Government of Canada / Gouvernement du Canada

INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION

An Update to Canada's Thirteenth and Fourteenth Reports

Canada

JULY 2002

Report submitted to the Committee on the Elimination of Racial Discrimination for consideration in the review of Canada's Thirteenth and Fourteenth Report on the International Convention on the Elimination of All Forms of Racial Discrimination

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1. Canada's approach to fighting racism is multifaceted and includes elements of legislation, public education, institutional change, community action and research. Canada's combined 13th and 14th Report provided information on Canada's efforts during the period from June 1993 to May 1997. Canada's delegation looks forward to its appearance before the Committee on the Elimination of Racial Discrimination to discuss its report. Given the lapse of time since the period covered by the 13th/14th Reports, Canada wishes to provide information highlighting some key initiatives to combat racial discrimination that have occurred since the report was submitted. Further details on these and other efforts relating to the provisions of the Convention will be provided in Canada's combined 15th/16th Report, which will be submitted in the near future.

Legislative Measures

2. As described in the Core Document, Canada's Constitution is the supreme law of the land and includes the *Canadian Charter of Rights and Freedoms* which applies to all governments (federal, provincial and territorial). Section 15 of the Charter prohibits discrimination based on race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability. The Supreme Court of Canada has held that the list of prohibited grounds of discrimination under section 15 is not exhaustive and that other distinctions based on analogous groups are subject to review. In addition, federal and provincial governments, as well as the territory of Yukon, have adopted human rights legislation that prohibits any type of discrimination based on race, nationality and ethnic background, color, sex, etc. The Northwest Territories and Nunavut are currently developing human rights codes also.

3. In a federal state such as Canada, sometimes there may be differences in the manner of implementing rights in the various jurisdictions. These differences reflect differences in local conditions; however, the features of the Canadian legal system help to ensure that there are not significant discrepancies between jurisdictions in human rights protection. Measures adopted by all governments in Canada are subject to review under the *Canadian Charter of Rights and Freedoms.* This ensures uniformity of protection across Canada regarding the equality rights guaranteed by the Charter. The Supreme Court of Canada interprets and applies legislation enacted throughout Canada, thus contributing to consistency of approach. For example, the basic doctrines that the Supreme Court has developed regarding the ambit of human rights law - paramountcy, adverse-effect discrimination and reasonable accommodation - apply to human rights

legislation in all jurisdictions.

4. Mechanisms exist to ensure that the various jurisdictions are aware of the approaches taken throughout Canada on human rights issues, and to promote co-ordination in this regard. The Continuing Committee of Officials on Human Rights is the principal mechanism for federal-provincial-territorial consultation and cooperation regarding the ratification and implementation of international human rights treaties. The federal nature of Canada makes a positive contribution to the protection of human rights in Canada because of the variety of perspectives brought to bear on human rights issues and the ability of governments to take into account the particular conditions within their jurisdiction in determining appropriate modes of implementation.

5. With respect to hate propaganda, in the area of criminal legislation, the *Criminal Code of Canada* prohibits the public incitement and promotion of hatred and the advocacy and promotion of genocide. In addition, the *Canadian Human Rights Act* prohibits publication of discriminatory materials, the communication of hate messages telephonically, by means of telecommunication or Internet, that are likely to expose persons to hatred or contempt by reason that they are identifiable on the basis of a prohibited ground (race, national or ethnic origin, colour, religion, age, sex, marital status, mental or physical disability, pardoned conviction, or sexual orientation).

6. In 1999, the federal government passed legislation that enhances the protection and participation of victims in the criminal justice system. As a result, victims of hate-motivated crimes have increased opportunities to provide victim impact statements that convey to the court the impact of the accused's conduct upon them and their broader community. In March 2000, the Minister of Justice announced that $20 million would be provided over the next four years for victim-related initiatives and programs through the Policy Centre for Victims Issues.

7. On October 23, 2000, the *Crimes Against Humanity and War Crimes Act* came into force. The Act:

   - implements the *Rome Statute* through the establishment of a domestic criminal and administrative regime to complement the International Criminal Court; and
   - strengthens Canada's legislative foundation for the prosecution of genocide, war crimes and crimes against humanity.

8. As part of the federal government's commitment to strengthen the *Canadian Human Rights Act* (CHRA) to ensure that it is effective in protecting human rights in a timely and efficient manner, on April 8, 1999 the Minister of Justice announced the establishment of an independent panel to conduct an in-depth review of the Act. The Panel's report from this panel, entitled *Promoting Equality a New Vision*, identified many complex issues, and contains 165 recommendations covering issues from extending the role of the Canadian Human Rights Commission with respect to implementation of international obligations, adding new grounds of discrimination and updating

the CHRA to create a more efficient, transparent and accessible complaint system. The report is the first comprehensive review of the CHRA in over 20 years, and Canada wants to ensure that any reform will stand the test of time.

9. In response to one of the recommendations, the government introduced legislation which would ensure that the CHRA applies to every Canadian, including Aboriginal Peoples who are presently not fully protected by the CHRA. The federal government is also working with the governments of both Nunavut and Northwest Territories as they develop human rights codes. The CHRA currently applies to both territories, however, once they adopt human rights codes that provide substantially the same protections as the CHRA, their codes will also apply.

10. In 2000, Royal Assent was given to the *Nisga'a Final Agreement*. This agreement sets aside 2,019 square kilometres of the Nass River Valley in British Columbia as Nisga'a Lands and establishes a Nisga'a Central Government with jurisdiction similar to that of other local governments. The Nisga'a own and have rights to natural resources, and will receive $253 million from the government over 15 years. The land and resource components of the Agreement, combined with enhanced local decision-making powers, will ensure the Nisga'a more self-reliance and full participation in the economy.

11. In 2002, the *First Nations Governance Act* was introduced into Parliament. The legislation is aimed at providing First Nations with tools missing from the *Indian Act* that lead to greater self-reliance, economic development and a better quality of life for First Nations. The development of this legislation was informed by the largest and most intensive consultation process ever conducted by Indian and Northern Affairs Canada. The *First Nations Governance Act* will create a new statutory framework for governance, update the electoral and voting systems for First Nations operating under the *Indian Act*, balance the interests of on - and off-reserve First Nations members, and ensure Band Councils have the right tools to operate effective governments. It will also provide First Nations an opportunity to establish governance practices that are sensitive to and appropriately reflect Aboriginal history, values, traditions, cultural and spiritual beliefs. The government has utilized an unusual legislative process for Parliamentary study of this bill. This process, known as "Reference before Second Reading" will provide further opportunities for critical views to be heard and give Parliamentarians broad scope to amend the proposed legislation.

12. The *First Nations Land Management Act* of 1996, gave 14 participating First Nations the option of operating under their own land codes instead of the *Indian Act*. It provides those First Nations under the Act with powers to manage First Nation Lands. The Government of Canada is now opening the Act to 30 First Nations every two years. Over 50 First Nations have already passed Band Council resolutions indicating they also want to work within this framework.

13. Canada has considered the Committee's earlier request to consider making the declaration necessary to accept the communication procedure established under article 14 of the Convention.

Canada remains concerned that the Committee's interpretation of Article 4 does not recognize the important balance that is necessary between the need to protect people from hate speech and the need to also protect the right to freedom of opinion and expression, freedom of peaceful assembly and association, and the right not to be deprived of liberty or security of the person except in accordance with the principles of fundamental justice. Given that individuals in Canada may bring such complaints to two other international complaints mechanisms[1], Canada considers that existing safeguards in this area provide effective protection against discrimination.

14. With respect to Article 4(b) of the ICERD, the Government of Canada's approach is to focus on the activities of racist organizations rather than the associational nature of the organizations because of our concerns regarding freedom of association. As set out in the 13th and 14th Reports, we prohibit, either through civil or criminal liability, racial discrimination and the incitement of hatred. In addition, offences in the *Criminal Code* address the issues of individuals aiding, abetting, conspiring, etc., in order to propagate hatred towards an identifiable group.

15. Regarding the Committee's request that Canada accept the amendments to Article 8 of the *International Convention on the Elimination of All Forms of Racial Discrimination*, adopted at the Fourteenth Meeting of the States Parties on January 15 1992, Canada deposited its instrument of acceptance on February 8, 1995.

Jurisprudence

16. Although the following case does not deal with racial discrimination, it sets out an important test for equality jurisprudence in Canada. In *Law v. Canada (Minister of Employment and Immigration)*, [1999] 1 S.C.R. 497, which considered whether age requirements for survivor benefits constituted discrimination, the Supreme Court of Canada stated that the purpose of section 15 of the *Canadian Charter of Rights and Freedoms* was to prevent the violation of essential human dignity and freedom through the imposition of disadvantage, stereotyping, or political or social prejudice, and to promote a society in which all persons enjoy equal recognition at law as human beings or as members of Canadian society, equally capable and equally deserving of concern, respect and consideration.

17. Since 1997, the Supreme Court of Canada has heard a number of cases dealing with relevant issues, including the ability of governments to have targeted ameliorative programs for disadvantaged groups, Aboriginals who live off-reserve voting in band elections, challenging jurors for racial prejudice, citizenship preferences in public service employment and child custody of a

[1] As a State Party to the *International Covenant on Civil and Political Rights* (ICCPR), and its first Optional Protocol, Canada recognizes the complaint mechanism established thereunder and administered by the Human Rights Committee.As a member of the OAS, Canada is also subject to the *American Declaration on the Rights and Duties of Man* (Declaration), and to the individual complaint mechanism before the Commission regarding the Declaration.

biracial child. In addition, there have been a few cases at lower court levels involving prosecutions for wilful promotion of hatred, uttering threats to cause bodily harm against members of certain groups and using aggravating sentencing factors set out in the *Criminal Code* to take racist motivations into consideration when sentencing accused. Human rights tribunals at both the federal and provincial levels have dealt with complaints involving the publication of hate literature, both in print and on the Internet.

18. The Supreme Court of Canada has also heard numerous cases in the last six years that relate to Aboriginal and treaty rights and the fiduciary relationship between the crown and Aboriginal people. The Supreme Court has also heard cases on the interpretation of historic treaties with Aboriginal peoples and has confirmed a broad and liberal interpretation of those treaties with ambiguities being resolved in favour of Aboriginal parties.

19. Most notable with respect to Aboriginal title was *Delgamuukw v. Attorney General of British Columbia*, [1997] 3 S.C.R. 1010, which involved a claim by the Gitskan and Wet'suwet'en hereditary Chiefs for Aboriginal title and an inherent right to self-government over 22,000 square miles of British Columbia. The Supreme Court of Canada ruled that, due to evidentiary problems with the case, a new trial is required to determine whether the plaintiffs enjoy the claimed Aboriginal title and self-government rights. While not providing any guidance on the issue of rights of self-government, the Court made general pronouncements on the scope and content of Aboriginal title. In essence, if an Aboriginal group can establish that, at the time of sovereignty, it exclusively occupied a territory to which a substantial connection has been maintained, then it has the communal right to exclusive use and occupation of such lands. The Aboriginal group can use the lands for far-ranging purposes including economic exploitation. The only limitations are that the lands cannot be disposed of without surrender to the Crown nor can they be used in a fashion that would destroy the Aboriginal group's special bond with the land. To date, no Aboriginal group has proven Aboriginal title.

20. Most notable with respect to treaty interpretation was the *Marshall* case. The Supreme Court of Canada ruled in *R. v. Marshall*, [1999] 3 S.C.R. 456, that there is an implied term in the Treaties of 1760-61 granting to the Mi'kmaq signatories a right to engage in traditional resource harvesting activities, including for the purposes of sale, to the extent required to provide them a moderate livelihood. In the course of the judgment, the Court clarified some important principles of evidence relating to the interpretation of Indian historical treaties. In particular, the Court expressly rejected its earlier pronouncement in the *Horse* case that treaties are to be interpreted without resort to intrinsic evidence where the treaty terms are unambiguous. In particular, the Court made it clear that extrinsic evidence relating to the historic and cultural context is available for consideration absent ambiguity on the face of the treaty document.

21. The Ontario Human Rights Commission has continued to receive and deal with complaints as well as to refer complaints to the Board of Inquiry. To facilitate access to information about human

rights and on the complaints process, the Commission has redesigned its website to become more user-friendly, accessible and substantively informative.

Canadian Race Relations Foundation

22. In 1997, the Government of Canada established the Canadian Race Relations Foundation (CRRF) with a mandate to combat racism and all forms of racial discrimination. In acknowledging the unjust treatment of Japanese Canadians during World War II, the Foundation was developed to "foster racial harmony and cross-cultural understanding and help to eliminate racism." The Foundation received a one-time endowment of $24 million. It also operates on income derived from investments, donations and fundraising efforts and has registered charitable status. It operates at arm's length from the government; its directors and employees are not part of the federal Public Service. The CRRF is committed to building a national framework for the fight against racism in Canadian society.

23. The CRRF speaks out against both overt and systemic racism. It seeks to shed light on the causes and manifestations of racism; provide independent, outspoken national leadership; and act as a resource and facilitator in the pursuit of equity, fairness and social justice. In 1997-98, the Foundation undertook consultations with key stakeholders across Canada to identify which aspects of racism in Canada today require the greatest attention. Priority areas, consistent with the Foundation's legislated mandate, were established: public education; action-oriented research; and, information, resource development and networking for policy and advocacy.

24. On its fourth anniversary, the Foundation undertook an evaluation of its activities. Based on this positive evaluation, in April 2002, the Foundation embarked on a joint initiative with the Multiculturalism Program of the Department of Canadian Heritage to explore a more cooperative relationship and opportunities for greater synergy in the programs they deliver.

Multiculturalism and Education

25. Currently celebrating its 30th anniversary, the Multiculturalism Program continues to uphold Canada's reputation as a world leader in promoting diversity and respect. This achievement provides an opportunity to redefine the role of the Multiculturalism Policy in building a sense of citizenship shared by all Canadians. Ongoing initiatives in the areas of research, community action, institutional development, and education and outreach engage Canadians of all backgrounds.

26. The Government of Canada actively participated in the World Conference Against Racism (WCAR) and facilitated comprehensive, nation-wide consultations with non-governmental organizations, civil society, women's organizations, Aboriginal peoples, the private sector, other levels of government, youth and the media. In order to inform the process, youth, Aboriginal and civil society advisory committees were created. The Canadian delegation to WCAR was

composed of a diverse representation of government, non-governmental organizations and Aboriginal peoples. Some 60 other organizations received funding for their participation in the conference. The view points, concerns and suggestions raised by individuals and organizations at these meetings will contribute to policy development and help to determine the future directions of the Multiculturalism Policy of the federal government and future anti-racism initiatives.

27. A key message drawn from these efforts was the need for more effective public education and outreach activities on the issues of diversity and inclusion. An interdepartmental Committee on Public Education was created in November 2001, which enables the Government of Canada to pursue a concerted approach to the promotion of its policy objectives. This initiative will facilitate the development of partnerships within government and allow the government to engage other levels of government, the public at large, children, teachers and all Canadians. The Committee will develop tools and initiatives to assist in public education strategies, and public awareness programs in support of social cohesion, respect, diversity and interconnection across all communities, including the Aboriginal communities.

28. Canada also continues to fight racism and to promote a more inclusive and diverse society through the March 21 Anti-Racism Campaign, the Mathieu Da Costa Award Program, the Metropolis Project, the Citizenship Education Research Network and the Canadian Race Relations Foundation, all of which are described in Canada's 13th /14th Report. The government of Canada also launched the "Canada: We All Belong" campaign and supporting products in 2000 in order to promote the two-way concept of integration. Provincial and territorial governments have also been developing initiatives in this area. Most of these will be described in the next report to the Committee but a few are mentioned below.

29. The work of the Ontario Human Rights Commission is the fundamental underpinning of Ontario's anti-racism strategy. To this end, the Commission has engaged in a number of initiatives related to racism issues. For example, the Commission has been involved in a partnership project to develop a training video and study guide dealing with racism, for schools and workplaces. It has also produced publications in languages other than English and French to make them more widely accessible in the community. It has undertaken an Aboriginal Human Rights Initiative, to increase awareness among Aboriginal Ontarians living off-reserve of the Ontario Human Rights Code's protections and the Commission's role in addressing human rights complaints.

30. In Ontario, ministries and agencies have been developing and/or updating training for their staff to prevent discrimination in the workplace and in the provision of services to the public. Specific initiatives have been undertaken in the areas of law enforcement, health, education and child welfare. In 2000, the Ministry of Public Safety and Security released a new Policing Standards Manual that contains sample policies and guidelines for local police services boards. These guidelines support police services investigations into hate propaganda and hate/bias motivated crimes and promote multilateral partnerships for detecting and addressing hate/bias activities in the

community. The Ontario Provincial Police has developed a number of initiatives to improve communications with Aboriginal and ethno-racial communities by creating a specific forum or by participating in a forum created by community partners and stakeholders.

31. The Ontario Ministry of Community, Family and Children's Services developed a comprehensive training curriculum for all child protection workers and supervisors. The Association for Native Child and Family Services is working with the ministry and the field to revise and expand the curriculum to ensure that all protection workers and supervisors in the province have culturally-appropriate knowledge and demonstrated skills to work more effectively with Aboriginal children, families and communities. The curricula will be responsive to and respectful of Aboriginal culture and practices. The adaptations will be completed in the spring of 2002. The training is available to all Children's Aid Society staff in Ontario.

32. In Québec, with regard to the fight against racism and the promotion of democratic rights, the government has organised various activities such as the Action Against Racism Week, the Québec Week of Citizenship and the Québec Citizenship Award. Also, the Commission des droits de la personne et des droits de la jeunesse [Human Rights and Youth Rights Commission of Québec] continues its educational activities related to the Québec Charter of Human Rights and Freedoms in the education community.

Post-September 11th Initiatives

33. The Government of Canada responded quickly to Canadians' concerns about incidents based on hatred and intolerance occurring in the aftermath of the events of September 11. The Government of Canada called for a renewed commitment to Canadian values of respect, equality, diversity and fairness and a strong condemnation of hate-motivated violence. The Secretary of State (Multiculturalism) (Status of Women) hosted a series of roundtable meetings across Canada to discuss concerns, and an Advisory Group (national organizations) was also formed to provide advice and information to the Secretary of State.

34. All governments in Canada are committed to developing effective partnerships with local institutions and cooperating with municipalities and local police to develop approaches and programs to enhance outreach, strengthen a sense of belonging, and sustain action against racism. As indicated above, the Multiculturalism Program will continue to work with community and volunteer organizations to build capacity, strengthen community cohesion and enhance intercultural and interfaith understanding.

35. In the aftermath of the tragedy of September 11, 2001, the Government of Canada introduced Bill C-36, the *Anti-terrorism Act*, which came into force on December 24, 2001. This Act adopts a number of anti-terrorism measures that are consistent with U.N. Security Council Resolution 1373 of September 28, 2001, as well as with the 12 U.N. anti-terrorism Conventions.

The government has stressed that Bill C-36 is a balanced package of measures, carefully targeting people and activities that pose a threat to the security of Canada, while fully respecting the diversity that is essential to Canadian society. The Preamble to the Act states that Parliament is committed to taking comprehensive measures to protect Canadians against terrorist activity 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 Act contains specific measures to address hate and its causes:

- an amendment to the *Criminal Code* to authorize a judge to order deletion of hate propaganda from the Internet, when the hate propaganda is stored on and made available to the public through a computer system that is within the jurisdiction of the court;
- an amendment to the *Criminal Code* to create an offence of mischief in relation to religious property or an object associated with religious worship, if the commission of the mischief is motivated by hate based on religion, race, colour or national or ethnic origin; and
- an amendment to the *Canadian Human Rights Act* to clarify that the prohibition against spreading repeated hate messages by telephonic communications includes all telecommunications technologies.

Immigration and Refugees Issues

36. The new *Immigration and Refugee Protection Act* (IRPA) became law on June 28, 2002. This balanced legislation replaces the 25 year-old *Immigration Act*. It recognizes the many contributions that immigrants and refugees make to Canada; encourages workers with flexible skills to choose Canada; and helps families reunite more quickly. The IRPA highlights key principles for the administration of the immigration and refugee programs. These principles include:

1. respect for the multicultural character of Canada;
2. support for the development of French and English linguistic minority communities;
3. the commitment to work in co-operation with the provinces and territories to secure better recognition of the foreign credentials of permanent residents and their more rapid integration;
4. the idea that refugee protection is, in the first instance about saving lives;
5. the requirement that all decisions taken under the Act be consistent with the *Canadian Charter of Rights and Freedoms* including its principles of equality and freedom from discrimination and equality of French and English as the official languages of Canada;
6. the principle that minor children should be detained only as last resort, taking into account the best interests of the child.

An overview of the new Act is provided to the Committee with this paper.

37. Canada supports the accommodation of newcomers, their diverse backgrounds and cultures by

encouraging a process of mutual adjustment by both newcomers and society. Integration of newcomers into Canadian society is a two-way process; newcomers are expected to understand and respect basic Canadian values, and society is encouraged to understand and respect the cultural differences newcomers bring to Canada. Rather than requiring newcomers to abandon their own cultural heritage, the emphasis is on finding ways to integrate differences in a pluralistic society. Several programs have been designed to assist immigrants in becoming participating and contributing members of Canada. These include:

1. Citizenship and Immigration Canada's settlement programs and services assist immigrants in their integration process by helping them learn about their rights and responsibilities and the laws that protect them from racial discrimination.
2. The Host Program matches newcomers with volunteers who help them learn about available services and how to use them.
3. The *Language Instruction for Newcomers to Canada* program provides basic training to adult immigrants in one of Canada's official languages.
4. The *Immigrant Settlement and Adaptation Program* provides funds for the delivery of services to newcomers, including reception, referral to community resources, community information/orientation, interpretation and translation, paraprofessional and employment-related services.

38. In Québec, the ministère des Relations avec les citoyens et de l'Immigration [Department of Citizen Relations and Immigration] implemented many services and integration hubs :

1. Services related to the settlement process (individual and group information sessions, integration based on needs, referral to partnership organizations for appropriate services);
2. French services (full and part-time training in the integration hubs, referral to higher education institutions for clients with schooling);
3 Support for social and economic integration (housing research, job preparation, notice of foreign credentials recognition, advice for business projects).
4. Joint adoption, in 1998, with the ministère de l'Éducation [Department of Education] of a policy on mainstreaming and education with a goal of zero exclusion. Through a set of activities, this policy aims at facilitating the integration of immigrant students into society.

Aboriginal Issues

(a) Land Claims

39. The Government of Canada notes the concern expressed previously by the Committee regarding the length of time it is taking to further define Aboriginal rights to land and resources across Canada. The modern treaties negotiation process often involves the resolution of fundamentally different conceptions of the nature of Aboriginal rights held by Aboriginal groups and governments.

Litigation can, under certain circumstances, result in the suspension of negotiations. Competing overlapping claims between Aboriginal groups must also be resolved before comprehensive claims can be finalized. Negotiating modern treaties includes building trust between the parties, which cannot occur through a hurried process. Nevertheless, significant progress has been made with respect to land claims.

40. In 1999, the creation of Nunavut transformed the map of Canada. One fifth of the nation's land mass, Nunavut is formed from two million square kilometres carved out of the eastern and central sections of the vast Northwest Territories. The establishment of Nunavut was a provision of the 1993 *Nunavut Land Claims Agreement*, the largest land claim in Canadian history. The Nunavut Government is a public government, elected by residents. Because Inuit make up 85 percent of the population, they can shape the government to reflect their culture, traditions and goals.

41. Canada has created processes to address issues related to the *Marshall* decision. The Department of Fisheries and Oceans is undertaking initiatives to facilitate the immediate participation of Mi'kmaq and Maliseet First Nations affected by the Marshall decision in the commercial fishery. In February, 2001, a Chief Federal Negotiator was appointed to negotiate with the First Nations and provincial governments of Atlantic Canada on the scope and nature of Aboriginal rights to land, resources and self-government in the region. In June 2002, the thirteen Mi'kmaq Chiefs of Nova Scotia, the province of Nova Scotia and the Government of Canada signed an Umbrella Agreement which reaffirms their longstanding relationship and commitment to work together in good faith to resolve issues of mutual concern arising from the *Marshall* decision.

42. In addition to the successful completion of the Nisga'a negotiations mentioned earlier in this paper, negotiation with First Nations in the British Columbia treaty process continues. As of June 2002, there are 53 First Nations (124 bands) participating in 43 sets of negotiations. Of these, there are nine First Nations in the early stages of negotiations, 43 in agreement-in-principle negotiations, and one First Nation is in negotiations to finalize a treaty.

43. The provincial government in British Columbia recently held a referendum on 8 principles informing treaty negotiations, the results of which were released in July 2002. About 2.2 million ballots were distributed to BC households in April and 763,480 total ballots were considered in the tabulation of results. The results, based on the views of about 35 percent of the BC electorate, were overwhelmingly in favour of the principles put forward by the provincial government, including that private property should not be expropriated for treaty settlements, that native government should be like local government, and that tax exemptions for Aboriginals should be phased out. The Government of Canada remains committed to settling treaties in British Columbia and working with the province to move ahead with the negotiations to resolve outstanding issues regarding rights to land and resources.

44. Progress on comprehensive claims is also being made elsewhere. Fifteen comprehensive claim

agreements have been signed since the announcement of the federal government's claims policy in 1973, most recently the Ta'an Kwach'an Council (TKC) in the Yukon. Under the January 2002 Final and Self-Government agreements, the TKC will retain approximately 785 square kilometres of land (303 square miles) and receive approximately $26 million over the next 15 years. Four other Yukon First Nations (Carcross, Tagish, Kluane, Kwanlin Dun and White River) are also nearing Final Agreements.

45. In June 2002, Canada introduced legislation to establish the Canadian Centre for the Independent Resolution of First Nations Specific Claims, which would apply to all First Nations in the specific claims process. This body would have two components - a Commission to facilitate negotiations, and a Tribunal to resolve disputes. Together, the Commission and Tribunal will ensure the fairness and transparency of research, assessment and negotiation, and ensure independent decision-making. As a last resort, the proposed Tribunal will make binding decisions on validity and compensate for claims under $ 7 million.

46. Since the events at Kanesatake (Oka) in 1990, the federal government has been making efforts to settle the grievances of the Kanesatake Mohawks. In December 2000, the Land Governance Agreement was signed, recognizing an interim land base for the Mohawks of Kanesatake as well as the legal status of these lands under section 91(24) of the *Constitution Act, 1867*. The Agreement calls for the harmonization of Kanesatake laws and Municipality of Oka by-laws in certain respects, and brings legal certainty over the status of Mohawk lands. The Agreement builds on other recent achievements in the Kanesatake community, including a tripartite policing agreement, a Property Management Agreement, land purchases to enhance the interim land base, the resolution of grievances related to the Mohawk cemetery, the establishment of a nursing home for the elderly in 1999, and the transfer of administrative control over education.

47. In 2002, the Government of Québec signed partnership agreements with the Grand Council of the Crees and the Makivik Corporation. In February 2002, the Québec Government and the Grand Council of the Crees signed a 50-year agreement. This agreement pertains specifically to the development of natural resources (hydroelectricity, forests, mines), including resource revenue sharing, the payment of an annual allowance of 70 million dollars for the duration of the agreement and the implementation of monitoring mechanisms, one of which is the Cree Development Corporation. On April 9, 2002, the Québec Government and the Makivik Corporation, representing the Inuit of Nunavik, signed a similar 25-year agreement. This agreement includes the taking over of responsibilities for economic and community development by the Inuit, the establishment of a partnership for the development of natural resources and the payment of an annual allocation of 15 million dollars starting the third year of the agreement.

(b) Justice

48. The Government of Canada is working in partnership with Aboriginal communities, the provinces

and the territories, to help ensure a fundamental long-term change in the relationship between Aboriginal people and the criminal justice system. To that end, the federal government has enacted sentencing principles that recognize the disproportionate impact of the criminal justice system on Aboriginal people. The need for this reform has been acknowledged by the Supreme Court of Canada in *R. v. Gladue* [1999] 1 S.C.R. 688 and *R. v.Wells* [2000] 1 S.C.R. 207, which call on courts to consider alternatives to imprisonment with particular attention to be given to Aboriginal offenders. A continuum of federal responses has been developed to address the disproportionate rates of crime, incarceration and victimization experienced by Aboriginal people in Canada. The Aboriginal Justice Initiative (AJI) the Aboriginal Justice Strategy (AJS), and the Native Courtworker Program (NCW) are key elements of the federal response. Through strong federal/provincial/territorial partnerships, the AJS currently supports 90 cost-shared, community-based justice programs that serve over 280 communities.

49. In Québec, the ministère de la Sécurité publique [Department of Public Safety] signed close to 30 agreements in 2001 to establish Aboriginal police services in approximately 50 Aboriginal communities in the province. The agreements confer to Aboriginal communities the responsibility of managing these services within their own territory. In June 2001, amendments were made to the *Youth Protection Act* aimed at adapting the execution of the law in Aboriginal territory, while recognizing the self-governing status of Aboriginals in these matters.

50. The Government of Manitoba established a new partnership with First Nations and Métis Family services agencies, on child and family services issues entitled The Aboriginal Justice Inquiry – Child Welfare Initiative (AJI-CWI). In May 2000, the AJI-CWI underwent a major restructuring of child welfare services which resulted in the transfer of responsibility for the delivery of child welfare services to Aboriginal children and families from the general child welfare system to Aboriginal child welfare agencies. The AJI-CWI extends the jurisdiction of these agencies throughout the province such that Aboriginal agencies will deliver services regardless of the place of the residence of Aboriginal children and families. Under new legislation introduced in June 2002, these new Aboriginal governance institutions, called *Child and Family Service Authorities*, will have the lawful ability to create new Aboriginal child welfare agencies, and delegate to them the statutory and non-statutory powers and obligations of a child welfare agency. The AJI-CWI is a recognition of the restoration of rights and responsibilities of Aboriginal peoples to care for Aboriginal children and families. Further information on this program can be found in the following Web-site: http://www.aji-cwi.mb.ca.

(c) Other Developments

51. In 1998, Canada responded to the report of the Royal Commission on Aboriginal Peoples with *Gathering Strength - Canada's Aboriginal Action Plan*. The government also offered a *Statement of Reconciliation* as an element of *Gathering Strength*, which acknowledged its role in the development and administration of residential schools. As part of *Gathering Strength*, the

government committed $350 million in support of a community-based healing strategy to address the healing needs of individuals, families and communities arising from the legacy of physical and sexual abuse at residential schools. In May 1998, the Aboriginal Healing Foundation was formally launched, to design, implement and manage the healing strategy. It is an Aboriginal-run, non-profit corporation which operates at arm's length from the government, and funds proposals from First Nations, Inuit and Métis affected by the legacy of physical and sexual abuse in the residential school system.

52. On June 7, 2001, the Government of Canada announced the creation of the Department of Indian Residential Schools Resolution of Canada. The creation of the Department demonstrates the government's commitment to achieving a fair and equitable resolution of long-standing issues involving Indian Residential Schools. The Department centralizes and focusses federal efforts and coordinates negotiations between the Government of Canada and major Church organizations concerning their shared responsibility for these claims. It also examines how to resolve claims in or outside of the court system and implement the government's wider objectives of healing and reconciliation with former residential schools students and their communities.

53. The Government of Canada, in cooperation with peoples across the country continues to address the pressing social and economic issues facing the Aboriginal population. The Government of Canada's renewed commitment to improving the quality of life of Aboriginal Canadians is clear in the 2001 Speech from the Throne, which stated that nowhere is the creation and sharing of opportunity more important than for Aboriginal people. The government is committed to strengthening its relationship with Aboriginal people. It is working to support First Nations communities in strengthening governance, including implementing more effective and transparent administrative practices. Developing and enhancing national initiatives to improve health, employment, education, housing and infrastructure remain priorities for Canada.

54. A long term goal of the Government of Canada is to work with provinces, territories, First Nations, Inuit and other Aboriginal people to achieve a health status for Aboriginal people comparable to that of non-Aboriginal Canadians. To achieve this goal, the Government operates a large and dynamic health system providing a wide range of health services to First Nations and Inuit. This includes public health and primary care services, nursing stations and nurse practitioners across 600 First Nation communities, including 198 in rural and remote areas. These federal government programs are in addition to the health care services provided to all Canadians by provinces and territories as part of Canada's overall health care system.

55. The federal government continues to invest in a number of front-end programs to address the specific health issues facing Aboriginal people in Canada. These programs include:
the Aboriginal Head Start program which provides a healthy start in life for over 7,000 First Nation children; the Fetal/alcohol system/effects initiative recently expanded by $25 million to intensify efforts in this area; and the Aboriginal Diabetes Initiative focussed on diabetes prevention.

56. Provinces and territories are also working to ensure healthy Aboriginal communities, for example, in areas such as Fetal Alcoholism Syndrome and Healing and Wellness. Some specific examples are provided below.

57. In 2002, the Government of Manitoba is implementing a number of programs in Aboriginal communities that promote the healthy birth and development of Aboriginal children (e.g. a program to address Fetal Alcohol Syndrome (FAS); early childhood development programs).

58. Four Ontario ministries and 15 Aboriginal organizations are jointly implementing the Aboriginal Healing and Wellness Strategy. With an annual operating allocation of $33.3 million, the Strategy is currently in its second five-year phase of implementation. It was developed after extensive consultation with all major Aboriginal and First Nations organizations and approximately 200 communities in Ontario.

59. In Alberta, the cross-ministry Alberta Children and Youth Initiative, a priority policy initiative, focusses on Aboriginal children and youth. With various ministry partners, the federal government, and Aboriginal communities, it is developing a provincial strategy to address Aboriginal youth suicide.

60. The Ontario Native Affairs Secretariat, through the Building Aboriginal Economies Strategy and Working Partnerships program, worked to remove barriers to Aboriginal economic development. Work was also done to promote Aboriginal partnerships with the corporate sector, improve access to government programs and services, and create economic development opportunities and jobs for Aboriginal peoples.

61. In Ontario, ministries and government agencies continue to support the corporate principles outlined in the provincial Aboriginal Policy Framework (1996). These include Ontario's constitutional and other legal obligations in respect of Aboriginal people, recognition of the the special relationship between the federal government and Aboriginal people, cost-effective service delivery, openness and accountability, and promotion of Aboriginal self-reliance through economic and community development. The government has been involved in negotiations on 16 Aboriginal land claims, while implementing eight final agreements in principle already reached on the claims.

Employment Equity

62. As mentioned in the 13th/14th Reports, The *Employment Equity Act* (EEA) came into force in 1996. Previous examination of salaries, occupations, career patterns, unemployment and labour force participation rates indicated serious disparities between the labour force experiences of women, Aboriginal peoples, persons with disabilities and members of visible minorities. To address these disparities or patterns of unequal access to job opportunities, the government

enacted the *Employment Equity Act* to ensure that no one is denied employment opportunities and benefits for reasons unrelated to ability. The Act states that this is achieved by correcting disadvantages or imbalance in the workplace experienced by the four designated groups including visible minorities. It is also achieved by implementing the principle that employment equity means more than treating people in the same way, but also requires special measures and the accommodation of differences.

63. For the purpose of the *Employment Equity Act,* only those employees who self-identify as Aboriginal peoples, members of visible minorities or persons with disabilities are counted as members of those disadvantaged groups. The term "visible minorities" is a term specific to the *Employment Equity Act*, but is not used for the purposes of the equality guarantees in the *Canadian Charter of Rights and Freedoms*, the *Canadian Human Rights Act* or any provincial or territorial human rights codes.

64. The EEA requires the Canadian Human Rights Commission to conduct audits of both federally-regulated public and private sector employers to ensure their compliance with the legislation. Four years after the Commission's employment equity auditing mandate was introduced, 215 employers have been or are being audited, representing more than 80 percent of the workforce covered by the EEA. A mandatory review of the Act commenced in December 2001 and concluded in June 2002. The government is in the process of reviewing the report and preparing a response.

65. As employer for the federal Public Service, the Treasury Board has obligations under the *Employment Equity Act*. The Treasury Board Secretariat works closely with departments to effectively implement employment equity in the Public Service of Canada by removing barriers to the participation of persons from the designated groups - Aboriginal persons, members of visible minority groups, persons with disabilities and women. This includes providing support for initiatives aimed at improving representation and creating an inclusive work environment.

66. The Special Measures Initiatives Program (SMIP) mentioned in Canada's previous reports ended on March 31, 1998. However, there was still a need for support programs for employment equity within the federal Public Service to ensure that it would be successfully implemented across departments and agencies. As a result, Treasury Board approved the Employment Equity Positive Measures Program (EEPMP) on October 8, 1998, as a four year program to assist departments and agencies in meeting their obligations under the *Employment Equity Act*. The EEPMP, like the SMIP, was a temporary program which provided project funding from a $10 million annual budget as a catalyst for eliminating employment barriers and for building institutional capacity to support employment equity in the federal Public Service. This program built on the successes and lessons learned from the SMIP but with a stronger regional focus, emphasis on cost-shared departmental projects and a new governance structure under Treasury Board Secretariat.

67. In 1999, the Task Force on the Participation of Visible Minorities in the federal Public Service was

established to take stock of the situation of members of visible minority groups in the federal Public Service and formulate a government-wide action plan with benchmarks and follow-up mechanisms. During 1999-2000, it consulted extensively with key stakeholders inside and outside the federal Public Service and developed an action plan. In June 2000, the Government of Canada endorsed the action plan, entitled *Embracing Change in the Federal Public Service*, and began implementing the plan within a results-based framework. The goal is to transform the Public Service into an institution that reflects the diversity of Canada's citizens and attracts them to its service. The action plan outlines six broad categories in which the representation and participation of visible minorities will be addressed, including external recruitment, career development and advancement and changing the corporate culture. In the area of external recruitment, departments have until 2003 to achieve a benchmark of one person from a visible minority for every five people recruited externally, and until 2005 for executive appointments. Financial support of up to $10 million annually for three fiscal years concluding in March 2003 has been provided to help in implementing Embracing Change Action Plan.

68. As the official recruiter for the federal Public Service, the Public Service Commission has assisted federal departments and agencies in integrating employment equity, *Embracing Change*, and diversity as part of good human resources management and business planning. For example, the PSC has helped 21 federal departments and agencies develop special employment equity programs to facilitate recruitment from diverse populations.

69. In terms of equal access for target groups (women, Aboriginal peoples, members of visible minorities), the Québec government adopted the following measures:

1. The enactment of the *Loi sur l'accès à l'égalité en emploi dans les organismes publics* [Equal Access to Jobs in Public Organizations Act] which establishes a specific framework for job access for target groups. This Act affects 700 public organizations employing over 100 people in the municipal, education, health and social services sectors, as well as in government agencies such as the Sûreté du Québec [Québec Police].
2. The implementation, in February 2000, of the Québec Youth Fund, which aims at improving access to jobs for youth, in particular those in cultural communities and visible minority groups.
3. One of the priority aspects of the poverty and labour force re-entry fund created in 1997 is to foster job placement for visible minority youth through different initiatives.

70. Canada remains committed to combatting racism and ensuring the substantive equality and non-discrimination of all Canadians.