



Government
of Canada

Gouvernement
du Canada

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

Fifth Report of Canada

Covering the period
May 2000 – July 2004

Canada¹

FOREWORD

The *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* was adopted by the United General Assembly on December 10, 1984. Canada ratified the Convention on June 24, 1987.

States Parties are required to report to the United Nations on measures they have taken to give effect to the Convention. The present report was submitted to the Committee against Torture in October 2004 and covers the period of May 2000 to July 2004. It was prepared in close collaboration by the federal, provincial and territorial governments and describes measures and initiatives taken by these governments with respect to the Convention.

The report is published so that it can be made available to interested groups and individuals. Through its publication, it is hoped that Canadians will be encouraged to become familiar with the measures adopted in Canada to ensure the implementation of the Convention and to broaden their understanding of the obligations contracted by Canada through ratification of this important international treaty.

Copies of the report, in both official languages, may be obtained free of charge from the Human Rights Program, Department of Canadian Heritage. This report is also available on the Human Rights Program website at: <http://www.pch.gc.ca/progs/pdp-hrp/>.

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* In geographical order, from east to west

Introduction

1. On June 24, 1987, Canada ratified the *United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (the *Convention*). This is Canada's Fifth Report under the Convention, covering the period from May 2000 to July 2004. Part I updates from the Fourth Report the measures undertaken at the federal level to give effect to the provisions of the *Convention*. Parts II and III include an update on measures undertaken at the provincial and territorial levels.
2. This report reflects the principal changes in federal, provincial and territorial policies, laws and programs since the submission of Canada's Fourth Report under the Convention. Unless necessary, the information contained in Canada's previous reports is not repeated here and only significant changes are mentioned. For a complete picture of measures to implement the Convention, the previous reports should be consulted as well as reports submitted under other treaties, in particular the *International Covenant on Civil and Political Rights*.

Consultations with Non-Governmental Organizations

3. The government of Canada invited 47 non-governmental organizations (NGOs) to give their views on the issues to be covered in the federal portion of this report. One response was received from the Canadian Centre for Victims of Torture (CCVT), which has been forwarded to the Committee.
4. Although the CCVT has acknowledged Canada's leadership role at the forefront of the global campaign against impunity for torturers and other perpetrators of international crimes, it has expressed some concerns with respect to Canada's compliance with the Convention. These include:
 - the adversarial nature of some refugee determination hearings;
 - the increasing number of immigration detainees in Canada;
 - the issue of police violence;
 - the Supreme Court of Canada ruling in *Suresh* where the Court stated that Canada's interest be weighed with the Convention refugee's interest;
 - the need for public education about the rights of torture survivors to redress and compensation;
 - the need for Canada to define cruel, inhumane and degrading treatment or punishment and to develop mechanisms for the accountability and prosecution of officers who commit such offences.

Part I

Measures Adopted by the Government of Canada

Article 2: Legislative, administrative, judicial and other measures

5. Previous periodic reports outlined a series of constitutional and legislative measures directed at preventing torture. There is no new legislation to report.
6. Since the Committee against Torture has indicated an interest in anti-terrorism legislation, the following is a description of Canada's anti-terrorism legislation, including safeguards it contains to protect human rights.
7. Following the terrorist attacks against the United States of 11 September 2001, Canada undertook a comprehensive review of criminal, security and other relevant legislation with a view to addressing the new threat. The review resulted in the *Anti-terrorism Act*¹, which was given Royal Assent on 18 December 2001. Most of the provisions came into force on December 24, 2001, and with the last proclamation on 6 January 2003, it is now fully in force. The preamble to the *Anti-terrorism Act* recognizes that terrorism is a matter of national concern but this concern must be addressed while continuing to respect and promote the values reflected in, and the rights and freedoms guaranteed by, the *Canadian Charter of Rights and Freedoms* (the *Charter*).
8. The Act addresses a number of specific areas and implements Canada's international obligations under Security Council resolution 1373 of 28 September 2001. Specific amendments include a definition of "terrorist activity",² new criminal offences and sentences, changes to evidence laws, and powers and procedures for dealing with the financing of terrorism.
9. The amendments contain new provisions respecting the arrest and detention of persons to prevent terrorist activities, based on existing criminal law powers. Those suspected of involvement in criminal offences are subject to the normal process of investigation and prosecution. As a preventive measure, however, any peace officer who believes on reasonable grounds that a terrorist activity will be carried out may obtain a judicial arrest warrant and those suspected of involvement and identified may be arrested and detained, if there are grounds to suspect that the arrest is necessary to prevent the terrorist activity. Where there are exigent circumstances, suspects may be arrested without a warrant. Anyone arrested must be taken before a judge within 24 hours if a judge is available and otherwise as soon as possible. Once before the judge, the suspect can be directed to comply with a court order to keep the peace and meet any specific requirements imposed. If the suspect agrees to the order, he or she must be released, subject to re-arrest and prosecution if the order is not complied with. If the suspect refuses to agree, he or she may be detained for up to 12 months. At the end of this period, the suspect must be released, subject to the possibility of the State bringing a further recognizance application. In all proceedings, once the suspect has been arrested, the burden of establishing the existence of the circumstances needed to obtain a recognizance order lies with the State.

¹ All federal legislation can be found at: <http://laws.justice.gc.ca/en/a-11.7/2092.html> /
<http://laws.justice.gc.ca/en/C-46/41632.html> .

² Definition of "terrorist activity" at section 83.01 (1) <http://laws.justice.gc.ca/en/C-46/41632.html>.

10. The legislation also contains powers to conduct judicial investigative hearings (s. 83.28 of the *Criminal Code*), at which attendance by anyone specified by the judge to have direct and material information related to a terrorism offence is mandatory, and those ordered to attend, may be arrested and detained for failure to attend or if there is reason to believe they might be about to flee. The compatibility of these provisions with the *Canadian Charter of Rights and Freedoms* has been examined by the Supreme Court of Canada. On June 23rd 2004, in *Application under s. 83.28 of the Criminal Code (Re)*, the majority of the Court stated that the challenge for democracies in the battle against terrorism is to balance an effective response with fundamental democratic values that respect the importance of human life, liberty and the rule of law.³ The Court concluded that, subject to interpretive comments, the impugned provisions (s. 83.28 of the *Criminal Code*) meet that challenge.
11. In that same judgment, the Supreme Court of Canada reiterated what it had expressed in previous cases (*Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 3; *United States v. Burns*, [2001] 1 S.C.R. 283) concerning the seriousness with which it views deportation or extradition to countries where torture and/or death are distinct possibilities. In that context, the Supreme Court also held that evidence collected at an investigative hearing should be subject to an order preventing its subsequent direct or derivative use in extradition or deportation proceedings where the potential for such use by the state exists.
12. The *Anti-Terrorism Act* contains rigorous safeguards to uphold the rights and freedoms of those affected by it. These safeguards include, with respect to preventive arrest and investigative hearings, requiring prior consent of the Attorney General where the proceedings take place; a judicial authorization; and requiring the Attorney General and Solicitor General of Canada, provincial Attorneys General and Ministers responsible for policing to report annually to Parliament on the use of the preventive arrest and investigative hearing provisions in the new Act. In addition, the Parliament has directed that a comprehensive review of the legislation be conducted within 3 years of its adoption, and a review commencing in late 2004 is expected. It also imposed a “sunset” requirement under which the specific powers relating to preventive detention and investigative powers cease to apply unless extended by a legislative resolution.
13. Nothing in any of the new offences, investigative powers or other provisions affects any of the safeguards already in place against torture and related activities. *Criminal Code* subsection 269.1(4), which bars the use of any statement obtained by torture for any purpose except as evidence that it was in fact obtained by torture, applies in full to all of the new procedures.
14. In addition, the Royal Canadian Mounted Police (RCMP) has developed internal policies that add additional safeguards with respect to the use of these provisions. Among other requirements, the policy requires that the RCMP Deputy Commissioner of Operations

³ The full text of all the judgments rendered by the Supreme Court of Canada can be found at the following website addresses: <http://www.canlii.org> or <http://www.lexum.umontreal.ca/csc-scc/en/index.html>.

personally approve all requests from RCMP officers to make use of these provisions, before a request is made for the consent of the Attorney General.

Article 3: Prohibition of expulsion and extradition

15. A new immigration act, entitled the *Immigration and Refugee Protection Act* (IRPA) came into force on June 28, 2002. IRPA includes as an objective and as a rule of interpretation the importance of fulfilling Canada's international obligations, in particular to refugees.

3. (2) *The objectives of this Act with respect to refugees are*

(b) To fulfil Canada's international legal obligations with respect to refugees and affirm Canada's commitment to international efforts to provide assistance to those in need of resettlement.

3. (3) *This Act is to be construed and applied in a manner that*

(f) complies with international human rights instruments to which Canada is signatory.

16. The risk of torture is recognized under IRPA as one of the grounds for conferring refugee protection. Torture is defined in the Act (s.97(1)(a)), by reference to article 1 of the *Convention Against Torture*. Another new ground leading to refugee protection under IRPA is the risk to life and the risk of cruel and unusual treatment or punishment (s.97(1)(b)). Refugee protection is conferred primarily by the Refugee Protection Division of the Immigration and Refugee Board. However, IRPA also provides for a Pre-Removal Risk Assessment (PRRA), prior to the removal of failed asylum claimants or others who are the subject of a removal order (s.112), including persons ineligible for a hearing by the Refugee Protection Division on grounds of security, human or international rights violations, serious criminality or organized criminality. The protection grounds under the PRRA also include the risks mentioned in s.97, including the risk of torture (ss.113(c) and (d)). All PRRA officers receive extensive training on a number of international conventions, including the *Convention against Torture*. In making decisions on PRRA applications, officers have continuous access to these conventions, as well as to the PRRA policy manual: <http://www.cic.gc.ca/manuals-guides/english/pp/pp03e.pdf>.

17. As a rule, Canada will not remove persons to a country where they risk being tortured (s.115). The risk of indirect *refoulement* to torture is also addressed in IRPA. A country can only be designated as a safe third country, i.e. where an asylum seeker can be removed to have their claim examined without that claim having been examined in Canada, if the proposed designated country complies both with article 33 of the *1951 Convention relating to the Status of Refugees* and article 3 of the *Convention Against Torture* (s.102).

18. The government of Canada takes its international obligations to protect people at risk of persecution, torture and other cruel and unusual treatment or punishment very seriously. The government also has an obligation to maintain the security of Canadian society. IRPA allows for the removal of foreign nationals who constitute a danger to the public or the security of Canada; however, this is to be done only in exceptional circumstances and after the risk to the individual has been carefully balanced against the risk to Canadian society. During this process the foreign national is given the possibility to present submissions and the Minister's decision is subject to review by the courts. The Supreme Court of Canada ruled in the case of *Suresh v. Canada (Minister of Citizenship and Immigration)* ([2002] 1 S.C.R. 3) that while deportation to torture will generally violate the principles of fundamental justice protected by the *Canadian Charter of Rights and Freedoms*, it might be justified under the balancing process, in exceptional circumstances.

Article 7: Prosecution of persons alleged to have committed torture

19. An Interdepartmental Operations Group, comprised of officials from Citizenship and Immigration⁴, the Department of Justice and the Royal Canadian Mounted Police (RCMP), was created in 1998 and coordinates Canada's War Crimes Program. Allegations of war crimes or crimes against humanity come from victims, witnesses, foreign governments, ethnic communities, non-governmental organisations, and from active citizenship and immigration files in which the applicant has testified before the Immigration and Refugee Board of his or her own criminal wrongdoing.
20. The Interdepartmental Operations Group has identified more than 80 suspects as individuals whose cases merit further attention. The cases are prioritized according to defined criteria which includes: the nature of the allegation, the seriousness of the crimes, the strength of the investigation, the position occupied by the individual, the ability to conduct documentary research to test the credibility of the allegation and the ability to secure cooperation from other countries or international tribunals in order to conduct the investigation. The investigations are complex and lengthy as they generally deal with crimes committed several years before on foreign territory. In some countries, the people are often struggling to overcome the full impact of the atrocities committed in their homes or in their neighbourhoods. In some circumstances, the conflicts have not completely ceased, making investigations even more difficult. Therefore, it can be difficult to gather reliable evidence that will be accepted in a Canadian court of law. Once the investigations are complete, if there is evidence of torture sufficient to create a reasonable likelihood of conviction by Canadian courts, appropriate charges may be laid.
21. The RCMP, with the assistance of the Department of Justice, has conducted modern war crimes investigations in at least 15 countries in the last year, including the Former Yugoslavia, Rwanda and other parts of Africa, Latin America and the Middle East. The Government of Canada is entering into agreements with other governments to allow Canadian officials to seek evidence in more countries.

⁴ As of December 12, 2003, the Canadian Border Services Agency has replaced CIC as a member of the Interdepartmental Operations Group.

22. There are several remedies available to deal with alleged war criminals and persons who have committed crimes against humanity—from extradition, to prosecution, to deportation. The Canadian government applies its immigration laws to deny entry and exclude such persons from using the protection accorded to genuine refugees. Canadian immigration legislation includes measures so that Canada does not become a safe haven for persons who commit acts of torture and cruel, inhuman or degrading treatment. The goal of Canada's War Crimes Program is to select the appropriate remedy in every situation. Where there is a reasonable prospect of a conviction and it is in the public interest to launch a criminal prosecution, the Canadian Government will do so. Since 1999, an annual report has been issued that details the activities of the War Crimes Program. All annual reports can be found at <http://www.cic.gc.ca/english/pub/index-2.html>.

Article 10: Education and training

23. The Fourth Report provides details on training pertaining to the Correctional Service Canada, RCMP, Canadian Forces, and Immigration Enforcement officers. Additional information is provided below.
24. Canadian Immigration Enforcement provides training and information to all immigration officers, as well as other law enforcement partners, about the *Convention Against Torture* as it pertains to immigration-related matters. Immigration training is comprehensive in that it considers Canada's international obligations, as well as the *Canadian Charter of Rights and Freedoms*.
25. The Enforcement Training Program and the Examining Officer training, which are mandatory for all officers who perform enforcement functions, discuss policies and procedures in place when performing an arrest and detention, including the treatment of individuals in custody.
26. The Canadian Forces (CF) have measures in place to ensure that CF personnel do not commit torture or other acts of cruel, inhumane or degrading treatment or punishment. Canadian Forces members are also trained to recognize and report any such acts if they observe them. The CF continue to train its military personnel on the standards of the *Convention*, by conducting the training that incorporates prohibitions against torture either as part of Law of Armed Conflict (LOAC) or Code of Conduct training.
27. This training is enhanced by initiatives such as the self-study package in Operational Law and draft manual of Operational Law prepared by the Office of the Judge Advocate General. These refer to international law, including international human rights law, that may be applicable to CF international operations. These materials also reiterate the legal obligations of the CF and all CF personnel to ensure that all detainees in CF control, regardless of legal status, are treated humanely. Operational Law encompasses both LOAC and international human rights law as two of the many legal regimes that impact on CF operations.

Article 11: Treatment of persons arrested, detained or imprisoned

Correctional Service Canada (CSC)

28. The *Corrections and Conditional Release Act* (CCRA) remains the core piece of legislation governing Correctional Service Canada. Section 69 of the CCRA 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. This section prohibits the use of corporal punishment as a disciplinary sanction.

Use of Force

29. Correctional staff are accountable for using only as much force as is believed, in good faith and on reasonable grounds, to be necessary to carry out their legal duties. Every reasonable step is taken to explore and assess alternatives to the use of, or escalation in the use of, force. The use of force must be proportional to the risks and circumstances.
30. As noted in the Fourth Report, CSC policy requires that Use of Force Reports be completed, describing and justifying the type and amount of force used in specific contexts. All inmates are to be examined by health care professionals following any use of force situation. CSC policy also dictates that an Institutional Head must formally call for an investigation when he has reason to suspect that the amount of force used in a situation may have been excessive.

Inmate Discipline

31. Since Canada's Fourth Report, CSC has revised its policy on inmate discipline (http://www.csc-scc.gc.ca/text/plcy/cdshtm/580-cde_e.shtml). The new policy, which incorporates the former policy on disciplinary segregation, contains a number of changes that contribute to a fair and transparent disciplinary system that promotes the accountability and individual responsibility while contributing to public safety and an orderly, safe correctional environment. These changes include:
- that each institution assign a major court disciplinary advisor and an alternate to ensure consistency in the implementation and operation of the disciplinary process;
 - a clearer set of guidelines for determining the category of an offence;
 - a requirement to document the reasons for delays in the disciplinary process where exceptional circumstances apply; and
 - clear direction on the cell effects allowed in disciplinary segregation.

Special Handling Unit

32. As CSC's most secure facility, the Special Handling Unit (SHU) is reserved for inmates who have proven to be too dangerous for the safety of staff and other inmates to be

managed in any other maximum security facility. In September 2002, CSC amended Commissioner's Directive 551 – Special Handling Unit (http://www.csc-scc.gc.ca/text/plcy/cdshtm/551-cde_e.shtml). The amendments ensure that the decision-making responsibility for placements to and from the SHU rest with one person, the Senior Deputy Commissioner, instead of being split between the Commissioner and the National Review Committee. The Commissioner retains responsibility for responding to third level offender grievances related to SHU placements.

33. The policy regarding the SHU has also been amended to ensure that an external representative will participate as a member of the SHU Advisory Committee, which advises the Special Deputy Commissioner on SHU decisions. The participation of an external member provides further openness and accountability and is an effective means to ensure administrative fairness.

Women Offenders

34. Three Reports are discussed here: the Arbour Report; the Final Report of the Cross Gender Monitor; the Canadian Human Rights Commission's report entitled "Protecting Their Rights: A Systematic Review of Human Rights in Correctional Services for Federally Sentenced Women".
35. Canada's Fourth Report refers to the positive impact that the Commission of Inquiry into Certain Events at the Prison for Women in Kingston (the Arbour Report) has had on CSC by making the organization and its culture more respectful of the rights of both male and female offenders. The most significant developments stemming from the Arbour Report are outlined in Canada's Fourth Report. To date, CSC has taken decisive action on all recommendations in the Arbour Report that are within its jurisdiction.
36. In March 2004, CSC opened its sixth correctional facility for federal women offenders and the first of its kind in CSC's Pacific region. Located in British Columbia, the institution is currently comprised of seven houses, each with six individual bedrooms. These houses accommodate both minimum and medium security women.
37. During 2001, CSC implemented Structured Living Environment houses in the regional facilities to address an identified need for a more intensive response to minimum and medium security women with significant cognitive limitations or mental health concerns. The Structured Living Environment houses accommodate up to eight women and are staffed on a full-time basis with individuals who have been trained in specialized mental health intervention.
38. At the time of Canada's Fourth Report, approximately 15 percent of federally sentenced women were living in three units co-located within existing male facilities in Saskatchewan, Quebec and Nova Scotia. This was an interim measure to be used while CSC built specially designed Secure Units for women classified as maximum security. By February 2003, Secure Units were operational in CSC's Atlantic, Quebec and Prairie regions. The Secure Unit in the Ontario region is expected to be operational by the

summer of 2004. It is anticipated that the Secure Unit in the Pacific region will be operational by the summer of 2005.

39. As noted in Canada's Fourth Report, an independent Monitor the Cross Gender Monitor was appointed to provide a three-year review of the policy and operational impacts of cross gender staffing in the federal women's facilities. The Final Report of the Cross Gender Monitor (Final Report) was released in April 2001. Results revealed that over 80% of staff working in the regional women's facilities and over 80% of women offenders support the use of male front-line staff in selected functions. The Final Report further stated that 84% of staff and 68% of women offenders agree that having male staff working in a facility has positive effects. Despite these findings, the Final Report made eleven recommendations, the most significant of which was the termination of cross gender staffing in the regional women's facilities and healing lodge. The remaining recommendations focus on staff training and screening, sexual misconduct issues, and monitoring activities.
40. Following release of the Final Report, CSC conducted extensive internal and external consultations with regard to the Monitor's main recommendation. Despite some disagreement, the majority of parties indicated that they are in favour of maintaining a percentage of men as front-line staff in women's institutions. CSC has since developed a working group to evaluate the impact that male front-line workers have on operational practices in women's institutions. This working group will determine the frequency with which operational practices are dictated by mandated, gender-specific policies. Such a determination will result in the opportunity to examine privacy and dignity issues, the impact on daily operations and financial implications. Once the working group has determined the frequency with which operational practices are impacted by mandated, gender-specific policies, CSC will review this data to establish the most appropriate response to the Final Report.
41. In January 2004, the Canadian Human Rights Commission released a report on federally sentenced women entitled, *Protecting Their Rights: A Systematic Review of Human Rights in Correctional Services for Federally Sentenced Women*. The Report reviews the extent to which federal corrections provides services that respond to the specific needs of women, and identifies "ways of bringing the correctional system into line with the purpose of the *Canadian Human Rights Act*." It notes that CSC has made progress in developing a system specific to the needs of women offenders. However, the Report also raises a number of issues related to federally sentenced women including: the assessment and classification of women offenders; health issues; programming; reintegration; accountability; and, external redress. In addition, the Report includes 19 recommendations related to risk and need assessment; safe and humane custody and supervision; rehabilitation and reintegration programming; and mechanisms for redress. CSC is currently studying the recommendations and will prepare a comprehensive response to the report. The full report can be viewed at:
www.chrc-ccdp.ca/legislation_policies/consultation_report-en.asp.

Aboriginal Offenders

42. The over-representation of Aboriginal people in the federal correctional system continues to be a pressing challenge for the criminal justice system as a whole. Aboriginal people make up two percent of the Canadian adult population, but account for 17% of all federal offenders.
43. Since Canada's Fourth Report, CSC's strategic direction regarding the Aboriginal offender population has moved from a focus on individual programs to a broader focus on the entire correctional continuum. This means providing a whole range of integrated, aboriginal-specific services from intake to discharge. This integrated approach includes: the intake assessment process; intervention and treatment initiatives; and, maintenance and release opportunities. In addition, CSC and the broader Aboriginal community continue to provide a range of services to the Aboriginal offender population through placements in Healing Lodges.
44. Placements at Healing Lodges help address the needs of the Aboriginal offender population through traditional Aboriginal teachings, ceremonies, contact with Elders and children, and interaction with nature. Service delivery is premised on individualized plans, a holistic approach, interactive relationships with the community and a focus on preparation for community release. As of April 2004, there are eight Healing Lodges in operation with the capacity to manage 339 offenders in total.
45. In November 2002, CSC published a report entitled, *An Examination of Healing Lodges for Federal Offenders in Canada*. The report examined both Healing Lodges run by CSC and those run by the Aboriginal community. The report raises a number of issues, all highlighting the need to strengthen current Healing Lodges before endeavouring to create new ones. The key issues raised in the report include: human and financial resources, staff training, the efficiency of the transfer process, the effectiveness of communications between Healing lodges and CSC institutions and the amount of community involvement in the operations of the Healing Lodges. CSC has developed an action plan to respond to the aforementioned report, and a final report on the Action Plan is to be delivered to CSC's Executive Committee in October 2004.
46. Since 2000-2001, CSC has hired Aboriginal Community Development Officers (ACDOs) in each region, in order to develop a national infrastructure for the consistent delivery of Aboriginal community correctional initiatives. The key legislative provision is section 84 of the *Corrections and Conditional Release Act*, which provides that where an inmate who is applying for parole has expressed an interest in being released to an aboriginal community, the Service shall, if the inmate consents, give the aboriginal community adequate notice of the inmate's parole application, and an opportunity to propose a plan for the inmate's release to, and integration into, the aboriginal community.
47. The ACDOs roles and activities have centered on the following areas: promoting the provisions of section 84 and increasing Aboriginal community involvement through awareness and training; carrying out awareness training for parole officers and the

National Parole Board; promoting the provisions of section 84 of the Act and increasing offender awareness; promoting the involvement of the Aboriginal community in institutions; implementing measures to ensure consistent follow-up where section 84 has been identified as an option. Since 2000/2001, 175 section 84 release plans were undertaken by Aboriginals.

48. CSC has also developed a strategy for working with Aboriginal offenders in institutions that provides for enhanced programs and services for those who wish to pursue a healing path. Entitled *Aboriginal Pathways in Federal Corrections*, or the Aboriginal Pathways Strategy, the strategy deals with the establishment of healing environments at all security classifications and is designed to provide intensive Aboriginal programs to address personal development as well as the opportunity to learn effective social skills, responsible behavior and attitudes. One of the goals of Pathways is to build a continuum of Aboriginal specific services from intake to release within existing correctional facilities. In 2002, this concept was piloted in the Prairie region at Saskatchewan Penitentiary and Stony Mountain Institution. It is running currently also at La Macaza Institution in Quebec. It is intended to be introduced in other regions in the near future.

Inmate Suicides

49. In September 2002, CSC modified and expanded its policy entitled "Commissioner's Directive 843 - Prevention, Management and Response to Suicide and Self-Injuries" (http://www.csc-ccc.gc.ca/text/plcy/cdshtm/843-cde_e.shtml). The following key elements were added to the policy to ensure continuous improvement in prevention and intervention efforts with respect to suicide and self-injury: an outline of the responsibilities of the Institutional Head, District Director, psychologists or appropriate health service professionals and other staff; and a requirement that within 24 hours following the transfer of an offender from one CSC facility to another, the sections of the Offender Intake Assessment pertaining to suicide must be re-administered.

Royal Canadian Mounted Police

50. The RCMP reviewed its interview and interrogations procedures in the fall of 2003 to ensure consistency with the spirit and the intent of the *Convention against Torture*, recent case law and best practices. RCMP policy with respect to the treatment of persons arrested, detained or imprisoned take into account all relevant factors of the Convention. A person in RCMP custody will also be treated in accordance with rights provided under Canadian law.
51. The RCMP actively seeks the input of Aboriginal peoples through mechanisms such as the RCMP Commissioner's National Aboriginal Advisory Committee, which is comprised of 13 Aboriginal community members from across Canada who meet twice a year to advise the RCMP on issues affecting Aboriginal people.
52. The Public Safety Cooperation Protocol between the Assembly of First Nations (AFN) and the Royal Canadian Mounted Police (RCMP) was signed on May 18, 2004. The

Protocol is the first of its kind between the two national organizations and is the result of proactive discussions. The purpose of the Protocol is to establish a trusting and reciprocal relationship with a focus on public, community and police officer safety.

Immigration

53. The Government of Canada has taken measures to address the circumstances of those who are detained pursuant to the *Immigration and Refugee Protection Act* (IRPA). National standards of care and treatment for detainees in facilities have been implemented, and a detention monitoring agreement has been signed with the International Committee of the Red Cross. An information brochure for detainees outlining their rights, policies that may affect them and other general information has been published. It is entitled "Deprived of freedom" and can be found on Internet at: <http://www.icrc.org/Web/Eng/siteeng0.nsf/iwpList528/B462B98285B30773C1256C79004D4EE7>.
54. A national detention data reporting system has also been established to collect sex disaggregated data. Where possible and appropriate, detention facilities are being modified to accommodate women who wish to have their children with them. In a special initiative, one provincial facility in Quebec has provided a home for use in the event that a woman wishes to have her children detained with her.
55. The IRPA affirms as a principle that a minor child shall be detained only as a measure of last resort and that such decisions shall take into account the best interests of the child.

Sedation

56. The current policy regarding the involuntary sedation of clients under removal is found in Enforcement Manual 10 - Removals, Section 24 (<http://www.cic.gc.ca/manuals-guides/english/enf/index.html>). It states that under no circumstances will any foreign nationals be taken to a physician solely for the purpose of that foreign national being placed under sedation for removal from Canada. Where a foreign national has been taken to a physician for some other legitimate medical reason, the physician may address the question of sedation for removal as a secondary issue. If the physician decides to prescribe medication, the foreign national concerned must be asked if he or she wishes to take such medication, and if not, no medication is to be administered.

Hearings

57. The current policy regarding the role of hearings officers in preparing a case for intervention before the Immigration and Refugee Board and during an intervention hearing is found in Enforcement Manual 24 - Ministerial Interventions, Section 7 (<http://www.cic.gc.ca/manualsguides/english/enf/index.html>). Hearings officers represent the Government and, as such, they are instructed to always act professionally. The guidelines make it very clear to hearings officers that they have a duty to assess the sensitivity of each case when preparing for an intervention. Issues such as a claimant

having been tortured, witnessed massacres or having been detained in a place where torture was practised, should be of specific concern to the hearings officers. It is even suggested that a pre-hearing conference be held to limit the areas of sensitivity during the hearing. During an intervention hearing, the officer is reminded to carefully consider the necessity of asking a particular question related to a sensitive issue, such as those listed above. The officer is tasked with monitoring a claimant's reaction to such questions and will consider modifying their approach to make the claimant more comfortable.

National Defence

58. In light of recent events highlighting concerns respecting torture of detainees by countries allied with Canada, the Canadian Forces (CF) has undergone a review of its policies and procedures regarding the detention and handling of individuals in order to ensure compliance with the *Convention Against Torture* and other relevant international legal instruments.
59. Specifically the CF has reviewed its procedures related to interrogation and tactical questioning. It has been noted that the primary aim of interrogation and tactical questioning is the timely extraction of information from a prisoner of war in a humane manner. As a part of CF policy, all interrogation will comply with relevant international law, including conventions and agreements such as the Third Geneva Convention and the *Convention Against Torture*.
60. All individuals used for interrogation purposes are instructed that all individuals subject to interrogation or tactical questioning shall be treated humanely. No physical or mental torture, nor any other form of coercion, may be inflicted on an individual to secure from them information of any kind. Individuals who refuse to answer may not be threatened, insulted, or exposed to unpleasant or disadvantageous treatment of any kind.

Article 12 : Impartial and immediate investigation, and Article 13 : Allegations of torture or abuse by authorities

Correctional Service Canada (SCC)

61. In March 2003, CSC released a *Policy Bulletin on Harassment* which clarifies CSC's policies and redress procedures pertaining to harassment. A further policy clarification was issued June 9, 2003, regarding the investigation of allegations of harassment made by offenders. The clarification incorporates the procedural safeguards outlined in the anti-harassment policy for government employees, notably that a trained harassment investigator from outside the institution or parole office from which the complaint originated will conduct a thorough investigation. The institutional head, Regional Headquarters or National Headquarters, can convene an investigation. In late 2003 and early 2004, CSC conducted training to reinforce the processes involved in handling offender harassment complaints (including allegations of staff misconduct). A monitoring system is currently being developed to ensure that responses to these complaints are in compliance with CSC policy.

62. From April 2000 to March 2004, CSC recorded a total of 89,272 offender complaints and grievances. The majority of these complaints and grievances (71,483) were investigated and responded to at the operational level (complaint and first level). Of the remainder, 11,912 were managed at the regional (second) level and 5,877 were examined and responded to at the national (third) level.

Royal Canadian Mounted Police (RCMP)

63. The Commission for Public Complaints Against the RCMP continues to operate as outlined in the Fourth Report; however, reports are forwarded to the Minister of Public Safety and Emergency Preparedness, which is now the Minister responsible for the RCMP.⁵ By way of additional information, it can be noted that, at any stage of the complaint process, the Commission Chair may also conduct an investigation where the Chair considers it advisable in the public interest, regardless of whether the RCMP has investigated or disposed of the complaint. On completion of the investigation, the Chair prepares and delivers to the Commissioner of the RCMP and the Minister of Public Safety and Emergency Preparedness a written report setting out findings and recommendations. After receiving the Commissioner's response, the Chair prepares a final report that is distributed to all parties, the RCMP Commissioner and the Minister of Public Safety and Emergency Preparedness.
64. Since May 2000, a number of public complaints against the RCMP alleging improper use of force, oppressive conduct, and improper arrest and search have been made. The events which gave rise to the majority of these complaints occurred at the time of arrest or during transportation to detention facilities.
65. For the Commission, isolated public complaints that may meet the "reasonable person" criteria for cruel, inhuman or degrading treatment or punishment, as stated in Article 16 of the *Convention* include:
- extended period of detention without justification;
 - cellblock overcrowding;
 - failure to provide a prisoner a meal at a normally scheduled mealtime;
 - failure to provide a prisoner his / her own medication;
 - failure to provide the amenities or maintain clean cells;
 - incarcerating a youth with an adult;
 - assaulting a detainee in a cellblock area; and
 - failure to conduct a strip search in an appropriately sheltered location.
66. Some complaints have alleged failure to seek medical attention for a detainee who appears ill or injured or who claims to be ill or injured.

⁵ The Office of the Solicitor General was incorporated with the new Department of Public Safety and Emergency Preparedness Canada in early 2004.

67. The Commission and the RCMP have addressed these complaints. The Commission's reports can be found at: <http://www.cpc-cpp.gc.ca/DefaultSite/index.aspx>.
68. From May 2000 to March 2004, the Commission received a total of 4,787 complaints. Generally, the Commission receives half of all the complaints lodged, the other half being received by the RCMP directly. After receiving a response to their complaint by the RCMP, 844 of these complainants requested a review by the Commission. During this time period the Commission produced 678 reports in which the Commission was satisfied with the conduct of the RCMP members in question; and 168 interim reports, where the Commission concluded that the subject members or the subject members' conduct, behaviour, or performance failed to conform to the standard prescribed in law or policy.
69. The Commission reviewed a number of complaints between May 2000 and March 2004 regarding the care and treatment of detainees. While some of the complaints were found to be unsubstantiated, the Commission did make the following comments, among others, to the RCMP:
- RCMP members should continue to refer to their Incident Management/Intervention Model to determine which level of force is appropriate in a situation;
 - medical care must be provided to detainees when requested;
 - RCMP members must treat detainees with dignity; and
 - RCMP detachment members should be reminded that they are responsible for the care and well-being of detained persons.
70. In cases where the Commissioner of the RCMP agreed with the Commission's findings and recommendations, depending on the cases, he may have directed that policy be created or amended, that training be designed and/or provided, that apologies be extended, and/or that operational guidance be provided. Operational Guidance is the process of coaching, training or directing the member, in a non-disciplinary fashion, toward the prescribed standard.
71. There have also been allegations with respect to the release of persons into adverse climates. These allegations have involved persons who were not detained, but whose vehicle was impounded, or detainees who were released from incarceration. Remedial action was taken in cases where the allegations were determined to be founded.
72. On January 28, 2004, the Government of Canada announced an inquiry into the actions of Canadian officials in the case of a specific individual. In addition to the factual inquiry being conducted by a judge appointed as the Commissioner of the inquiry, the inquiry mandate includes making recommendations on an independent arm's length review mechanism for the RCMP's national security activities.

Asia-Pacific Economic Cooperation (APEC) Conference Inquiry

73. An RCMP interim report on the results of the public interest hearing on complaints surrounding the RCMP's involvement in the Asia-Pacific Economic Cooperation (APEC) Conference was completed on July 31, 2001. The Chair of the Commission for Public Complaints Against the RCMP submitted her final report on March 25, 2002. The RCMP responded to the Commission's recommendations and has made policy changes in the following areas, among others: policing public order events; opportunity for protest; relations with protestors; body search policy; privacy for personal searches; and release of prisoners.
74. Overall, the Commissioner of the RCMP accepted that errors were made in planning security arrangements at the University of British Columbia site and that the RCMP had failed to achieve a high state of readiness. Additional observations included that the RCMP:
- Learned considerably from the experience and that, since APEC, has gained valuable experience at several major public order events such as the Francophone Summit in Moncton, New Brunswick (September 1999); the meeting of the Organization of American States in Windsor, Ontario (June 2000); and the Summit of the Americas in Quebec City (April 2001).
 - Conducted an extensive review of their readiness and response to major public order events, including initiating ongoing consultations with other police agencies, nationally and internationally, to share information and identify best practices in the provision of security.
75. The recommendations from the APEC public hearing report have been implemented or are actively being addressed. This report has had a positive impact on the RCMP's approach to major public order events.
76. In 2000, the RCMP created a national public order-working group. As a result of the group's recommendations, a public order unit was established in the newly formed Critical Incident Program to ensure better preparedness in policing major incidents whether scheduled events or spontaneous occurrences.
77. The Critical Incident Program presently maintains the national program coordination for the Negotiators, Incident Commanders, Public Order/Tactical Troops, Emergency Response Teams, Emergency Medical Response Teams, and Emergency Planning. Coordinators have the mandate to ensure that policies and training for the respective areas of expertise is maintained.
78. A Tactical Operations Manual has been re-written and covers the following areas:
- New training course for tactical troop commanders
 - Basic courses for troop members, instructors and chemical weapons instructors

- Use of Police Service Dogs
 - Deployment of less lethal/chemical munitions
 - Warnings to crowds
 - Training requirements to perform specialty duties
 - Formal Emergency Medical Response Team status
79. The National Tactical Troop Training Committee was formed to ensure the existing training courses are current and to oversee the development of new public order training courses (arrest team, bicycle team response, object removal teams).
80. The Critical Incident Program is also working with several other major Canadian police agencies to formalize a training program for public order liaison/negotiators to deal with protestors and activist groups in a proactive manner before, during and after an event to minimize confrontation. It is now standard practice to use negotiation-trained personnel or those assigned to specialty liaison teams to perform a similar duty.

Summit of the Americas

81. The Commission reviewed a complaint regarding the actions of some RCMP members at the April 2001 Summit of the Americas (SOA) Conference in Québec City. This complaint involved the treatment of protestors by the RCMP. At the SOA Conference, the RCMP used baton rounds and tear gas to disperse protestors when a section of the perimeter security fence had been breached, which posed a threat to the Internationally Protected Persons in attendance.
82. The Commission recommended clarifying the policy on warnings to allow sufficient time for protestors to vacate an area prior to using force to remove them. The RCMP Commissioner agreed with the majority of the findings. (It should be noted that this event took place before the Commissioner had responded to the Commission's report on the events at the APEC conference.)
83. The RCMP has incorporated some of the Commission Chair's recommendations on policy. For example, all members, immediately before assignment to an event such as the SOA, must undergo instruction in existing tactical operations policy, and must demonstrate knowledge of it annually. Moreover, current instruction on warnings given at the Tactical Troop Commander's pilot course will be reviewed and modified to reinforce the importance of allowing a crowd sufficient time to disperse.

National Defence - Somalia Inquiry

84. Following the events in Somalia in 1993 a number of individuals were charged in respect of the death of a Somali teenager. All proceedings related to the incident have been concluded with the exception of those against MCpl Matchee who has yet to stand trial for the murder and torture of Shidane Arone, as he has been declared unfit to stand trial. Reviews take place every two years to determine whether he is fit to stand trial pursuant

to section 202.12 of the *National Defence Act*, to determine whether sufficient evidence can be adduced to put the accused person on trial.

Article 14: Redress, compensation and rehabilitation

85. One of the integration programs for Canadian permanent residents, Immigrant Settlement and Adaptation, helps immigrants, including refugees, settle, adapt and integrate into Canada by supporting orientation, para-professional counselling, referral to professional services in the community, etc. For example, in 2003-04, \$307,602 in contribution funding was provided under this program to the Canadian Centre for the Victims of Torture to assist newcomers to Canada who had been victims of torture prior to their arrival in Canada.
86. The Government of Canada also currently provides \$60,000 per annum in funding to the United Nations Voluntary Fund for Victims of Torture.

Article 16: Prevention of other acts of cruel, inhuman or degrading treatment or punishment

87. Canada's Fourth Report had noted that section 43 of the *Criminal Code*, which provides a limited justification in cases where a parent or person acting in the place of a parent uses reasonable force in the correction of a child, was the subject of a legal challenge under several provisions of the *Canadian Charter of Rights and Freedoms*. At the time of the Fourth Report, the matter was on appeal to the Supreme Court of Canada. On 30 January 2004, in the case of *Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)*, the Supreme Court upheld the legislation. According to the Court, limitations in the statutory and case law provided adequate procedural safeguards to protect the right to fundamental justice and the provision did not authorize the use of force likely to cause harm. The requirement that any force used must be reasonable also ensured that criminal liability would apply in appropriate cases. Further, provided that any force met the statutory reasonableness requirement, it could not be said that it amounted to cruel or unusual treatment or punishment. Finally, taking into account the need to provide a safe environment for children, the need for appropriate guidance and discipline, and the fact that, absent the justification, Canada's criminal law of assault would apply even to the most minor application of force, the justification did not offend the constitutional prohibition on discriminatory measures⁶. The Government of Canada continues to maintain its previously-stated policy in support of measures that advocate against the use of corporal punishment of children, but it also recognizes the need for limitations on the criminal law of assault insofar as it would otherwise apply in such cases. It also notes that, in addition to the application of the criminal law in cases of child-abuse, extensive child-welfare and child-protection legislation remains in effect at both the federal and provincial levels.

⁶ Full text of the judgment is available on-line at: <http://www.lexum.umontreal.ca/csc-scc/en/rec/index.html>.

Part II

Measures Adopted by the Governments of the Provinces

Newfoundland and Labrador

Article 2: Legislative, administrative, judicial or other measures

88. The policy directive governing internal inmate disciplinary tribunals within the Adult Custody Sector has been significantly revised with the incorporation of several additional protections available to adult offenders in custody:
- clarification of the specific types of disciplinary offences for which an inmate may be held accountable;
 - a categorization of offence seriousness and associated limitations on the extent of penalties which may be imposed;
 - a requirement for full disclosure except where such would compromise personal safety or institutional security;
 - strict limitations on the use of pre-hearing detention;
 - incorporation of additional safeguards and protections for the inmate during the disciplinary process; and
 - an appeal process.

Article 10: Education and training

89. A new, updated version of the Use of Force Policy and Procedures has been constructed, including the incorporation of sections dealing with legislative authority, guiding principles, the use of force continuum, the situation management conceptual model, post incident debriefing and the conduct of investigations. Additionally, selected personnel have received intensive training in the Use of Force and will be responsible for conducting training for all corrections personnel.

Article 11: Treatment of persons arrested, detained or imprisoned

90. As the result of a complaint made by an inmate that he had been confined in a restraint chair contrary to policy, an investigation was initiated that concluded that the governing policy needed to be revised to ensure a greater degree of transparency and accountability. The John Howard Society was invited to participate in the review, through which a new policy on the use of the restraint chair was formulated. The policy now limits the use of the device to very specific circumstances, requires advance authorization by a senior manager, requires ongoing audiovisual surveillance and obliges the Superintendent of Prisons to review the circumstances surrounding each occasion when the device is engaged.
91. In order to address possible over-representation of Aboriginal inmates in provincial correctional facilities, the provincial Department of Justice, both on its own and in conjunction with other relevant government departments and community organizations, has developed and implemented a number of measures that are intended to prevent

- violence and reduce recidivism by enhancing aboriginal participation in the major components of the justice system and by encouraging greater aboriginal and community control over the administration of justice.
92. In addition to ongoing efforts by policing and correctional services to recruit aboriginals and in addition to long-term initiatives designed to familiarize aboriginals with the operation of the criminal justice system such as the Native Court Worker Program, courts engaged in the sentencing process have followed the direction contained in section 718 of the *Criminal Code* to 'consider all available sanctions other than imprisonment' when imposing sentence upon aboriginal offenders. In this regard courts have increasingly relied upon the use of sentencing circles in aboriginal communities. The design of the new Supreme Court in Happy Valley-Goose Bay is to include space for sentencing circles to be held.
93. The Department of Justice, together with other government departments as well as representatives of non-governmental organizations, is also engaged in the exploration of alternatives to criminal process which will be of particular significance in aboriginal communities. For example, the Department, along with other government agencies and non-governmental organizations, is represented on a Steering Committee that is currently involved in the development of a community mediation program based in Happy Valley-Goose Bay to be directed at both offenders and victims in aboriginal communities. Since this program is in the developmental stages only, no evaluation has yet been conducted.
94. Aboriginal offenders who have been convicted of criminal offences are eligible to participate in treatment programs offered at a healing facility owned and operated by the Innu Nation. Programs offered at this facility include substance abuse, anger management and violence prevention. Both offenders serving sentence in the community as well as institutional inmates are eligible to apply for such programming. Since this facility has been in operation for only a year, no evaluations have been conducted to determine its success in reducing recidivism and over-representation.
95. During the past five years, pursuant to the National Community Crime Prevention Strategy, the Department has also partnered with Justice Canada to sponsor a number of time-limited community-based crime prevention initiatives in aboriginal communities. For example, the Department has supported the 'Hands are not for Hitting' program in Nain, which is an anti-violence program aimed at aboriginal children. The Department has also supported workshops focusing on the safety of aboriginal women. These and other analogous initiatives are targeted at violence in aboriginal communities with the ultimate goal of reducing violence generally and thus, in the long term, decreasing the number of aboriginals convicted of crimes involving violence.
96. The Department is also responsible for the delivery of policing services in aboriginal communities and has, until recently, funded two aboriginal community constables to provide assistance to the RCMP in the communities of Makkovik and Postville pursuant to a Community Policing Agreement, which was executed in 2000. This program has been reduced to include only Makkovik but the province has begun negotiations with the

Government of Canada and the five Inuit communities in coastal Labrador to conclude a First Nations Community Policing Agreement. This is a cost-shared policing program aimed at aboriginal communities, which is intended to produce a more culturally appropriate and responsive policing service in aboriginal communities. This agreement, when concluded, will be the only one of its kind in Canada applicable to Inuit and through savings realized under the agreement, the province hopes to reactivate the community policing agreement and reinstate aboriginal community constables in at least one of the Inuit communities. The province has also had discussions with the Innu communities about negotiating a First Nations Community Policing Agreement.

97. The Department is also involved in initiatives which are intended to transfer control over to the delivery of justice to aboriginal communities. The province currently partners with Justice Canada in the delivery of the Aboriginal Justice Strategy. Pursuant to the Strategy, the province supports the Miawpukek First Nation Justice Initiative, which promotes Mi'kmaq traditional justice initiatives that promote pre-charge diversion of Mi'kmaq and post-charge community involvement in sentencing. The ultimate goal of this program which is in its second year of operation is the implementation of a community-based holistic justice program which formalizes Mi'kmaq traditional justice practices. The program is in its developmental phase. During 2004-2005, the Mi'kmaq will undertake an informal self-evaluation, which will form part of a year-end activity report, and with government, will develop a longer-term evaluation strategy.
98. Between 2000-2004 there were 10 complaints of misconduct/assault made against correctional officers. In one case the correctional officers admitted the wrongdoing, in 6 cases full investigations were completed and the complaints were not substantiated, in 3 cases the records were checked and there was no evidence found to substantiate the complaints.

Prince Edward Island

99. The Government of Prince Edward Island (PEI) continues to be in compliance with the provisions of the *Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment*. The legislative and administrative measures outlined in PEI's previous report under this treaty remain in effect. No significant developments have occurred during the period of this report that would add to the information already provided to the Committee.

Nova Scotia

100. The Government of Nova Scotia continues to be in compliance with the provisions of the *Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment*.

Developments

101. During the period of this report, the Government of Nova Scotia has enacted the *Fatality Investigations Act*, S.N.S. 2001, c.31. This Act continues to require an investigation into the cause of death of any person detained in custody in a correctional institution or an inmate of a hospital by the Chief Medical Examiner who may in turn recommend a judicial inquiry, and so supports implementation of the Convention.
102. The legislative and administrative measures outlined in previous reports under this treaty remain in effect. No other significant developments have occurred during the period of this report that would add to the information already provided to the committee.

New Brunswick

103. The Province of New Brunswick fully supports the principles of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.

Article 11: Treatment of persons arrested, detained or imprisoned

104. No new measures have been implemented within New Brunswick's correctional system that would impact the rights guaranteed under the Convention. There have been no violations of the Convention standards through either the treatment or imprisonment of individuals.

Article 13: Allegations of torture or abuse by authorities

105. In 2000, the *Education Act* was amended to include a non-professional conduct section that requires mandatory reporting when non-professional conduct is suspected. This amendment further supports the Department of Education's *Policy for the Protection of Pupils in the Public School System from Non-Professional Conduct* (Pupil Protection Policy) that came into effect in 1996. This policy is intended to:

- Protect pupils from non-professional conduct by adults to which pupils may be exposed by virtue of being pupils, including physical, sexual, and emotional abuse and discrimination, and
- Eliminate non-professional conduct through prevention and effective intervention.

106. This policy protects all pupils who are registered in public schools in New Brunswick regardless of their age. This policy applies to all adults whose job or role on behalf of the public school system places them in contact with pupils. This includes all school personnel, contract and casual employees, as well as student teachers and volunteers.

107. Complaints and investigations of abuse by municipal law enforcement authorities are dealt through the New Brunswick Police Commission.

Québec

108. The Government of Québec has undertaken to comply with the provisions of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* by adopting Decree No. 912-87, on June 10, 1987, in compliance with its internal law.

Article 2: Legislative, administrative, judicial or other measures

109. In 2000, the National Assembly adopted the *Police Act* (R.S.Q., c. P-13.1) which *inter alia* replaces the *Act Respecting Police Organization*. This statute recommends an approach promoting police officers' responsibilities in the denunciation of derogatory conduct, whether they are breaches of the Code of Ethics, Internal Disciplinary Rules, or of the Criminal Code.

110. The main points to emphasize are:

- improvement of the professional training programs for the police personnel in patrolling, investigation and management;
- a better definition of the mission and powers of l'École nationale de police du Québec;
- the establishment of a training and research Commission within l'École nationale de police du Québec;
- a clarification of the role and powers of the special constables;
- a complaint process to the Police Ethics Commissioner better controlled and mindful of the citizens' individual rights;
- Police Ethics Commissioner's investigatory powers defined to give the Commissioner maximum flexibility whenever violations of fundamental rights are reported; and
- an external control of the extensive police activity.

111. In 2003, the National Assembly adopted another bill which aims to abolish imprisonment as the ultimate enforcement measure against convicted traffic and parking offenders. This new legislation, expected to come into force shortly, provides that a person shall not be deprived of his/her liberty solely for the reason that he/she failed to pay his/her fines.

Article 4: Criminalization of torture

112. The *Criminal Code* (s. 269.1) prohibits torture of a citizen by a public official. In R.C. Rainville, J.E. 2001-1816, Court of Quebec, 200-01-048761, the accused, a member of the military, without the knowledge of the Canadian Armed Forces, conducted a simulation of a terrorist operation at the Citadel of Québec, a site occupied by members of the military and where firearms are warehoused. As the members of the military had not been advised of the exercise, they believed they were being attacked by terrorists. The accused was found guilty and sentenced to 20 months of prison to be served in

society, with a 2 year probation principally implying the obligation to carry out 160 hours of community service and to pay a sum of \$4,000.00 for the benefit of a Québec's Crime Victims' Assistance Centre (Centre d'aide aux victimes d'actes criminels), as well as a prohibition to possess firearms, explosives or explosive substance for a period of ten years.

Article 10: Education and training

113. Correctional services in Québec continue to offer training sessions to their personnel. Respect for rights and freedoms are taught as part of this training. Ongoing monitoring of physical intervention procedures is also conducted.
114. Implementation of the *Act Respecting the Protection of Persons whose Mental State Presents a Danger to Themselves or to Others*, enacted in 1997, necessitated the training of several health and social services advocates, the establishment of crisis services and the linking of police services and crisis intervention support services.

Article 11: Treatment of persons arrested, detained or imprisoned

115. In 2002, Québec's National Assembly adopted the *Québec's Corrections and Conditional Release Act*. This Act, for which no date of entry has been made yet, clearly reaffirms that the reintegration objective must remain the first principle of our Correctional System.
116. Since November 2002, the Correctional Services of Québec have been co-operating in the implementation of appearance procedures by telephone, on weekends and on public holidays. The aim of these procedures is to make sure that persons who are arrested appear before a Justice of the Peace, who rules on their release or their committal to custody, prior to the trial, and this as quickly as possible following arrest. In this manner, a person who is committed to custody following arrest is not detained at the police's discretion but in accordance with the ruling of a judge.
117. Certain additions have been made in the *Manual of police practices*, regarding the implementation of new practices.
 - The police practice described in the manual provides working guidelines for police officers regarding offences committed by youths that lead to extra judicial measures, methods of ensuring the fundamental rights, types of sentencing measures and links existing with alternative judicial organisations in Québec. These new practices guarantee appropriate treatment to adolescents while taking into account possible extra judicial measures better adapted to youth development;
 - the exercise of the power of arrest and detention has been better defined;
 - the practice regarding the recording of audiovisual examinations and interviews was modified in June 2000; and
 - procedure to follow in order to take samples and analyze a person's DNA was developed in September 2002.

118. During the reporting period, Correctional Services updated their procedures for dealing with incarcerated persons with disciplinary problems.
119. The number of individuals admitted to detention facilities is dropping steadily. In 2000-2001, 43,911 individuals entered prison. This number slightly increased to 44,697 in 2001-2002, and fell back to 43,080 in 2002-2003. Preliminary figures for 2003-2004 suggest that this decline in admissions is continuing, because only 40,492 individuals have entered prison up to now.

Article 13: Allegations of torture or abuse by authorities, and Article 14: Redress, compensation and compensation

120. There are several types of recourse available to citizens who feel their rights have not been respected or who have been treated incorrectly. With respect to police work, all citizens can file a complaint with the Police Ethics Commissioner. The procedure followed in such cases is set out in paragraphs 87-90 of Canada's Second Report. The office of the Ethics Commissioner received 1,426 complaints in 2003-2004 (April 1, 2003 to March 20, 2004). When a complaint is received, the Commissioner ensures that the complaint admissibility conditions have been met, namely: the one-year time limit set out by law within which a complaint must be made; that the allegations pertain to a member of a police service or a special constable; that this person was on duty at the time of the alleged incidents and that the alleged conduct contravenes Québec's Police Code of Ethics. As a result, the Commissioner refused to investigate 697 complaints (52.9%), tried conciliation between the parties in 465 cases (35.3%) and decided to investigate 121 cases (9.2%). After these investigations, the Commissioner decided to commit police officers to appear before the Police Ethics Board with regard to 29 cases.

Article 16: Prevention of other acts of cruel, inhuman or degrading treatment or punishment

121. Ministerial orientations and a plan of action were published in December 2002 on the exceptional use of control measures within health facilities, including restraint measures, isolation, and the use of chemical substances. Certification standards were established in June 2003 for restraint equipment and the furnishing of isolation rooms.
122. Operating procedures for facilities that include child occupants must be approved by the managing board of the facility and posted. These procedures must be explained and a copy given to the child and a copy forwarded to the regional and national regulatory authorities. In order to meet these legal requirements, each facility housing children in trouble must adopt a policy regarding the operational procedures and the use of disciplinary measures. These policies must recognize the child's right to contest the measures used by means of an internal appeal mechanism and, outside the facility, by an appeal to the Commission des droits de la personne et des droits de la jeunesse.
123. In order to ensure a greater consistency in the application of other control and protection measures, the Association des centres jeunesse du Québec, which brings together

facilities housing children, established overall policies that guide the adoption of policies within each facility concerning:

- establishment of an intensive mentoring program;
- use of search and seizure procedures;
- recourse to restraining of youth; and
- use of isolation of youth.

124. The use of the measures prescribed by these different policies is subject to monitoring by the managing board of each facility.
125. Case law in Québec at times qualifies certain police actions as degrading treatment and further reveals cases of abusive use of force. These cases are most often examined by the Police Ethics Committee or by the Court of Québec to which the Committee decisions may be appealed. During the period covered, in *Lapointe v. Monty*, D.T.E. 2004T-324, two police officers were convicted under the Code of Ethics of Québec Police Officers for having failed to decontaminate a troubled woman, whom they had arrested by using Cayenne pepper, but they decontaminated themselves.

Ontario

General information

126. In November 2000, the Ontario Human Rights Commission updated its *Policy on Female Genital Mutilation*. This revision was partly in response to the federal government's amendment to the *Criminal Code* in May 1997 that included as aggravated assault the performance of female genital mutilation. The Commission's policy continues to recognize female genital mutilation as a violation of the rights of girls and women to physical integrity. The policy views the practice as a health hazard and a form of violence against women and girls. The Commission continues to accept, investigate and make a determination on any complaints involving female genital mutilation filed by victims of the practice or their legal guardian.

Article 2: Legislative, administrative, judicial or other measures

127. The Ministry of Community Safety and Correctional Services released recently a revised and updated Use of Force Guideline, accompanied by a Use of Force Model, intended to guide police in assessing and responding to various situations. These documents provide a balance between two considerations: the judicious and proportionate use of force in a given situation; and officer safety as an important link to, or prerequisite for, public safety. In addition, while the Policing Standards Manual contains 58 guidelines in support of the Adequacy Standards Regulation, there are another 17 guidelines (four of which have been released in early 2004), which were promulgated to facilitate police compliance with other legislative initiatives.
128. With respect to correctional services, current policy and procedures are in place to ensure the rights of youth are not violated. The Office of Child and Family Service Advocacy of Ontario and the Provincial Office of the Ombudsman are permitted access to the facilities where youth are held, as well as to any record related to a young person in the course of conducting an investigation. Youth under community supervision, or in a custodial setting, or their family members, also have the right to initiate contact with these agencies. The Ministry of Children and Youth Services monitors compliance in provincial youth centres, and relevant directives, policies, procedures, training and standards prohibit and reinforce guidelines around the treatment of persons in custody in provincial youth centres.
129. With respect to adult offenders, current policies and procedures are in place to ensure that adults' rights are not violated. The Ministry of Community Safety and Correctional Services monitors compliance in adult institutions. Relevant directives, policies, procedures, training and standards prohibit abuse and reinforce guidelines around the treatment of persons in custody in adult institutions. There is an ongoing review of the offender misconduct process to ensure that penalties that remove the offenders' earned remission are fair and follow appropriate procedures.

130. In addition, the Independent Investigations Unit, which reports directly to the Deputy Minister, investigates allegations of sexual impropriety.

Article 10: Education and training

131. All those working with youth in open and secure youth custody facilities and in communities in Ontario receive training in a variety of areas including education and information related to the prohibition against mistreatment of youth. Areas of training are outlined in the Young Person Operational Policy and Procedures Manual and the Youth Justice Service Manual issued by the Ministry of Community Safety and Correctional Services. Training is provided to update correctional staff on new protocols, policies and procedures and the effective use of non-physical intervention.
132. During 2002 and 2003, the Ontario Provincial Police (OPP) promoted supervisory awareness of critically important policies throughout the organization. As part of this initiative, critical policy awareness presentations were made to law enforcement supervisory staff in respect to prisoner care and control, and prisoner transportation. This was undertaken to ensure fair and humane treatment of all prisoners in OPP care and custody.

Article 11: Treatment of persons arrested, detained or imprisoned

133. The Ministry of Community Safety and Correctional Services has policies and procedures in place for staff to follow for open and secure custody facilities where youth may be detained or imprisoned, as these specifically relate to the treatment of young persons in custody. Youth also have rights and responsibilities and protection under various statutes. In addition, a Rights and Responsibilities Booklet is available to young persons, whether they are on community supervision or in a custody setting, that helps them understand their rights and responsibilities under the *Youth Criminal Justice Act* as it pertains to the youth criminal justice system. Training for new correctional services staff includes an introduction and overview on the rights of the child as expressed in the *UN Convention on the Rights of the Child*.
134. Current policies and procedures are in place to ensure that adults' rights are not violated. The Ministry monitors compliance in adult institutions. Relevant directives, policies, procedures, training and standards prohibit and reinforce guidelines around the treatment of persons in custody in adult institutions.
135. Within Ontario's correctional system, the courts determine offenders to be placed under community supervision (i.e. probation or conditional sentence) and what conditions they must abide by. The Ontario Parole and Earned Release Board has the legislative authority to determine who is eligible for parole and temporary absences from a correctional facility for over 72 hours and what conditions the offenders must abide by. It is the mandate of Probation and Parole Services to ensure that the offenders placed under community supervision are assessed at intake for risk/needs and supervised in

accordance with their level of risk under the Ministry's Service Delivery Model. If offenders believe they cannot comply with their conditions or that they are not being treated fairly, they have recourse to the courts, the Board, or the area manager of the supervising probation office for variation of their order. They may also contact the Office of the Ombudsman of Ontario or the Ontario Human Rights Commission to investigate their concerns.

136. In addition, offenders who are charged with internal misconduct have the right to appeal any sentence that impacts on their legislated earned remission.
137. In November 2002 the Ministry of Community Safety and Correctional Services developed and implemented an Aboriginal Services Strategy and Implementation Plan for Adult Institutional Services and Community and Young Offenders streams. This strategy and implementation plan utilizes culturally appropriate approaches combined with effective programs for offenders. It outlines objectives to reduce the over-representation of Aboriginal people in the correctional system. Native Inmate Liaison Officer Services have been made available in two youth facilities to provide culturally appropriate programming. In addition, Aboriginal inmates have the right to practice their chosen spirituality. Staff in Adult Institutional Services as well as Community and Youth streams have been provided with cultural awareness training regarding Aboriginal offenders.

Article 13: Allegations of torture or abuse by authorities

138. The Fourth Report provides information on procedures for lodging complaints against authorities.
139. On November 12, 2003, the Ontario Attorney General announced the appointment of Justice Sidney Linden to lead an independent, public inquiry into the events surrounding the death of Dudley George, who was shot by a member of the Ontario Provincial Police during a protest at Ipperwash Provincial Park. In conducting the inquiry Justice Linden has a broad mandate to:
- inquire into and report on events surrounding the death of Dudley George; and
 - make recommendations directed to the avoidance of violence in similar circumstances.

Article 16: Prevention of other acts of cruel, inhuman or degrading treatment or punishment

Long-Term Care System

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

term care sector and to recommend practical actions to strengthen long-term care services.

141. The Ministry took immediate actions to raise care standards and protection for long-term care residents. As of January 1, 2004, all annual inspections of long-term care facilities are unannounced so that the Ministry can identify and act on incidents of substandard care, neglect or abuse more effectively. Complaint investigations are already unannounced.
142. The Ministry also created a toll-free number so that long-term care residents and their families have one easy access point to seek information or lodge complaints about a long-term care facility.
143. Ministry officials are taking a number of additional medium and long-term steps to continually improve the safety and quality of long-term care services. These efforts focus on four main areas:
 - better protection for residents, improved ministry inspection and enforcement,
 - improved accountability and performance management,
 - better public reporting and greater transparency, and
 - long-term strategies to improve the facility system's capacity to deliver high quality care.

Patient Restraints Minimization Act

144. On June 27, 2001 the government passed the *Patient Restraints Minimization Act*. The Act received Royal Assent on June 29, 2001.
145. The intent of the Act is to minimize the use of restraints and to encourage hospitals and other health care facilities to use alternative methods to prevent serious bodily harm by a patient to himself or others. Under the Act, a hospital or prescribed facility may not physically, mechanically or chemically restrain a patient, or confine a patient, or use a monitoring device on a patient unless it is necessary to prevent serious bodily harm to him or to another person. The use of restraints must meet other criteria prescribed by regulation, and be ordered by a physician or a person specified by regulation. The Act requires hospitals and other prescribed facilities to establish and follow policies, as prescribed in regulation, regarding restraints.

Regulations on the Use of Physical Restraints

146. In response to concerns raised over the use of physical restraints in residential settings in both the children's sector and the developmental services sector for adults, a Six-Point Action Plan was issued in September 2001. The Six-Point Action Plan is aimed at enhancing the safety and security of vulnerable children and adults who are in residential care and includes:

- a prohibition on the use of physical restraints, except in cases where the safety of individuals, staff or others is clearly at risk;
 - clear and enforceable regulations on the use of physical restraints;
 - revised licensing, compliance tools, service contracts and staff training requirements;
 - an implementation guide;
 - funding to train staff in residential programs; and
 - stricter reporting requirements and sanctions for non-compliance.
147. The Six-Point Action Plan was fully implemented on April 1, 2003. On this date, provincial regulations on the use of physical restraints came into effect for residences licensed as children's residences under the *Child and Family Services Act (CFSA)* and residences funded under the *Developmental Services Act (DSA)* that provide group living supports to adults with developmental disabilities.
148. The amendments made to the *CFSA* in March 2000 have resulted in increased identification of children at risk of physical, emotional and sexual abuse and neglect. It has also led to more interventions to protect children.

Day Nurseries Act

149. Under Ontario's *Day Nurseries Act*, every licensed operator of a childcare centre or private-home day care agency must have written policies and procedures with respect to discipline, punishment and any isolation measures. No operator may permit corporal punishment of a child, deliberate harsh or degrading measures that would humiliate a child or undermine a child's self respect, or deprivation of a child of basic needs including food, shelter, clothing or bedding.

Revocation of Zero Tolerance Policy for Welfare Fraud

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

Manitoba

Article 2: Legislative, administrative, judicial and other measures

151. There are no new legislative measures to report.
152. The *Correctional Services Act* and its Regulations (1999) generated a re-draft of existing policies as well as development of new policies from 2000 to the present. While they are not explicit to torture, they support an environment that would deter such practices. In this manner the policies give life to the Convention. The “custodial” policies, with few exceptions, are applicable to both youth and adult offenders.
153. The Extending Delivery of Medications to Offenders policy, approved January 2001, is intended to ensure that when nurses are not available to the offender to receive prescribed medications, prescribed medication can be available on the continuing schedule by other trained staff delivering it in “blister packs”. This maintains the optimum dose schedule, relieves offender anxiety, and maximizes the beneficial treatment objectives.
154. Manitoba previously reported on the enactment of *The Protection for Persons in Care Act*, which imposes a duty on health facilities to protect patients from abuse and to maintain a reasonable level of safety for them. (Persons who have been found to be ‘not criminally responsible’ for the commission of an offence due to mental disorder, and who are subsequently detained in a hospital, are covered by this legislation). The Act imposes a duty to report, and to receive reports of, abuse. Abuse means “mistreatment, whether physical, sexual, mental, emotional, financial or a combination of any of them, that is reasonably likely to cause death or that causes or is reasonably likely to cause serious physical or psychological harm to a person, or significant loss to that person’s property”. The Act provides a mechanism for complaint, and the investigation of such complaints, mandates compliance with subsequent ministerial orders, etc.

Article 10: Education and training

155. The general approach within the staff-training unit (Corrections) is to maintain a respective workplace and adhere to the policy on Standards of Professional Conduct. The trainers are role models, and course content is prefaced by the purpose and principles of *The Correctional Services Act*, that is, “... policies programs and practices should take into account the age, cultural differences and abilities of offenders...”. Newly trained recruits for adult and young person facilities seeking to earn a full time position, as well as established staff members who want to advance, require the achievement of established competencies. In summary, all training activity reflects the concept of treating others with respect and to embrace diversity.
156. The Protection for Persons in Care Office (PPCO) provides ongoing education and training to help facilities and regional health authorities with respect to policies and

procedures required to comply with *The Protection for Persons in Care Act*. Since the PPCO commenced operations in May 2001, some 1,500 people have received relevant education and training.

Article 11: Treatment of persons arrested, detained, or imprisoned

157. While the objective is to prevent acts of torture and its other related elements within the process of detention and imprisonment, both the adult and youth correctional approach is to develop and enforce appropriate pro-active requirements backed by policy and procedures.
158. An extremely important opportunity for youth and adult offenders is to have visitors. While the legislation sets the parameters, safe and secure visits are in place at all facilities for both remand and sentenced offenders. Applications, screening, non-intrusive searches, regular visiting hours and non-contact alternatives combine to provide a safe, productive and valued experience. This is supported by the policy on Offender Visits, approved May 2002. In addition the policy on Visits by Spiritual Caregivers was approved February 2003 and further supports this activity.
159. All facilities have health care staff (including a community physician) on contract to provide care to the community standard to all offenders. More recently, facilities have retained mental health nurses and psychiatric referral to intervene with mental illness issues and suicidal behaviour.

Article 13: Allegations of torture or abuse by authorities

160. Inmate complaints are dealt with under *The Correctional Services Act*. An adult offender or youth resident may complain to the facility head, "about any condition or situation in the facility that affects the inmate" and be dealt with in accordance with the Regulations. In addition, an inmate may appeal from any prescribed decision affecting the inmate that was made by the facility head, divisional head or their delegate. Other elements regarding complaints include dealing with issues as soon as possible, taking all necessary steps and advising the inmate of the action taken on an appeal.
161. All complaints and major incidents are logged, investigated and rectified, whenever possible. The legislation and the policy on Correctional Investigations, approved March 2002, and Reporting Major Incidents, approved April 2003, require staff to cooperate in any investigation.
162. The Ombudsman's Office receives all policies of youth and adult correctional facilities at the same time as these are made available to staff. This ensures that the information is current and accessible when responding to a complaint. Cooperation with the Ombudsman's Office results in timely interventions.
163. The Ombudsman has a wide jurisdiction to investigate allegations of mistreatment by prisoners, and is active in that regard. For instance, the 2002 Annual Report of the

Ombudsman indicates 7 files opened during that reporting year involving Adult Corrections, and one file involving Youth Corrections. The Annual Report, at pp 32-37, illustrates the wide range of complaints investigated, as well as the positive changes which often occur as an outcome of an investigation (<http://www.ombudsman.mb.ca/pdf/Ombudsman%202002%20Annual%20Report.pdf>).

164. A wide range of allegations of mistreatment with respect to law enforcement authorities continue to be dealt with under the procedures set up pursuant to *The Law Enforcement Review Act*: see <http://www.gov.mb.ca/justice/lera>.

Article 16: Prevention of other acts of cruel, inhuman or degrading treatment or punishment

165. Significant safeguards have been adopted within Manitoba Corrections, involving established policy that act to mitigate the effects of “use of force” faced by offenders who are engaging in out of control disturbances, or are otherwise temporarily a danger to self or others.
166. The use of pepper spray, restraint chair, immobilizers and cuff and leg restraints are controlled by specific authorization. Incident response training, using the “continuum of force” is covered under corresponding policy. Decontamination is mandatory, medical care is available and documentation and reporting events are required.
167. The segregation of inmates gives rise to issues about the conditions of such confinement. In October 2002, a policy was approved to deal with the matter of “Preventive Segregation”. It provides for conditions of confinement and includes most of the privileges enjoyed by the overall population, as well as weekly scheduled nurse visits and a designated staff person visiting daily, and observation every 30 minutes.
168. An infrequent but critical situation is when an inmate goes on a hunger strike. Policy approved in February 2003 provides for tracking of fluids and food with health care staff and a physician managing the handling of ongoing care requirements up to admission to hospital.
169. Another of many health-related policies is the Methadone Maintenance Program policy (adult only) approved December 2002, when an addict is incarcerated, having been currently involved in a community methadone program.
170. The Communicable Disease Control policy was approved in July 2002. It has been recently amended in response to extending application. The health issue is managed by health professionals in the custodial facility in partnership with the community resources. Confidentiality under the *Personal Health Information Act* (PHIA) is pledged by all staff with the related policy on PHIA approved in May 2003. These policies combine to balance the related privacy rights of offenders against the “right to know” by applicable staff.

171. The emergence of gang members from the community has resulted in restricted custodial environments and other appropriate separation from non-gang offenders and from rival gang members. Gang culture includes initiation rituals that are often acts of torture from which other offenders are protected and insulated from recruitment, as much as possible. The facilities that hold significant numbers of gang members rely on “information” and have preventive security officers.

Saskatchewan

Article 11: Treatment of persons arrested, detained or imprisoned

172. Saskatchewan Justice established a committee of officials to implement the jury recommendations arising from the Coroner's Inquests into the deaths of the Aboriginal men, referred to in Canada's Fourth Report. The committee included representatives from the federal and provincial governments as well as representatives from the Aboriginal community. Most of the recommendations from the Inquests have been implemented, and others are underway. The committee is working on a final report that will outline its activities respecting implementation of the recommendations.
173. The Saskatchewan Police Commission, in its role of promoting adequate and effective policing, participated in a subcommittee of the Jury Recommendation Implementation Committee. The Committee undertook a full review of all aspects of police policy regarding the arrest, detention and holding of prisoners. The RCMP actively participated and, as a result, police policy was strengthened and aligned provincially.
174. The Department of Corrections and Public Safety (CPS) was formed April 1, 2002, bringing Adult Corrections, Young Offenders, Licensing and Inspections, and Protection and Emergency Services under one umbrella.
175. In Adult Corrections, CPS provided supervision on an average daily basis to 1,213 offenders in custody programs in 2002-03, and 1,205 in 2003-04, and to 5,617 in community correctional programs in 2002-03 and 6,095 in 2003-04.
176. With respect to Youth Corrections, CPS provided supervision to an average of 335 in youth custody programs in 2002-03, and 260 in 2003-04, and to an average of 2,438 young offenders in the community in 2002-03, and 1,964 in 2003-04.
177. The *Youth Justice Administration Act* was passed in 2003 to implement the federal *Youth Criminal Justice Act*, which introduced a new policy direction for youth justice, emphasizing risk management and integrated case management, including support for victims, families, communities and offenders, using multidisciplinary approaches.
178. One of the goals of the CPS Strategic Plan is to reduce reoffending behaviour through effective programming. Objectives under that goal are related to addressing cultural and spiritual needs of Aboriginal clients, and the effective use of diversion, alternatives to custody and offender reintegration into the community.
179. All eight youth custody facilities have staff assigned, either full time or part time, to work in partnership with local First Nations and Elders to develop, coordinate and deliver appropriate cultural programs for youth. The Department has established an ongoing forum with the Federation of Saskatchewan Indian Nations to address joint concerns and

partnerships have been developed with Aboriginal organizations to provide alternative measures and day program services and cultural camps for young offenders. In adult correctional centres, Elders provide cultural, spiritual and personal counselling services. Pipe ceremonies, smudging ceremonies, drum practice, sweat lodges, pow-wows, round dances, and feasts are regularly facilitated. Specific programs such as the Balanced Lifestyle program, the Prince Albert Grand Council Spiritual Healing Lodge and the Meyoyawin Circle Project allow Aboriginal offenders to address their needs in the context of their cultural and spiritual beliefs.

180. In addition to providing cultural and spiritual programming, and partnering with Aboriginal organizations in the delivery of programs, CPS emphasizes case management planning, building stronger links with community programs and services and working with other government departments and levels of government to better integrate services for Aboriginal people.
181. The Commission on First Nations and Métis Peoples and Justice Reform (referred to in Canada's Fourth Report) released its final report on June 21, 2004, after having released three interim reports. The final report emphasized the need for a community-based approach in which communities provide justice services as much as possible, and in which restorative approaches and alternatives to court and incarceration are used at every opportunity. Its recommendations fall under the following themes:
- *Improving the way the justice system operates for First Nations and Métis communities* – This involves improving the relationship between the justice system and Aboriginal peoples as well as improving the effectiveness of justice services.
 - *Closing major gaps in the operations of the justice system, as well as in the structure of many First Nations and Métis communities* – This involves specific justice reforms and initiatives to foster the development of Aboriginal leadership, promote integration, and address jurisdictional debates that affect the ability of communities to address offending and victimization.
 - *Looking beyond the justice system* – This involves reducing reliance on the justice system to solve social problems, and addressing the root causes of crime.
182. The Commission's recommendations cover a wide range of topics, from developing crime prevention initiatives to fostering youth leadership.
183. In terms of policing, the Commission recommended that the Saskatchewan Police Commission establish a broad strategy to address racism within police services. This strategy would include screening potential police officers to ensure that candidates with racist views are not hired, a remedial training program for officers who exhibit racist views, and a strategy to hire more Aboriginal police officers. The Commission also endorsed a community policing approach and recommended the development of a new process for handling complaints against the police. Moreover, to ensure that charges are used only when community-based options are not appropriate, the Commission

recommended that police services be required to prepare reports justifying decisions in which matters are not diverted, and that a provincial pre-charge screening program be developed in which Crown prosecutors would consider whether a matter could be referred to a community-based justice initiative as an alternative to court.

184. The Commission also made a number of recommendations regarding corrections. For example, the Commission recommended that there be greater availability of cultural and spiritual programming for incarcerated offenders, and that community-based programs be funded to aid offenders from the transition between prison and their release into the community. It also made recommendations regarding the provision of programming for female inmates and the establishment of a program to address the effect of parental incarceration on children. Additionally, the Commission called for the closure of two wings in the Regina Correctional Centre that are in need of repair, and recommended that all levels of government fully resource the implementation of the *Youth Criminal Justice Act*, particularly in terms of provisions that address community supervision for young offenders.
185. The Government of Saskatchewan has endorsed the themes in the Commission's reports. A number of the Human Services departments have new initiatives in 2004-05 that respond to the recommendations of the Commission. Further, in a process led by Saskatchewan Justice and Saskatchewan Corrections and Public Safety, thirteen provincial government departments will develop a detailed provincial response to the recommendations. This response, which will be completed by January 2005, will be implemented over the next few years in a coordinated way across government. For example, each of the thirteen departments will develop new actions that are consistent with the provincial government response in their fiscal and strategic plans for 2005/06. This process will ensure that government has time to fully assess the scope of the Commission's recommendations and proceed in an integrated manner.
186. As part of its terms of reference, the Commission was asked to make recommendations about an implementation structure to oversee the implementation of its recommendations once its term ends. Discussions are occurring among the Government of Canada, the Government of Saskatchewan, the Federation of Saskatchewan Indian Nations (FSIN) and the Métis Nation-Saskatchewan (MNS) about how to support an implementation structure, and the form that the implementation structure should take.

Article 12: Impartial and immediate investigation

187. The appeal of the conviction and sentence by the two police officers charged with the unlawful confinement of Darrel Night (referred to in Canada's Fourth Report) was dismissed March 13, 2003.
188. Canada's Fourth Report referred to an investigation into the death of Neil Stonechild. A public inquiry into the death of Neil Stonechild was established February 20, 2003. The Commission of Inquiry held approximately ten weeks of hearings, beginning September 2003 and concluding May 19, 2004. The Commissioner's final report is expected in the fall of 2004.

Article 13: Allegations of torture or abuse by authorities

189. Saskatchewan Justice is working with the police, the FSIN and MNS to revise the public complaints process so that it will enjoy the trust and respect of Aboriginal leaders and complainants. The process will involve an independent review of all public complaints against the police and will include participation from the Aboriginal community through a review panel. Saskatchewan Justice is also examining ways in which the federal RCMP complaints process can be aligned with the provincial process.

Number of complaints against municipal police officers processed by the office of the Saskatchewan Police Complaints Investigator:	
April 1, 2000 - March 31, 2001	154
April 1, 2001 - March 31, 2002	134
April 1, 2002 - March 31, 2003	130
April 1, 2003 - March 31, 2004	148

Findings:				
	2000-01	2001-02	2002-03	2003-04
Substantiated (supported by evidence)	18	9	12	16
Unsubstantiated (cannot be proved or disproved)	15	4	6	12
Unfounded (unsupported by evidence)	57	53	41	67
Withdrawn/Other	32	29	15	27
Not Yet Completed	46	40	63	53
Total*	168	135	137	175

*Some of the complaints filed included multiple complaints and findings.

Classification of Substantiated and Unsubstantiated Complaints*:		
2001-2002	Substantiated	Unsubstantiated
Discreditable Conduct	3	
Neglect of Duty	1	
Improper Disclosure of Information		1
Abuse of Authority	5	2
Other Offences		1
2002-2003		
Discreditable Conduct	1	
Insubordination	1	
Neglect of Duty	6	1
Abuse of Authority	4	4
Criminal Conduct		1
Other Offences		
2003-2004		
Discreditable Conduct	2	1
Neglect of Duty	6	1
Abuse of Authority	6	10
Criminal Conduct	2	

*The 2000-2001 Annual Report of the Saskatchewan Police Complaints Investigator does not classify the substantiated and unsubstantiated complaints; it classifies only total complaints, including unfounded and withdrawn complaints.

Article 14: Redress, compensation and rehabilitation

190. Saskatchewan has a Victims Compensation Program, the purpose of which is to provide compensation to a person who has suffered physical, mental, emotional or economic harm by reason of an act that is in violation of one of the criminal offences described in the Regulations. These are personal violent crimes, including assaults.
191. While compensation may not help with all of the concerns of victims of crime, it is one way to acknowledge the effect of the crime and help pay for some of the associated costs. Types of expenses covered by the program are loss of earnings, most medical expenses authorized by a physician, dental expenses, counselling, funeral expenses and travel costs. If the costs are covered by other sources, then compensation would not be payable. Saskatchewan does not provide payments of compensation for pain and suffering.

Alberta

192. The Government of Alberta continues to be in compliance with the provisions of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. The legislative and administrative measures outlined in previous reports under this treaty remain in effect. No significant developments have occurred during the period of this report that would add to the information already provided to the committee. However, it can be noted, further to paragraph 366 of the Fourth Report that the Correctional Services Division, formerly part of Alberta Justice, became part of the new Ministry of Solicitor General that was created in 2001.

British Columbia

Article 11: Treatment of persons arrested, detained or imprisoned

193. With regard to patients in psychiatric facilities, the following reflects changes to the *Mental Health Act* made in 1999. Patients involuntarily placed in psychiatric facilities must be notified of their patient rights both orally and in writing. If the patient is incapable of understanding their notice of rights upon admission, the rights must be repeated when the patient is able to understand the information. Patients can nominate a relative or friend to whom notices regarding admissions, renewals, review panel hearings and discharges are sent. Patients, or persons on their behalf, may request a physician of their choice to provide a second medical opinion on the appropriateness of treatment.

Article 13: Allegation of torture or abuse by authorities

Office of the Police Complaint Commissioner

194. On March 11th, 2004, an Order in Council was passed, amending s.50(3)(f) of Part 9 of the Police Act. As of March 11th, 2004, the Police Complaint Commissioner may make a recommendation to the Solicitor General (rather than the Attorney General) that a matter proceed to public inquiry.
195. On December 3rd, 2002, a Memorandum of Understanding was agreed upon, whereby complaints regarding sworn municipal officers seconded to the Organized Crime Agency of British Columbia fall within the mandate of the Office of the Police Complaint Commissioner.
196. As of December 1st, 1999, the Stl'atl'imx Tribal Police became a self-administered police service in British Columbia. As a result, their officers are municipal constables subject to the provisions of Part 9 (Complaint procedure) of the *Police Act* and fall under the mandate of the Office of the Police Complaint Commissioner.
197. As a result of a recent British Columbia Court of Appeal decision, the protocol for selecting an adjudicator for public hearings has been modified. Adjudicators, who are retired judges or justices, are now selected by the Associate Chief Justice of the Supreme Court and then appointed by the Police Complaint Commissioner, thereby eliminating any possibility of bias.
198. Between January 2000 and December of 2003, the Police Complaint Commissioner ordered eight public hearings. Six have been completed and two are scheduled for hearing later in 2004.
199. The Office of the Police Complaint Commissioner has opened an office in Victoria, in addition to the Vancouver office, thereby increasing public awareness and accessibility.

200. The Police Complaint Commissioner ordered an investigation into complaints of abuse by the police received from residents of the Vancouver Downtown Eastside. The results of this investigation are expected later in 2004.
201. The Police Complaint Commissioner concluded a lengthy review of the internal investigation into the police conduct at a December 1998 public demonstration at the Hyatt Hotel in Vancouver, British Columbia. The findings released at the conclusion of the review in May 2004, indicated the Commissioner was completely satisfied with the quality and extent of the internal investigation and that a public hearing into this matter is not necessary. Further, the Commissioner found that the investigation report established to his satisfaction that the force used in this particular situation was neither unnecessary nor excessive.
202. Complaints monitored by the Office of the Police Complaint Commissioner since 1998:

COMPLAINTS RECEIVED					
<i>Year</i>	<i>Total</i>	<i>Public Trust</i>	<i>Internal Discipline</i>	<i>Service or Policy</i>	<i>Other</i>
2000	398	299	12	19	68
2001	356	306	8	15	27
2002	407	329	16	6	56
2003	456	393	11	9	43

“**Public Trust**” complaints affect the relationship between a police officer and the community and allege specific misconduct on the part of the police officer.

“**Service or Policy**” complaints are complaints regarding the policies, procedures and services provided by a municipal police department and affect the relationship between the police department and the community.

“**Internal Discipline**” complaints concern police misconduct that is of concern to the officer as employee, but does not affect the officer’s relationship with the public.

“**Other**” refers to complaints that may be a combination of Public Trust, Service or Policy and Internal Discipline, or are complaints that have yet to be characterized.

CONCLUDED COMPLAINTS									
<i>Year</i>	<i>Total</i>	<i>A/W</i>	<i>R&C</i>	<i>IR</i>	<i>SD</i>	<i>NS</i>	<i>Substantiated</i>		<i>Other</i>
							<i>Corr/Disc</i>	<i>No Corr/Disc</i>	
2000	439	26	42	64	145	77	46	8	31
2001	355	18	22	51	132	75	42	6	9
2002	378	33	22	25	139	111	21	16	11
2003	366	32	6	27	129	126	38	1	7

AW	Abandoned/Withdrawn	Sub Corr/Disc	Substantiated, corrective or disciplinary measures imposed
R&C	Reviewed & Closed (Service & Policy complaints)	Sub No Corr/Disc	Substantiated, no corrective or disciplinary measures warranted
IR	Informal Resolution	Other	No jurisdiction; or officers resigned/retired
SD	Summarily Dismissed		
NS	Not Substantiated		

Office of the Ombudsman

203. Further to the report in paragraph 401 of Canada's Fourth Report, which provided the complaint procedure available to inmates held in provincial correctional centres, the following should be added:

- Where an inmate provides reasons suggesting this procedure cannot provide an appropriate and timely review, the Office of the Ombudsman will investigate a complaint without requiring prior use of this procedure.

204. While information on the role of the provincial Ombudsman is included in the Fourth Report, the following provides a current description of the scope that this office has for reviewing complaints from inmates:

- The Ombudsman, an Officer of the Provincial Legislature established by enactment, will investigate complaints for which no appropriate avenue of review exists or remains, including complaints by inmates and by young offenders. The complaints may relate to actions, decisions, omissions and procedures within the custodial setting, or in other government authorities with which the complaint deals. The Ombudsman has established protocol for confidential written communication between his office and inmates, exempt from usual procedures to censor mail. The Ombudsman provides a free telephone line and number, for the use only of persons held in custody.

Part III

Measures Adopted by the Governments of the Territories

Nunavut

205. The Government of Nunavut continues to be in compliance with the provisions of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. The legislative and administrative measures outlined in previous report under this treaty remain in effect. No significant developments have occurred during the period of this report that would add to the information already provided to the committee.

Northwest Territories

206. The Government of Northwest Territories continues to be in compliance with the provisions of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. The legislative and administrative measures outlined in previous report under this treaty remain in effect. No significant developments have occurred during the period of this report that would add to the information already provided to the committee.

Yukon

Article 13: Allegation of torture or abuse by authorities

207. The Government of Yukon continues to be in compliance with the provisions of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. The legislative and administrative measures outlined in previous reports under this treaty remain in effect. No significant developments have occurred during the period of this report that would add to the information already provided to the committee.