diversity of Canadians with regard to international, and diplomatic and cultural links between Canada and other countries. There are currently approximately 200,000 children learning heritage languages in a variety of provincially supported programmes, and an additional number learning them at secondary and post-secondary institutions. There are more than 200 ethnic journals and newspapers across Canada. The Multiculturalism Programme provides some limited assistance to the writing and publication of books in languages other than English and French. See also paragraphs 294-295 on Aboriginal languages.

Official languages (French and English)

302. In Reference re Public Schools Act (Man.), the Supreme Court of Canada confirmed its 1990 decision in Mahé v. Alberta that section 23 (minority-language educational rights) of the Charter includes the right of official-language minority groups to manage and control their own school facilities (third report, paragraph 60). In Reference re Manitoba Language Rights, it held that the duty of the federal, Quebec, Manitoba and New Brunswick governments to enact laws in both official languages applied to orders-in-council of a legislative nature and to documents incorporated by reference in a law. See also paragraph 151 on the Tran case.

303. The Official Languages Regulations, enacted pursuant to the Official Languages Act, came into force on a graduated basis from 1992 to 1994. They define more precisely the linguistic duties of federal institutions when communicating with members of the public. In 1993, Treasury Board policies on language rights were revised to ensure compliance with sections 16 and 20 of the Charter, the Official Languages Act and the new Regulations.

304. In 1994, the Government of Canada announced that an accountability framework would be established to require key federal institutions (some 25 departments and agencies) to develop business plans which take into account the needs of minority-language communities, to contribute to their development as required by sections 41 and 42 of the Official Languages Act. These plans will be developed in consultation with minority-language communities, which will identify their needs in relation to these institutions.

305. The Government of Canada has, through agreements with all provinces and territories, funded English and French minority-language and second-language education. The Languages Agreements with the Yukon and Northwest Territories referred to in paragraphs 294-295 above include funding for the expansion of governmental services in the French language.

Race relations

306. In 1991, in cooperation with the government of Ontario, the Government of Canada established the Canadian Centre for Police-Race Relations. The Centre is the first national service offering specialized information to improve police-minority relations in Canada.

307. There is a Federal-Provincial-Territorial Working Group on Multicultural and Race Relations in the Justice System. It is currently examining the following issues: the taking of oaths, hate-motivated activity, the legal needs of ethno-cultural minority women, jury selection, criminal gangs, interpretive services and blasphemous libel.

308. The Department of Canadian Heritage has developed a guide entitled Toward Full Inclusion: Gaining the Diversity Advantage to help private and public institutions respond to the diverse nature of Canadian society. It has assisted the National Judicial Institute in developing a national programme for Canadian judges on race relations, and the Western Judicial Education Centre in improving the awareness of judges in western and northern Canada of race relations issues, particularly those regarding Aboriginal peoples.

Follow-up to views of Committee

309. In Ominayak v. Canada, Communication No. 167/1984, the Human Rights Committee concluded that Canada had breached article 27 of the Covenant in its treatment of the Lubicon Lake Band. The Committee also stated that the settlement offer made by the Government of Canada to the Lubicon Lake Band constituted an appropriate remedy within the terms of article 2 of the Covenant. This offer was not accepted by the Band, and after prolonged negotiations with the Band, in 1994, the Government of Canada announced that it would appoint a negotiator to assist in the resolution of the dispute.

Measures foreseen

310. In 1994, in the Speech from the Throne at the opening of Parliament, the Government of Canada announced its intention to proclaim the Act to Establish the Canadian Race Relations Foundation, which received Royal Assent in 1991. The Canadian Race Relations Foundation will serve as a national resource for community groups, researchers and the general public to further understanding of racial discrimination in Canadian society, and to provide a knowledge base from which Government can draw for legislative and policy developments.

Factors and difficulties

311. In the consultations conducted by the Government of Canada with non-governmental organizations in preparing the present report, the Armenian National Committee of Canada submitted that article 27 of the Covenant should be interpreted to require positive measures of protection of minority rights, and that section 27 of the Canadian Charter of Rights and Freedoms provided inadequate protection at the constitutional level in this regard, because it is solely an aid to interpretation.

II. MEASURES ADOPTED BY THE GOVERNMENTS OF THE PROVINCES

A. Newfoundland

312. The purpose of this report is to update the information provided in Newfoundland's section of the third report of Canada on the International Covenant on Civil and Political Rights and covers the period from 1

tion elderly handicap-ped					3	3	0.4
Reprisals					3	3	0.4
Total	628**	74	67	25	43	837	-
%	75.0	8.9	8.0	3.0	5.1	-	100

** These data include complaints made under section 10 of the Charter (grounds of discrimination) and 10.1 (harrassment on those same grounds).

F. Ontario

522. This report updates the information in the initial second and third reports.

Article 2

523. See also articles 3 and 26.

Legal aid

524. The Attorney General, in cooperation with the provincial legal aid plan, is adding a refugee law office and three family law offices to complement existing legal aid services in these areas. The refugee office will provide legal advice and representation in a linguistically and culturally sensitive manner to refugee applicants involved in Canada's refugee-determination tribunals and courts. The family offices represent different models of legal aid services, with one focusing on the broader legal, social-advocacy and counselling needs of women involved in family conflict.

525. In October 1994, the Ontario government officially opened the African Canadian Legal Clinic. The government worked in collaboration with the African Canadian community to develop the clinic. Its mandate is to litigate test cases aimed at eliminating race discrimination in our laws and in legal decision-making. The African Canadian clinic is the seventy-second clinic in Ontario joining, among others, the Aboriginal Legal Services, and the Metro Chinese and Southeast Asian Legal Clinics.

Extending rights and benefits to same-sex spouses

526. The government of Ontario introduced legislation in 1994 which would have granted same-sex couples equal rights, benefits and obligations as heterosexual common-law couples. However, the proposed legislation was narrowly defeated by a vote of the legislature.

Article 3

527. See also article 26.

Ontario Women's Directorate

528. The Ontario Women's Directorate (OWD) was established in 1983 to help the government of Ontario to achieve its commitment to economic, legal and social equality for all women in Ontario. This work includes policy development and review, programme coordination, consultation and public education. Central to the work is the recognition of diversity among women.

529. Currently, the Directorate is responsible for two specific initiatives: the Wife Assault Prevention and the Sexual Assault Prevention Initiatives. These involve a three-pronged approach to address the issue of violence against women in the province - public education and prevention programmes, shelter and support services, and law enforcement initiatives. The Ontario Women's Directorate coordinates this initiative.

530. The Ontario Female Genital Mutilation (FGM) Prevention Task Force, established in 1993, is co-chaired by the OWD and a community representative. The Task Force recognizes the practice of female genital mutilation as a violation of women's human rights. It will develop and recommend strategies and policies designed to provide support to women and girls who have undergone FGM, to prevent the practice, and to support community work by and for women affected by FGM.

Gender equality in the justice system

531. In 1992, federal and provincial justice ministers endorsed the recommendations of the Federal-Provincial-Territorial Working Group of Attorneys General Officials on Gender Equality in the Canadian Justice System. The report contains 55 recommendations for immediate action and 72 recommendations for further study or referral to promote gender equality in the justice system. Ontario has either implemented or is in the process of implementing most of the proposals.

Pay equity

532. On 28 June 1993, the legislature of Ontario passed amendments to the Pay Equity Act, implementing recommendations made in the 1989 report of the Pay Equity Office entitled Methods of Achieving Pay Equity in Sectors of the Economy that are Predominantly Female. These amendments, which came into effect on 1 July 1993, will enable an additional 420,000 workers who are in jobs that are classified as predominantly female, to achieve pay equity.

533. The amendments established two new methods of achieving pay equity: proportional value comparisons and proxy comparisons. These methods complement the existing job-to-job comparison method enacted in the existing Act. Both new methods, like the job-to-job comparison method, require a gender-neutral comparison of skill, effort, responsibility and working conditions between so-called male and female jobs.

534. Proportional value comparisons will be used by both private-sector employers with 10 or more employees and public-sector employers regardless of size. They are required in situations where there are an insufficient number of equal or comparably valued so-called male jobs to make direct comparisons for all so-called female jobs using the job-to-job method. The proportional value method allows comparisons to be made indirectly between differently valued jobs. To use proportional value comparisons, employers must determine the relationship between the value of the work performed and the pay received by so-called male jobs, and apply the same principles and practices to paying so-called female jobs. The proportional value method took retroactive effect on 1 January 1993. Employers had until 1 January 1994 to prepare and post plans, and begin paying adjustments.

535. Proxy comparisons will be used in the public sector only. The public sector is defined in a schedule to the Pay Equity Act and includes universities, hospitals, schools, municipalities and colleges, plus most social service and public health agencies.

536. Proxy comparisons are used where there are insufficient so-called male jobs to make comparisons using either the job-to-job or proportional value methods. With proxy, employers must make comparisons to jobs outside the employer's establishment. The choice of which jobs to use outside the establishment is set out in another schedule to the Pay Equity Act. The proxy comparison method took effect on 1 January 1994.

537. The Act continues to require employers to pay any necessary adjustments at a rate of 1 per cent of payroll per year until pay equity is achieved, except for public-sector employers using job-to-job or proportional value comparisons who must achieve pay equity no later than 1 January 1998.

538. The government of Ontario has publicly affirmed its commitment to assist public-sector employers with the costs of achieving pay equity. It anticipates that, by the time pay equity is fully achieved, it will contribute $1 billion annually toward pay-equity adjustment costs.

539. In addition to expanding coverage under the Act, the government has provided significant funding to establish a new legal clinic called Pay Equity Advocacy and Legal Services. This clinic provides free legal advice and representation to non-unionized women who need assistance in enforcing their rights under the Pay Equity Act. The clinic also acts as an advocate on behalf of its client group and is active in law reform.

540. Finally, in 1993, the government initiated the Downpayment Programme, which was designed to provide a "downpayment" on future pay-equity adjustments for some of the most female-predominant and lowest-paid agencies in the public sector. The $50 million programme provided base wage increases of $2,500 annually for eligible so-called female jobs, and a proportional amount for part-time workers. The sectors targeted for the programme were: child care, homemaking and home-support services, community mental health services, family violence services, libraries and information centres, immigrant services, community corrections and Native friendship centres.

Article 4

541. The Emergency Plans Act, R.S.O., 1990, c. E.9, provides for the formulation and implementation of emergency plans, including nuclear emergency plans. "Emergency" is defined as a situation caused by the forces of nature, an accident, an international act or otherwise that constitutes a danger of major proportions to life or property. An emergency may be declared by the head of the council of a municipality or by the Premier of Ontario.

542. The Act empowers the Premier or the head of the council of a municipality, following the declaration of an emergency, to take such action as he or she considers necessary, which is not contrary to law, to implement the emergency plans and to protect the property and the health, safety and welfare of the inhabitants of the emergency area.

Article 7

543. See also article 26.

544. The Consent to Treatment Act, S.O., 1992, c. 31, received Royal Assent on 10 December 1992. Expected to be proclaimed in early 1995, it deals comprehensively with consent to treatment for therapeutic, preventative, palliative, diagnostic, cosmetic or other health-related purpose and administered by health practitioners.

545. The legislation sets out the elements of what constitutes a valid consent and provides a clear list of substitute decision makers, where a patient is found to be incapable of making a specific treatment decision on his or her own behalf. The substitutes include those specifically designated as such by the patient, when capable, by way of power of attorney for personal care, as well as court-appointed guardians and family members. The government-appointed Public Guardian and Trustee will be the decision maker of last resort for those with no one else to act as substitute.

546. The legislation stipulates that those acting as substitute decision makers must base their decision first and foremost on the previously expressed wishes of the incapable person, where those wishes are expressed when the person was capable and over the age of 16. Where no such wishes have been expressed, the decision maker must make decisions in the best interest of the patient. The best interest test is explicitly set out in the legislation.

547. Health practitioners are obliged under the legislation to make the determination of capacity, with

guidelines provided by way of regulation. When a health practitioner deems a person incapable of making a specific treatment decision (and capacity is linked to the nature of the treatment proposed), if that person is over the age of 14 years, the practitioner is obliged to give the patient written notice of his or her right to speak to the Rights Adviser. The practitioner must then make contact with the Rights Adviser where the patient requests such a meeting. Where a person 14 years or older is found to be incapable in a psychiatric facility, the Rights Adviser must be contacted without a request being made.

548. Rights Advisers will be authorized by the Advocacy Commissions, established by the Advocacy Act, S.O., 1992, c. 26 (a companion piece of legislation to the Consent to Treatment Act, which received Royal Assent at the same time and will be proclaimed in tandem with it). The role of the Rights Adviser is to provide information about the consequences of having been deemed incapable of making the treatment decision and the process of launching an appeal or obtaining legal services, if necessary.

549. Review of findings of incapacity will be heard by the Consent and Capacity Review Board. The Board will also have the authority to appoint representatives for incapable persons and give directions with respect to instructions and wishes previously expressed by the incapable person that are not clear. The Board also has the jurisdiction to settle disputes between two family members who have the same ranking in the legislation to make substitute decisions for the incapable person where those two do not agree on whether or not to give consent to the treatment. Decisions of the Consent and Capacity Review Board may be appealed to the court.

550. The legislation stipulates that it does not give authority to substitute decision makers to give consent on behalf of an incapable person for non-therapeutic sterilization, research or the removal of tissue for transplant into another person.

551. The purpose of the Regulated Health Professions Amendment Act, S.O., 1993, c. 37, is to prevent and reduce instances of sexual abuse of patients by members of regulated health professions. The legislation provides for funding for therapy and counselling of patients who have been sexually abused and requires mandatory reporting of sexual abuse of patients by regulated health professionals.

552. The Long-Term Care Statute Law Amendment Act, 1993, S.O., 1993, c. 2, which was proclaimed in force on 1 July 1994, amended legislation governing homes for the aged and nursing homes. The Act added a Bill of Rights to the legislation governing homes for the aged that is identical to the Bill of Rights created under the nursing homes legislation in 1987. The amending legislation also established a new admission scheme administered by independent agencies known as placement coordinators. When a placement coordinator assists a person to choose the homes to which the person wishes to apply, the placement coordinator is obliged by the legislation to consider the person's preferences relating to ethnic, spiritual, linguistic, familial and cultural factors.

Article 9

553. See also articles 2, 7 and 10.

554. The Police Services Act, R.S.O., 1990, c. P.15, was proclaimed in force on 31 December 1990. With the passage of the Act, civilian control of the police in Ontario has been considerably enhanced. The Act continued and expanded the role of the Police Complaints Commission who is authorized to oversee the investigation of public complaints against members of police forces (both provincial and municipal) and to review the decisions of chiefs of police with respect to such investigations. The Commissioner can also refer matters to a civilian board of inquiry that has full disciplinary powers.

555. Under the Act, police services boards and their members, chiefs of police and individual members of police forces are accountable to the Ontario Civilian Commission on Police Services (OCCPS) in accordance with the provisions of the Act. The OCCPS is also the appeal body for members of police forces who have been found guilty of internal disciplinary offences under the Act.

556. The Police Services Act also contains provisions requiring police forces to implement employment equity plans to ensure equitable hiring of women, racial minorities, persons with disabilities and Aboriginal peoples.

557. Regulations under the Act governing equipment and use of force by police officers prohibit a member of a police force from drawing or discharging a firearm unless he or she believes, on reasonable grounds, that to do so is necessary to protect against loss of life or serious bodily harm. Regulations also expand the rights of municipal police officers to engage in political activity.

558. The Special Investigations Unit (SIU) was established in 1989 and is administered by the Ministry of the Attorney General. The SIU is charged with the responsibility of conducting investigations into the circumstances of serious injuries and deaths that may have resulted from criminal offences committed by police officers. The SIU is a completely independent agency that reports to the legislature of Ontario through the Attorney General. The SIU trains and equips its own investigators, and has the power to lay criminal charges in regard to any of the matters that it investigates.

559. The Ministry of the Solicitor General and Correctional Services has issued a policing standard to deal with prisoners' right to counsel. The Prisoner Right to Counsel Standard supports the right of a person who has been arrested or detained to retain and instruct counsel, and the opportunity to exercise this right in private, in accordance with the provisions of the Canadian Charter of Rights and Freedoms.

560. The Provincial Offences Act was amended on 15 August 1994 to provide that anyone arrested for failure to pay a fine for a provincial offence must be taken before a judicial officer and given the opportunity to demonstrate that the failure to pay was based on an inability to pay. If this is demonstrated, the Justice of the Peace is forbidden to jail that person for default.

Article 10

561. See also articles 7 and 9.

562. The Ministry of the Solicitor General and Correctional Services issued, in 1992, a policing standard to deal with prisoner care and control. The Prisoner Care and Control Standard assures that individuals in custody have the right to humane treatment and, in the case of sick or injured persons, immediate medical or hospital care.

Article 11

563. The Fraudulent Debtors' Arrest Act was repealed in its entirety in 1991 by the Fraudulent Debtors' Arrest Repeal Act, S.O., 1991, c. 42.

Article 14

564. The Courts of Justice Statute Law Amendment Act, 1994, which received Royal Assent on 23 June 1994, entrenches in legislation a new independent process for the selection of provincially appointed judges who hear the majority of criminal cases in the province as well as important family law cases. The Judicial Appointments Advisory Committee is a public-dominated body responsible for advertising, screening and presenting to the Attorney General a ranked short list of candidates for every judicial position. The Committee's criteria and process for selection is public and is contained in an annual report of its activities. The Ontario legislation, which has been widely applauded, is intended to ensure the appointment of an independent, impartial and highly competent judiciary, and to increase the public's input into the appointment process.

565. These amendments also reformed the process of complaints against provincial judges, and instituted new measures to provide for standards of conduct, ongoing evaluation of judicial performance, and programmes of judicial education for provincially appointed judges.

566. The amendments also expand the regions where bilingual juries are available, and where court documents can be filed in French or English. The provincial government is also required, when prosecuting offences under provincial law, to provide a French-speaking prosecutor if the defendant states a desire to be heard in French at trial.

567. In 1992, the government decided upon a four-year extension of the Intervenor Funding Project Act, which provides financial assistance to public interest-groups intervening in proceedings before the Environmental Assessment Board, the Ontario Energy Board and joint boards under the Consolidated Hearings Act.

568. The Class Proceedings Act, 1992 permits broader access to the Ontario Court (General Division) for claims brought on behalf of a class of person, and provides detailed procedures for the bringing of such claims. The Law Society Amendment Act (Class Proceedings Funding), 1992 establishes the Class Proceedings Fund to provide financial support to plaintiffs for the litigation expenses (not including lawyers' fees).

569. The Regulated Health Professions Act, S.O., 1991, c. 18, provides for a comprehensive procedural code relating to the disciplinary process for regulated health professions. Under this procedural code, all regulated health professionals are entitled to fair and public hearings by a tribunal consisting of regulated health professionals and members appointed by the Lieutenant Governor in Council. Hearings are open, unless the tribunal excludes the press and public on the reason of privacy or security. All such hearings, and decisions arising out of those hearings, are made public.

Article 17

570. See also articles 26, 19 and 21.

571. The Freedom of Information and Protection of Privacy Act came into force on 1 January 1988. The Freedom of Information and Protection of Privacy Act, R.S.O., 1990, c. F.31, and the Municipal Freedom of Information and Protection of Privacy Act, R.S.O., 1990, c. M.56, regulate the collection, use and disclosure of personal information of an individual by provincial government institutions and municipal government institutions, respectively.

572. The Independent Health Facilities Act, R.S.O., 1990, c. 1.3, licenses free-standing women's clinics that deliver therapeutic abortions. In February 1994, the establishment of a new free-standing clinic in Ottawa was announced, as was a programme to train physicians in the delivery of abortion services, funded by the Ministry of Health. The government also provides funding for five free-standing abortion clinics, including $420,000 over the last two years to improve security. Amendments have been made to the Northern Health Travel Grants Programme to help cover abortion-related costs for women in remote areas.

573. In April 1993, the Attorney General of Ontario commenced an action seeking an interlocutory and permanent injunction against anti-abortion picketing and other activities at 23 locations in Ontario. The action seeks a ban on such activities within 500 feet of each of these locations, which consist of the homes and offices of certain physicians, several hospitals and three abortion clinics in Toronto.

574. On 30 August 1994, the court granted an injunction restraining, until the trial of the action, anti-abortion picketing and all other anti-abortion activities for a distance of 500 feet from the doctors' homes, 25 feet from their offices, 60 feet from Cabbagetown and Scott clinics in Toronto, and 30 feet from the Choice in Health Clinic. In addition, there is a 10-foot "bubble zone" around patients and providers, which extends 160 feet or 130 feet, as the case may be, from the property lines at the Toronto clinics.

575. The Landlord and Tenant Act, R.S.O., 1990, c. L.7, establishes privacy and security of tenure rights for tenants of residential rental premises and provides the means for tenants to enforce these rights as against landlords. The Landlord and Tenant Act was amended in 1994, so that it now applies to residential rental properties occupied by people receiving care (usually persons with disabilities or seniors) and by land-lease communities (such as persons who live in mobile homes). This means that tenants of these types of residential rental property now have the same privacy protection as tenants of other types of residential rental property.

Article 18

576. On 6 July 1994, the Ontario Court of Appeal in the case of Adler v. Ontario upheld the constitutionality of the provisions of the Education Act that provide for funding to Roman Catholic separate schools, but not to private religious schools, because of the explicit constitutional entrenchment of the former right.

577. The Retail Business Holidays Act (RBHA), R.S.O., 1990, c. R.30, which regulates retail-store closing on holidays enumerated in the legislation, was amended in 1991 by removing references to religious practices. The amendments also removed the wide discretion vested in municipalities to regulate in the area of holiday retail-closing and replacing it with an authority to exempt retail businesses from the Sunday and holiday-closing requirements for the purpose of maintaining or developing tourism. Minimum fines were established for contravention of the legislation. The Employment Standards Act was also amended at the same time to provide retail workers with the right to refuse Sunday and holiday work. Workers penalized for refusal to work on days such as their religious holidays may have grounds for a complaint under the Ontario Human Rights Code.

578. The RBHA was further amended in 1993 to enable retail businesses to open on Sundays. These amendments are retroactive to 3 June 1992.

Article 20

579. See also article 27.

580. The Cabinet Roundtable on Anti-Racism was established in 1992 to develop strategies for combating racism in the province and is focusing on the areas of justice, economic renewal and education. It is made up of Cabinet ministers and 13 community representatives, and provides communities direct and regular access to government decision-making. One of the focuses of the Roundtable is the development of strategies to combat hate activity in the province.

581. In 1994, the Ministry of the Solicitor General and Correctional Services implemented a standard for all police services regarding the investigation of crimes motivated by hate or bias. The Ministry of the Attorney General has also instituted guidelines for prosecutors to seek harsher sentences for offences motivated by racist or homophobic hate or bias, and specialist hate-crimes units and Crown attorneys have been designated in areas with the greatest frequency of hate crime.

Article 22

582. Amendments to the Labour Relations Act in 1993 have promoted freedom of association in the following ways:

(a) Extended the right to organize and bargain collectively to domestic workers and previously excluded professionals such as lawyers, architects and land surveyors;

(b) Removed restrictions on ability of security guards to join a trade union representing employees other than security guards;

(c) Permitted representation votes where a union has card-support of 40 per cent of employees in the proposed bargaining unit;

(d) Required the organization of part- and full-time employees in the same unit (previously, part-time employees were usually segregated into separate units);

(e) Empowered the Labour Relations Board to make interim orders and expedite hearings on complaints of unjustified discipline or discharge during an organizing campaign;

(f) Provided easier recourse to binding arbitration during the negotiation of a first collective agreement;

(g) Empowered the Labour Relations Board to combine two or more bargaining units where there is a common employer and trade union; and

(h) Placed restrictions on the use of replacement workers during a strike or lockout.

583. Amendments to the Crown Employees Collective Bargaining Act in 1994 have promoted freedom of association for public servants by:

(a) Removing statutory exclusions from organizing by moving to the private-sector definition of "employee";

(b) Permitting the right to strike, following determination of essential services (recourse to arbitration remains where essential designations are so high that they compromise the ability of the union to engage in meaningful bargaining); and

(c) Removing previous statutory restrictions on negotiable issues (e.g. pensions and job classifications).

584. The Public Service and Labour Relations Statute Law Amendment Act, 1993, S.O., 1993, c. 38, amends the Crown Employees Collective Bargaining Act, bringing it in line with the Ontario Labour Relations Act, and amends the Public Service Act, expanding political activity rights for Crown employees.

585. One of the major changes to the Crown Employees Collective Bargaining Act is extending the right to stike to employees of the Ontario Public Service and removing the reliance on binding arbitration. Before a strike can occur, the employer and union must reach agreement on the provision of essential services. Essential services are those services necessary to enable the employer to prevent danger to life, health and safety; the destruction or serious deterioration of machinery, equipment or premises; serious environmental damage; or disruption of the administration of the courts or of legislative drafting. Bargaining rights have also been extended to as many of these employees as possible through the revision of criteria in the legislation that have in the past excluded employees from collective bargaining.

586. Amendments to the Public Service Act expand political activity rights for Crown employees. The legislation maintains a two-tiered system of rights, restricted and unrestricted, but fewer employees now fall into the restricted tier, which is made up primarily of senior managers. Most employees will now have more freedom to comment on political issues, canvass on behalf of a candidate during a provincial or federal election, and take a voluntary leave of absence to take part in political activity at any level of government. In addition, all employees will have the right to file a grievance against any disciplinary action, adverse employment consequence or threat of such action for violation of any of the prohibitions in the legislation.

587. In 1993, the Ontario government passed the Social Contract Act, 1993, S.O., 1993, c. 5, in order to curtail spiralling public expenditures that were expected to increase the growing provincial deficit to an unacceptable level. The Act provided for a three-year freeze of wages in the broader public sector, and permitted employers to compel employees to take up to 12 days' unpaid leave. These provisions applied only where employers and their bargaining agents were unable to reach an agreement on some other basis to reduce expenditures by the approximately 5 per cent established as a target in most sectors. Where agreement could be reached on other expenditure-reducing measures, the compensation freeze and the

requirement to take unpaid leave did not become effective.

Article 23

588. The Children's Law Reform Amendment Act, 1989, S.O., 1989, c. 22, as summarized in Ontario's last report, has not been proclaimed in force.

589. The Support and Custody Orders Enforcement Act, 1985, S.O., 1985, c. 6, established the Support and Custody Orders Enforcement Office, which enforces support provisions contained in court orders, separation agreements, marriage contracts and cohabitation agreements. The Office also enforces custody provisions contained in court orders and separation agreements. There are eight regional offices throughout the province that provide enforcement services free of charge to any person entitled to support.

590. Amendments to the legislation that established the Support and Custody Orders Enforcement Act were proclaimed in force on 1 March 1992. The new Family Support Plan Act provides for the automatic deduction of support payments from the payer's income source (usually the employer) at the same time that a court order for support is made. As well, any support provisions in court orders made prior to 1 March 1992 or any domestic contracts for support, including paternity agreements, are subject to the new legislation.

591. The Hague Convention on the Civil Aspects of International Child Abduction is an international treaty to which Canada is a signatory. The purpose of the Convention is to secure the prompt return of children who have been abducted from one contracting State of the Convention to another. In Ontario, the Convention has been enacted into law and forms part of the Children's Law Reform Act. Under this Act, the Ministry of the Attorney General is named as the Ontario Central Authority and, therefore, must perform the duties pursuant to the Convention. This function is presently fulfilled by the Reciprocity Office of the Family Support Plan.

592. In 1992, under the Supervised Access Programme, the Ontario Ministry of the Attorney General provided funding for 14 supervised access centres across Ontario on a pilot-project basis. The main objectives of supervised access are to:

(a) Provide a safe, neutral and child-focused setting for visits or exchanges between a child and the non-custodial parent;

(b) Ensure the safety of all participants;

(c) Provide trained staff and volunteers who are sensitive to the needs of the child, and provide the court and lawyers with factual observations about the participants' use of the service.

593. Supervised visits may be appropriate in cases where, for example, there are concerns about the safety of the child or the mother; the non-custodial parent has a drug or alcohol problem, or a psychiatric disability; there has been a lengthy separation between the parent and the child; or there is a risk of abduction. An evaluation of the pilot project conducted in 1994 was very favourable. (In October 1994, permanent funding was announced for the 14 supervised access centres.)

Article 24

594. A 10 December 1990 amendment to the Vital Statistics Act, c. V.4, s. 10, requires that a child shall be given at least one forename and a surname. It allows a parent to give a child the surname of either parent or a combination of both, irrespective of marital status, provided both parents consent. If parents cannot agree, children will receive a hyphenated name.

Article 25

595. Amendments to the Municipal Elections Act in 1991 provide the opportunity for homeless persons (i.e. persons with no fixed address) to vote and run for municipal office.

596. Bill 175, the Statute Law Amendment Act (Government Management and Services), 1994, received Royal Assent in December 1994. The Bill removes a number of unwarranted barriers to sitting on juries. The Bill removes the eligibility for jury service granted to the spouses of people in certain occupations. It will also expand the jury pool to include unilingual Francophones who may be able to serve on French-only criminal trials.

Article 26

597. See also articles 2, 7, 17 and 27.

598. The Employment Equity Act came into effect on 1 September 1994. The legislation aims to ensure fair and equitable treatment of all employees and requires employers to develop plans to remove any barriers that adversely affect designated groups in the workplace. The Act sets out the principles, objectives and main features of employment equity. The Regulation outlines the practical steps needed to make employment equity a reality in Ontario. The Act ensures equal treatment in employment for Aboriginal peoples, people with disabilities, members of racial minorities and women.

599. The Act establishes an Employment Equity Commission to administer and monitor the legislation. The Commission will provide guidance, information and data to support the implementation of employment equity. Disputes about compliance and complaints about non-compliance will be mediated or decided by the Employment Equity Tribunal.

600. Sections 4, 14, 15 and 16 of the Advocacy Act, S.O., 1992, c. 26, were proclaimed in force on 15 September 1993. The Act contributes to the empowerment of, and promotes respect for the rights, freedoms, autonomy and dignity of vulnerable persons, i.e. persons who, because of a moderate to severe mental or physical disability, illness or infirmity, whether temporary or permanent, and whether actual or perceived, are unable to express or act on their wishes, or to ascertain or exercise their rights, or have difficulty in expressing or acting on their wishes, or in ascertaining or exercising their rights. The sections proclaimed provide for the establishment of the Appointments Advisory Committee to develop criteria and procedures for the selection of candidates for appointment to a commission to be created under the Act for the promotion of respect for and assistance to vulnerable persons and their rights, freedoms, dignity and autonomy. (Other sections proclaimed in force in October 1994 provide for the establishment of the Advocacy Commission, which will oversee the delivery of advocacy services as well as establish policies for such services.)

601. The Substitute Decisions Act, S.O., 1992, c. 30, provides people with options for appointing a substitute to make decisions about their personal care or property matters if they become mentally incapable. The Act also allows the court to appoint a guardian for personal care and property decisions for someone found incapable of making decisions. An official, the Public Guardian and Trustee, is given the mandate to serve as temporary guardian for people who are mentally incapable and are being exploited and abused, and to act as substitute decision maker of last resort for mentally incapable persons who have not appointed a substitute and who have no family able and willing to act.

602. Ontario has established the Commission on Systemic Racism in the Ontario Criminal Justice System, which will investigate and make recommendations to government. The final report is expected to be received in the spring of 1995. An interim report focusing on provincial correctional institutions was received, and the Ministry of the Solicitor General and Corrections has responded by addressing many of the issues raised in the interim report.

603. Amendments to the Employment Standards Act, which were proclaimed in December 1990, established the right of each natural or adoptive parent to take up to 18 weeks of unpaid leave to care for a newborn or newly adopted child. This is in addition to seniority and benefits that continue to accrue or be paid during this leave.

604. The Landlord and Tenant Act, Rent Control Act, 1992 and the Rental Housing Protection Act were amended in 1994, so that they now apply to residential rental properties occupied by people receiving care (generally seniors or people with disabilities). They will now have the same protection as other residential tenants.

605. The Landlord and Tenant Act and the Rental Housing Protection Act were amended so that they now apply to land-lease communities, in which residents own homes but rent the land on which the houses sit. This is commonly found in retirement communities. Tenants of these communities, many of whom are seniors, will now have the same protection as other residential tenants.

606. In amendments to the Insurance Act made by the Financial Services Statute Law Reform Amendment Act, 1994, restrictions on the activities of agents selling life insurance were significantly altered. Prior to those amendments, an agent was required to devote his or her full time and attention to the business of selling life insurance, and a person could not carry on the business of a life insurance agent as a part-time activity. This restriction had a disproportionate effect on women, since it prevented them from working part-time as life insurance agents. These restrictions were removed by the amendments.

Article 27

Statement of political relationship

607. The Statement of Political Relationship was signed between the Ontario government and Aboriginal leaders in Ontario on 6 August 1991. The document recognizes that First Nations peoples in Ontario are distinct nations and that they have the inherent right of self-government. The document established a government-to-government relationship between First Nations and Ontario, and committed both to negotiations for the implementation of the inherent right of self-government.

608. The French-language Services Act, as reported in the second report, is now in effect. It sets out the requirement that government services be available to the public in French. It applies to head and central offices of government agencies, as well as to local offices in the 23 areas designated in the Schedule to the Act. The Act also applies to public-service agencies as designated by regulation, but does not apply to municipalities or local boards.

609. Other major features of this Act are: a requirement that all public Bills in te legislature be introduced and enacted in both French and English, and a requirement that the public general statutes of Ontario be translated into French and the regulations be translated as determined by the Attorney General. The purpose of the Office of Francophone Affairs is to advise the Minister Responsible for Francophone Affairs, the Executive Council and senior government officials on matters pertaining to the provision of services in French and the needs of the province's Francophone community.

610. As of September 1992, 4,850 positions in the Ontario Public Service (6.9 per cent of the total) require French-language proficiency. Of those, 74 per cent were staffed with incumbents able to provide services in both English and French. As of September 1994, 130 public service agencies had been designated under the Act.

Ontario Native Affairs Directorate

611. The Ontario Native Affairs Directorate has been renamed the Ontario Native Affairs Secretariat.