



Government  
of Canada

Gouvernement  
du Canada

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

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## **Fourth Report of Canada**

Covering the period  
April 1996–April 2000

**Canada**



## 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 August 2002 and covers the period of April 1996 to April 2000. 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, or at any regional office of the 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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Catalogue. No. CH4-43/2002E  
ISBN 0-662-32712-8

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\* In geographical order, from east to west.

## List of Acronyms

APEC	— Asia-Pacific Economic Cooperation
BC	— British Columbia
CAPRA	— Clients, Analysis, Partnerships, Response, Assessment
CCRA	— <i>Corrections and Conditional Release Act</i> (Canada)
CCVT	— Canadian Centre for Victims of Torture
CF	— Canadian Forces
CIC	— Citizenship and Immigration Canada
CME	— Continuing Medical Education (British Columbia)
CTP	— Cadet Training Program (RCMP)
FGM	— female genital mutilation
ICCPR	— International Covenant on Civil and Political Rights
ICTR	— International Criminal Tribunal for Rwanda
ICTY	— International Criminal Tribunal for the Former Yugoslavia
IERT	— Institutional Emergency Response Teams
II&SO	— Investigation, Inspection and Standards Office (British Columbia)
IRB	— Immigration and Refugee Board
LOAC	— <i>The Law of Armed Conflict at the Operational and Tactical Level</i>
NDA	— <i>National Defence Act</i> (Canada)
NGO	— non-governmental organization
NRC	— National Review Committee
OPP	— Ontario Provincial Police
PDRCC	— Post Determination Refugee Claimants in Canada
PEI	— Prince Edward Island
PFW	— Prison for Women
PRRA	— Pre-Removal Risk Assessment
PSA	— <i>Police Services Act</i> (Ontario)
RCMP	— Royal Canadian Mounted Police
SHU	— Special Handling Unit
UN	— United Nations

## 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 or the Convention against Torture). This is Canada's Fourth Report under the Convention, covering the period from April 1, 1996 to April 1, 2000 (with occasional references to developments of special interest which occurred since that time). Part I contains general information on Canada's constitutional structure as it relates to the Convention. Part II updates from the Third Report the measures undertaken at the federal level to give effect to the provisions of the Convention and includes the response of the federal government to the concluding observations of the Committee after the presentation of Canada's Third Report in November 2000. Parts III and IV include an update on measures undertaken at the provincial and territorial levels.
2. This report reflects the main changes in federal, provincial and territorial policies, laws and programs since the submission of Canada's Third 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 report submitted to the Human Rights Committee.

### **Consultations with Non-Governmental Organizations**

3. The Government of Canada has written to many non-governmental organizations (NGOs), inviting them to give their views on the issues to be covered in the federal portion of this report. These organizations were invited to provide the names of other organizations that might be interested or to forward to them a copy of the government's letter.
4. Responses were received from the Canadian Council for Refugees and from the Canadian Centre for Victims of Torture. Most of the observations made by these NGOs deal with refugee issues and the immigration legislation that was drafted to replace the *Immigration Act* — the *Immigration and Refugee Protection Act* (Bill C-31). These consultations were made prior to the dissolution of Parliament in October 2000 and the Bill was not passed. The House of Commons adopted a new Bill (Bill C-11, *Immigration and Refugee Protection Act*) in June 2001, which entered into force in June 2002. The provisions of Bill C-11 are in many aspects similar to the provisions of Bill C-31. Changes will be described in Canada's Fifth Report.

5. The Canadian Council for Refugees noted that, unlike the *Immigration Act*, Bill C-31 contains an explicit reference to the Convention against Torture. Despite a step towards recognizing the obligations under the Convention, the Canadian Council for Refugees indicates that the Bill does not fully respect article 3 of the Convention because the prohibition against removing a person to torture does not apply to people who are inadmissible on grounds of serious criminality or security. The Council deplores the fact that there have been no prosecutions of torturers in Canada and that there is no indication that efforts are under way to investigate allegations of torture committed by persons in Canada. It also raises concerns about the implementation of article 10 of the Convention for immigration officers and guards involved in detention. The Council continues to urge the development and adoption of guidelines for survivors of torture before the Immigration and Refugee Board (IRB). The Canadian Council expressed concerns regarding the fact that the new *Extradition Act* provides that a refugee claim submitted by a person whose extradition is requested will be determined by the Minister of Justice in consultation with the Minister of Citizenship and Immigration, and not by the IRB following a quasi-judicial procedure.
  
6. The Canadian Centre for Victims of Torture (CCVT) indicates that, in applying article 1, Canada has gone beyond the Convention definition of torture by including gender-related persecution as a type of torture. Canada's refugee determination system has been cited as an example for the international community. This system, used by the Convention Refugee Determination Division of the IRB to examine refugee claims, including those of alleged torture, is non-adversarial. The CCVT, however, has raised concerns regarding instances where hearings have, in its view, become adversarial due to the intervention of panel members, refugee hearings officers and representatives of the Minister of Citizenship and Immigration who may, with the concurrence of the Chair of the IRB, attend certain refugee hearings. The CCVT says that Canada has partially complied with article 2 of the Convention. Section 269.1 of the *Criminal Code* states that torture is illegal, but there remains an urgent need for Canada to incorporate the Convention into the *Immigration Act*. The CCVT has serious concerns regarding Canada's compliance with article 3 of the Convention, since a person recognized as a Convention refugee, but who poses a danger to public security or national security, could be deported to a country where he/she will likely be subjected to torture or death. The CCVT underlines that torture in Canada is not used as a part of systematic, political strategy of repression. As for article 6 of the Convention, the CCVT deplores the fact that there have been only a few cases of initiating prosecution for international fugitive torturers in Canada. It indicates that Canada has changed its focus from criminal prosecutions to the revocation of citizenship and deportation. The CCVT supports prosecution and is against deportation. As for article 10 of the Convention, the CCVT has provided training for IRB officers and for immigration officers who make decisions with respect to Post Determination Refugee Class in



Canada (PDRCC). Regarding article 11 of the Convention, the CCVT expresses concerns in regards to detention of refugee claimants. Some people have been detained and kept in detention for a long period of time. Another cause of concern is related to disregarding the dignity and humiliation faced by detained refugee claimants. Concerning article 12, the CCVT reports that Canada has demonstrated its willingness and ability to conduct investigations into allegations of torture. Under article 14, the CCVT indicates that there is a need for public education for people who have been tortured in other countries and are now living in Canada. As for article 15, the CCVT mentions the need for Canada to make sure that confessions and convictions for crimes not committed are never used against genuine refugees and immigrants. Finally, the CCVT underlines the need to define cruel, inhuman or degrading treatment or punishment and to develop mechanisms for the accountability and prosecution of officers who commit such offences.

7. The comments received from these organizations were taken into consideration in the preparation of the federal section of this report. All the contributions received will be forwarded to the United Nations under separate cover. Copies of all the contributions received were forwarded to the federal departments and agencies with the main responsibilities for the implementation of the Convention.

# **PART I**

## **Overview**

## The Constitutional Structure of Canada

8. Canada is a federal state made up of 10 provinces and three territories. The third territory, Nunavut, was officially created on April 1, 1999.
9. Pursuant to the *Constitution Act, 1867*, and amendments thereto, legislative powers are divided according to subject matter between the federal government and the 10 provincial governments. For example, Canada's Constitution gives each province jurisdiction within its territory over the administration of justice, property and civil rights, and hospitals. Examples of matters within federal jurisdiction are criminal laws and procedures, naturalization and aliens, and residual power for the peace, order and good government of Canada.
10. The legislative, executive and judicial branches of government share responsibility for the protection of human rights in Canada. Relevant legislation is enacted by Parliament and the provincial and territorial legislatures, according to the division of powers described in the Canadian Constitution. Due to this division of powers, federal, provincial and territorial governments are all involved in the implementation of the provisions of the Convention against Torture. Prior to ratification, the federal and provincial governments engaged in extensive consultations which resulted in provincial governments undertaking to ensure compliance with those provisions of the Convention falling within their exclusive authority. The legislature is presumed to respect the values and principles enshrined in international law, both customary and conventional. International human rights law plays an important role as an aid in interpreting domestic law. It is also a critical influence on the interpretation of the scope of the rights included in the *Canadian Charter of Rights and Freedoms*.
11. With respect to prosecutions in Canada, constitutional responsibility is shared between the federal and provincial governments.
12. There is an overlap with respect to criminal law in that the federal government is responsible for enacting criminal law and procedure which applies throughout Canada as set forth in the *Criminal Code*. The enforcement of the *Criminal Code*, the prosecution of offences prescribed in that Code and the administration of justice within the province are generally matters under provincial responsibility. However, prosecutions under specific federal statutes, such as the *Crimes Against Humanity and War Crimes Act*, fall generally under federal jurisdiction.
13. The Government of Canada has submitted a *Core Document Forming Parts of the Reports of State Parties*. The Core Document examines, in detail, Canada's constitutional structure, political framework and general framework for the protection of human rights. The latter

Canada's Fourth Report on the United Nations'  
*Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*

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includes a discussion of constitutional and legislative protections for human rights, remedies available for redress of human rights violations, and the relationship between international human rights instruments and domestic law. This Fourth Report under the Convention should be read in conjunction with the Core Document.

## **PART II**

**Measures Adopted by  
the Government of Canada**

## Article 2: Legislative, Administrative, Judicial or Other Measures

14. Canada's previous reports outlined a series of constitutional, legislative, regulatory and administrative measures directed at preventing torture and punishing those who commit an act of torture. These included:
- The *Canadian Charter of Rights and Freedoms* and, in particular, the right not to be subjected to any cruel and unusual treatment or punishment (s. 12), the right to life, liberty and security of the person (s. 7), and the right not to be arbitrarily detained or imprisoned (s. 9). Section 32 of the Charter guarantees the rights of private persons against action by the federal and provincial legislatures and governments. This section has been interpreted by the courts to apply to the full range of government activities, including administrative practices and the acts of the executive branch of government, as well as to edicts of Parliament or the legislatures.
  - Section 269.1 of the *Criminal Code* provides a definition of torture that is similar to the definition contained in article 1 of the Convention. This section of the Code provides that torture means: any act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person, for a purpose including obtaining from the person or from a third person information or a statement; punishing the person for an act that the person or a third person has committed or is suspected of having committed; and intimidating or coercing the person or a third person; or for any reason based on discrimination of any kind, but does not include any act or omission arising only from, inherent in or incidental to lawful sanctions.
  - Section 269.1(3) of the *Criminal Code* establishes that it is no defence to a charge under this section that the accused was ordered by a superior or a public authority to perform the act or omission that forms the subject matter of the charge, or that the act or omission is alleged to have been justified by exceptional circumstances, including a state of war, a threat of war, internal political instability or any other public emergency.
  - Other *Criminal Code* offences relating to the prohibition against torture and cruel, inhuman or degrading treatment or punishment, such as: assault; causing bodily harm with intent to wound a person or endanger their life; murder; administering a noxious substance; extortion; and intimidation.
  - Legislative, regulatory and administrative provisions governing the use of force by police and correctional agencies such as the Royal Canadian Mounted Police Code of Conduct

offences, ss. 68 and 69 of the *Corrections and Conditional Release Act* (CCRA), and the *Penitentiary Service Regulations*.

15. Important developments occurred since the last report presented by Canada. The *Act respecting genocide, crimes against humanity and war crimes and to implement the Rome Statute of the International Criminal Court, and to make consequential amendments to other Acts* (*Crimes Against Humanity and War Crimes Act*, S.C. 2000, c. C-24) entered into force on October 23, 2000. It implemented the *Rome Statute of the International Criminal Court* (the "Rome Statute"), adopted in Rome on July 17, 1998, and replaced the war crimes provisions of the *Criminal Code*. The *Crimes Against Humanity and War Crimes Act* also made consequential changes to Canada's extradition and mutual legal assistance legislation to enable Canada to comply with its obligations to the International Criminal Court. The *Crimes Against Humanity and War Crimes Act* affirms that any immunities otherwise existing under Canadian law will not bar extradition to the International Criminal Court or to any international criminal tribunal established by resolution of the Security Council of the United Nations (UN). Canada has been a driving force behind the creation of the International Criminal Court. Canada ratified the Rome Statute on July 7, 2000. Section 4 of the Act deals with genocide, crimes against humanity and war crimes committed in Canada, and section 6 of the Act deals with genocide, crimes against humanity and war crimes committed outside Canada. Both provide a definition of crime against humanity which includes torture. Torture is defined in the Schedule of the Act, which reproduces article 7(2)(e) of the Rome Statute.
16. As a general rule, available justifications, excuses or defences under the laws of Canada or under international law, at the time of the offence or at the time of the proceedings, may be relied upon by persons accused of genocide, crimes against humanity, war crimes and breach of responsibility by a military commander or by a superior (s. 11 of the *Crimes Against Humanity and War Crimes Act*). However, there are exceptions. It would not be a defence that an offence of genocide, a crime against humanity, a war crime, or a breach of responsibility by a military commander or a superior was committed in obedience to the law in force at the time and in the place of its commission (s. 13 of the *Crimes Against Humanity and War Crimes Act*). Generally, the Act adopts the Rome Statute's approach to the defence of superior orders. The defence would not apply as a defence to genocide or crimes against humanity, because these offences are *per se* manifestly unlawful. The defence could only apply to war crimes if the orders are not manifestly unlawful. However, the defence of superior orders has been restricted further under the Act. The Act provides that the defence of superior orders cannot be based on a belief that the order was lawful where the accused's belief was based on information about a civilian population or an identifiable group of persons that encouraged, was

likely to encourage or attempted to justify the commission of inhumane acts or omissions against the population or the group (s. 14 of the *Crimes Against Humanity and War Crimes Act*).

17. The Canadian Forces requires its members to obey the lawful commands of superiors. It is not an offence to refuse to obey an unlawful command. Under section 83 of the *National Defence Act* (NDA), it is an element of the offence of disobeying a lawful command that the command be proven to be lawful. Members of the Canadian Forces are subject to the *Criminal Code* and would be subject to prosecution for any act of torture or other violation of the provisions of the *Criminal Code* dealing with cruel or inhuman treatment. An order to inflict torture upon a detainee would be a crime under section 269.1 of the *Criminal Code* of Canada and is punishable under section 130 of the NDA. Therefore, an order to commit an act of torture which is refused cannot result in a successful prosecution for disobeying a lawful command.
18. In 1997, the Canadian Forces adopted its Code of Conduct which provides explicit instructions about respect for the Convention against Torture, the prohibition of torture and inhuman treatment. Rule 6 says that all detained persons must be treated humanely in accordance with the standard set by the Third Geneva Convention. Any form of abuse, including torture, is prohibited. The Code explains that any form of physical or psychological abuse is prohibited.
19. The Code of Conduct also requires that any breaches of the Code of Conduct or international humanitarian law be reported without delay, and that “any attempt to cover up a breach of the law or the Code of Conduct is an offence under the Code of Service Discipline.” The Code recognizes that it may be difficult to report a breach, for example, if a junior ranked member believes a member of a higher rank has committed a breach. Consequently, a number of mechanisms for reporting are provided — either to superiors in the chain of command, military police, a legal officer or to the independent Director of Military Prosecutions, whose office was established in 1999.

## **Article 3: Expulsion or Extradition**

### **Immigration: The Assessment of the Risk of Return before Removal from Canada**

20. The formal refugee determination process which was set out in detail in Canada's Third Report has not changed during this reporting period. An independent and impartial tribunal is charged with assessing whether the claimant has established that he meets the definition of “refugee” as described in the *Convention Relating to the Status of Refugees*. In addition to the formal refugee determination process, the *Immigration Act* and the *Regulations* allow the Minister to facilitate the admission of a person, for example, because the person could face a risk of torture if removed to his/her country. To that effect, there are two avenues.



*(a) Post Determination Refugee Claimants in Canada Class*

21. The Post Determination Refugee Claimants in Canada Class (PDRCC) is available to persons who, although determined not to be Convention refugees, may face personal risk should they be returned to their country of origin. The *Regulations* provide for some exceptions to access to PDRCC. The PDRCC review assesses risk to life, inhumane treatment or extreme sanctions. A positive PDRCC assessment allows persons in Canada who are not accorded refugee status under the *Convention Relating to the Status of Refugees* to apply for landed immigrant status from within Canada. PDRCC decisions are made by Post-Claim Determination Officers who are specially trained to assess risk and who have access to information on the human rights situation around the world.
22. The PDRCC risk assessment process has been determined to be a viable and effective domestic remedy by both the Committee against Torture (*KKH v. Canada; VV v. Canada*<sup>1</sup>) and the UN Human Rights Committee (*Adu, Badu and Nartey*<sup>2</sup>).

*(b) Humanitarian and Compassionate Applications*

23. In this administrative review, an immigration officer has the duty to consider any submission put forth by the applicant and has unfettered discretion to use his/her judgment in assigning relative weight to the facts of the case when deciding whether the application warrants approval or refusal. A positive determination would mean that the officer is satisfied that the person should be exempted from any regulation or that the person's admission should be facilitated owing to the existence of compassionate or humanitarian considerations.
24. Humanitarian and compassionate factors considered could include family ties, presence of a spouse in Canada, overall integration within Canadian society and personal risk should the individual be removed from Canada.

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<sup>1</sup> *K. K. H. v. Canada*, Communication No. 35/1995, views adopted on 22 November 1995 (CAT/C/15/D/35/1995) ; *V. V. v. Canada*, Communications No. 47/1996, views adopted on 19 May 1998 (CAT/C/20/D/47/1996).

<sup>2</sup> *Kwame Williams Adu v. Canada*, Communication No. 654/1995, views adopted on 18 July 1997 (CCPR/C/60/D/654/1995); *Andres Badu v. Canada*, Communication No. 603/1994, views adopted on 18 July 1997 (CCPR/C/60/D/603/1994); *Joseph Nartey v. Canada*, Communication No. 604/1994, views adopted on 18 July 1997 (CCPR/C/60/D/604/1994).

### ***Immigration and Refugee Protection Act (Bill C-31)***

25. Following extensive public consultations, a new *Immigration and Refugee Protection Act* (Bill C-31) was tabled in Parliament on April 6, 2000. Although the Bill died on the Order Paper when the election of November 27, 2000 was called, with Bill C-31 the government demonstrated its commitment to maintaining Canada's humanitarian tradition by continuing to provide a fair hearing to people claiming persecution. At the same time, Bill C-31 proposed strengthened provisions to protect the integrity of the refugee determination system to ensure that protection would be offered only to people in genuine need. Bill C-31 has been replaced by Bill C-11. The new bill incorporates a number of recent proposals from Canadians, yet maintains the core principles and provisions of Bill C-31.
26. Bill C-31 proposed many changes to the refugee determination process to increase its effectiveness and integrity. One of the principal elements of the reformed process is consolidated decision making. The criteria for granting refugee protection included grounds outlined in the *Convention Relating to the Status of Refugees* and the Convention against Torture, and risk to life or risk of cruel and unusual treatment or punishment. This consolidates grounds for protection that are currently assessed through three separate procedures (refugee status determination, post-determination risk review and risk-related humanitarian review) into one procedure at the Immigration and Refugee Board (IRB). The international instruments that have been incorporated into the refugee protection definition to be considered by the IRB include the *Convention Relating to the Status of Refugees* and article 1 of the Convention against Torture. Bill C-31 also contained a provision that would allow the Minister, through regulations, to add additional international instruments to the refugee protection division to accommodate changes over time.
27. Bill C-31 proposed a Pre-Removal Risk Assessment (PRRA) to be conducted by Citizenship and Immigration Canada (CIC) to examine potential personal risk of return, including risk of torture. Under the proposed legislation, all persons (with certain exceptions) against whom an enforceable removal order has been issued may make an application for protection to the Minister of Citizenship and Immigration. This includes persons whose claims for refugee protection has been refused but who have not yet left Canada.

## Jurisprudence

28. On January 11, 2002, the Supreme Court of Canada released its decisions in the cases of *Suresh v. M.C.I.* (SCC no. 27790) and *Ahani v. M.C.I.* (SCC no. 27792)<sup>3</sup>.
29. Mr. Suresh, a citizen of Sri Lanka, was found to be a Convention Refugee in 1991. He is alleged to be a prominent fundraiser for the Tamil Tiger group known as the Liberation Tigers of Tamil Eelam. The Solicitor General of Canada and the Minister of Citizenship and Immigration issued a security certificate under section 40.1 of the *Immigration Act* alleging that Mr. Suresh was engaging in terrorism and was a member of an organization which engaged in terrorism. This certificate was upheld by the Federal Court. Mr. Suresh was ordered deported in 1997 on the basis of his membership in a terrorist organization. In 1998, the Minister of Citizenship and Immigration reviewed his case and signed an opinion that he was a danger to the security of Canada pursuant to section 53(1)(b) of the Act. The Minister concluded that the threat Mr. Suresh posed to Canada's security outweighed his risk of torture upon return and further concluded that his risk of torture was not a substantial one.
30. Section 53(1)(b) of the Act, which reflects article 33 of the *Convention Relating to the Status of Refugees*, permits a Convention Refugee to be removed to a country where that person's life and freedom would be threatened, if they constitute a danger to the public or to the security of Canada.
31. Before the Canadian courts, Mr. Suresh argued that his removal to Sri Lanka would violate article 3 of the Convention against Torture and the *Canadian Charter of Rights and Freedoms*.
32. The Supreme Court of Canada examined the question of whether the government may, consistent with the principles of fundamental justice (s. 7 of the Charter guarantees the right not to be deprived of the life, liberty and security of the person except in accordance with the principles of fundamental justice), expel a suspected terrorist to face torture elsewhere.
33. The Court concluded that the appropriate approach is essentially one of balancing: "The outcome will depend not only on considerations inherent in the general context but also on considerations related to the circumstances and condition of the particular person whom the government seeks to expel. On the one hand stands the state's genuine interest in combating terrorism, preventing Canada from becoming a safe haven for terrorists, and protecting public

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<sup>3</sup> The decisions can be found at: <http://www.lexum.umontreal.ca/csc-scc/rec/html/suresh.en.html> and at <http://www.lexum.umontreal.ca/csc-scc/fr/rec/html/ahani.fr.html>.

security. On the other hand stands Canada's constitutional commitment to liberty and fair process. This said, Canadian jurisprudence suggests that this balance will usually come down against expelling a person to face torture elsewhere."

34. The Court has not excluded the possibility that, in exceptional circumstances, deportation to face torture might be justified, either as a consequence of the balancing process mandated by section 7 of the Charter or under section 1. (A violation of s. 7 will be saved by s. 1 "only in cases arising out of exceptional conditions, such as natural disasters, the outbreak of war, epidemics and the like.") Generally, however, to deport a refugee, where there are grounds to believe that this would subject the refugee to a substantial risk of torture, would unconstitutionally violate the Charter.

35. The Court expressed the following comments on the international norms, which as explained above inform section 7 of the Charter:

"In our view, the prohibition in the ICCPR [International Covenant on Civil and Political Rights] and the CAT on returning a refugee to face a risk of torture reflects the prevailing international norm. Article 33 of the *Refugee Convention* protects, in a limited way, refugees from threats to life and freedom from all sources. By contrast, the CAT protects everyone, without derogation, from state-sponsored torture [...]

"Recognition of the dominant status of the CAT in international law is consistent with the position taken by the UN Committee against Torture, which has applied Article 3(1) even to individuals who have terrorist associations. (...) More particularly, the Committee against Torture has advised that Canada should '[c]omply fully with article 3(1) ... whether or not the individual is a serious criminal or security risk': see Committee against Torture, *Conclusions and Recommendations of the Committee against Torture: Canada*, CAT/C/XXV/Concl.4, at par. 6(a)."

36. The Court concluded that Suresh made a *prima facie* case showing that he might be tortured on return if expelled to Sri Lanka. Accordingly, he should have been provided with the procedural safeguards necessary to protect his section 7 right not to be expelled to torture. The minimal safeguards required are that the Minister must provide the refugee with all the relevant information and advice he/she intends to rely on, as well as an opportunity to address that evidence in writing, and, after considering all the relevant information, issue responsive written reasons.

37. At the same time as *Suresh*, the Supreme Court of Canada released its decision in *Ahani* and adopted the same reasons. In this case, the Solicitor General of Canada and the Minister of

Citizenship and Immigration have also issued a security certificate under section 40.1 of the *Immigration Act* alleging that Mr. Ahani was a member of an organization which engaged in terrorism. This certificate was upheld by the Federal Court. Mr. Ahani is a member of the Iranian Ministry of Security and Intelligence which commits terrorist activities world-wide. He argued that his removal would violate article 3 of the Convention against Torture and the Canadian Charter.

38. The Court concluded that the Minister applied the proper principles and took into account the relevant factors in her decision that Mr. Ahani faced only a minimal risk of harm upon deportation and that he was a danger to the public. The Court found no basis upon which to interfere with her decision. The Court was satisfied that Ahani was fully informed of the Minister's case against him and was given a full opportunity to respond. It concluded that the process accorded to Ahani was consistent with the principles of fundamental justice.

**Interim Measures Request from the Committee against Torture in Cases of Communication Based on an Alleged Violation of Article 3 of the Convention (Mr. TPS — Communication No. 99/1997)**

39. In September 1997, TPS filed a communication with the Committee in which he alleged that his removal to India would violate article 3 of the Convention against Torture.
40. On December 18, 1997, the Committee requested that Canada not remove TPS to India while his communication was under consideration by the Committee. Canada considered the request and determined that it would not comply, given the exceptional circumstances of the case, and removed TPS to India on December 23, 1997.
41. The decision to remove was not taken lightly. The Minister of Citizenship and Immigration carefully considered the possible risk to public safety and security posed by the presence of TPS in Canada against any possible risk he faced upon return. Indeed, the Minister concluded that there was no substantial risk of torture faced by the individual in his country of origin. Further, a judge of the Federal Court, Trial Division, determined that the risk to TPS was not sufficient to justify a stay of his removal. Although Canadian officials offered to monitor the situation of the individual concerned, and advised the government of the state of return of this intention, the individual refused this offer.
42. In its final views, adopted on May 16, 2000, the majority of the Committee against Torture found that Canada was not in violation of its article 3 obligations in removing TPS from Canada.

43. Canada considers its obligations under international instruments seriously. Canada further considers that an interim measure request is not an order. Nevertheless, interim measures requests received from the Committee are given serious consideration irrespective of their legal status. Canada recognizes the importance of interim measures requests but would favour the adoption of rules of procedure which would ensure that these requests are made only when the individual faces some credible risk of torture and for a limited period of time. This is particularly important in cases where the individual may be a risk to public safety. In addition, Canada is concerned that the Committee's procedures do not allow States parties to adequately make representations before interim measures requests are made, and that delays in the examination of communications can jeopardize important state interests in protecting public safety.
44. During its appearance before the Committee in November 2000, Canada welcomed the Committee's suggestion that, when faced with circumstances where compliance with an interim measures request is difficult, Canada should present the Committee with arguments as to why a request should not be made, or should ask that consideration of the case be expedited. Canada considers that these suggestions address in large part the concerns which led to the deportation of TPS. These suggestions are also consistent with recommendations made by Canada in the context of the review of treaty bodies, including a recommendation that the Committee against Torture and the Human Rights Committee consider augmenting their rules of procedure to include clear criteria to govern the issuing and revocation of requests for interim protection.

## **Extradition**

45. On June 17, 1999, Canada's new *Extradition Act* came into force. The new Act establishes clear procedures for the extradition process and permits more flexible evidentiary requirements. The Act permits the surrender of persons sought to states and to entities like the International Criminal Tribunals for the former Yugoslavia and Rwanda.
46. The extradition process under the new Act continues to have both a judicial and an executive phase. At the judicial phase, a judge will determine if the conduct constitutes an offence in Canada and, where the person is wanted for prosecution, if there is sufficient evidence such that, had the conduct occurred in Canada, the person would be committed to stand trial. At the executive phase, the Minister of Justice will decide whether or not to surrender, taking into account all of the circumstances and any applicable ground of refusal.
47. Under the Act, the Minister of Justice shall refuse surrender of a person sought, if the Minister is satisfied that:

- the surrender would be unjust or oppressive having regard to all the relevant circumstances; or
  - the request for extradition is made for the purpose of prosecuting or punishing the person by reason of their race, religion, nationality, ethnic origin, language, colour, political opinion, sex, sexual orientation, age, mental or physical disability or status, or that the person's position may be prejudiced for any of those reasons.
48. The *Convention Relating to the Status of Refugees* excludes from its protection individuals who have committed a serious non-political crime outside the host country. Proceedings before the Convention Refugee Determination Division of the Immigration and Refugee Board for a claimant who is subject to a request for extradition for an offence that is punishable by 10 years or more in Canada (if committed here) under federal law will be stayed until a ruling on the request for extradition.
49. The Minister of Justice can only order extradition if the judge, following a hearing, is satisfied with the evidence submitted. The *Extradition Act* states that the Minister of Justice shall consult the Minister of Citizenship and Immigration before making a decision on extradition when the person whose extradition is requested has claimed refugee status. The person can make submissions to the Minister of Justice against the extradition and present facts, arguments and documents to this end. The reasons for refusal of extradition set out in the *Extradition Act* and outlined above or in the applicable treaty will apply. Furthermore, the Minister of Justice may attach assurances and conditions to the extradition.
50. As noted in Canada's Second Report, the Minister's exercise of discretion to surrender is subject to the *Canadian Charter of Rights and Freedoms*, and in particular section 7 of the Charter — the right not to be deprived of life, liberty and security of the person except in accordance with the principles of fundamental justice. A person sought has the ability to appeal a committal for extradition to the provincial Courts of Appeal and to the Supreme Court of Canada, if leave is granted and judicial review of a ministerial decision to surrender is similarly available.

## **Jurisprudence**

51. The Supreme Court of Canada recently released a decision with respect to the constitutionality of the Minister of Justice's decision to surrender to the United States of America two Canadian citizens (Burns and Rafay) who were wanted in the State of Washington on charges of

aggravated murder in the first degree, and who, if convicted of those crimes, could face the death penalty<sup>4</sup>.

52. The Supreme Court of Canada decided that to order the extradition of Burns and Rafay without obtaining assurances that the death penalty will not be imposed would violate the principles of fundamental justice. In the absence of exceptional circumstances, which the Court did not define, assurances in death penalty cases are always constitutionally required.
53. The Court did not foreclose the possibility that there may be situations where the Minister's objectives are so pressing, and where there is no other way to achieve those objectives other than through extradition without assurances, that a violation might be justified. In those cases, the Minister must show that: the refusal to ask for assurances serves a pressing and substantial purpose; the refusal is likely to achieve that purpose and does not go further than necessary; and the effect of unconditional extradition does not outweigh the importance of the objective.

## **Article 4: Criminalization of Torture**

### ***Crimes Against Humanity and War Crimes Act***

54. The *Crimes Against Humanity and War Crimes Act* repealed former section 7(3.71) to (3.77) of the *Criminal Code*. Section 4 of the Act provides that genocide, crimes against humanity and war crimes committed in Canada are indictable offences. The definition of a crime against humanity includes torture and other acts that may constitute cruel, inhuman or degrading treatment or punishment. It reads as follows:

“Crime against humanity means murder, extermination, enslavement, deportation, imprisonment, torture, sexual violence, persecution or any other inhumane act or omission that is committed against any civilian population or any identifiable group and that, at the time and in the place of its commission, constitutes a crime against humanity according to customary international law or conventional international law or by virtue of its being criminal according to the general principles of law recognized by the community of nations, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission.”

55. Section 4(1.1) of the *Crimes Against Humanity and War Crimes Act* provides that every person who conspires or attempts to commit is an accessory after the fact in relation to, or

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<sup>4</sup> *United States v. Burns*, [2001] 1. S.C.R. 293 ([http://www.lexum.umontreal.ca/csc-scc/en/pub/2001/vol1/html/2001scr1\\_0283.html](http://www.lexum.umontreal.ca/csc-scc/en/pub/2001/vol1/html/2001scr1_0283.html)).



counsels in relation to, an act of genocide, a crime against humanity or a war crime is guilty of an indictable offence. The *Criminal Code* also contains specific dispositions which deal with parties to offences, attempts, conspiracies and accessories (ss. 20-24, 463, 464, 660).

56. Section 4(2) of the *Crimes Against Humanity and War Crimes Act* also establishes the penalty applicable to the person found guilty of committing genocide, a crime against humanity or a war crime, or to the person who would conspire or attempt to commit, be an accessory after the fact in relation to, or counsel in relation to these offences. Such a person shall be sentenced to imprisonment for life, if an intentional killing forms the basis of the offence, and is liable to imprisonment for life in any other case.
57. Section 6 of the *Crimes Against Humanity and War Crimes Act* provides that genocide, crimes against humanity and war crimes committed *outside* Canada are indictable offences. The definition of a crime against humanity includes torture and other acts that may constitute cruel, inhuman or degrading treatment or punishment. The definitions of these crimes are similar to the definitions contained in section 4 of the Act. Section 6(1.1), similar to section 4(1.1), provides that every person who conspires or attempts to commit, is an accessory after the fact in relation to, or counsels in relation to, an act of genocide, a crime against humanity or a war crime is guilty of an indictable offence. Section 6(2) sets out the applicable penalties, which are identical to those found in section 4(2) of the Act.

### ***National Defence Act***

58. The *National Defence Act* provides, in section 77(f), that it is an offence for any member of the Canadian Forces to commit an offence against the property or person of any inhabitant or resident of a country in which the Canadian Forces member is serving. If such an offence is committed while the Canadian Forces member is on active service, he/she is liable to either imprisonment for life or to a lesser punishment. In any other case, the Canadian Forces member is liable to dismissal with disgrace or to a lesser punishment (including any punishment lower on the scale of punishments, such as imprisonment for less than two years). Section 129 of the *National Defence Act* establishes that it is an offence to contravene any provisions of the Act, any regulations, orders or instructions for the general information and guidance of the Canadian Forces or any part thereof, or any general, garrison, unit, station, standing, local or other orders. Upon conviction of that offence, the member is liable to dismissal with disgrace or to a lesser punishment. By section 130 of the *National Defence Act*, members of the Canadian Forces are also subject to the provisions of the *Criminal Code* and all other Acts of Parliament in Canada and abroad, and are liable to all penalties provided for in those statutes. This includes the minimum penalties prescribed in section 235 of the *Criminal Code* for murder and the provisions of section 269.1 dealing with torture.

## Article 5: Establishment of Jurisdiction

59. Section 7(3.7) of the *Criminal Code* establishes the jurisdiction of Canada over the offence of torture in all situations mentioned in article 5 of the Convention. It provides that, notwithstanding anything in the *Criminal Code* or any other Act, everyone who, outside of Canada, commits an act or omission that, if committed in Canada, would constitute an offence against, a conspiracy or an attempt to commit an offence against, being an accessory after the fact in relation to an offence against, or any counselling in relation to an offence against, section 269.1 of the *Criminal Code* shall be deemed to commit that act or omission in Canada if:
- the act or omission is committed on a ship that is registered or licensed, or for which an identification number has been issued, pursuant to any Act of Parliament
  - the act or omission is committed on an aircraft registered in Canada under Regulations made under the *Aeronautics Act*, or leased without crew and operated by a person who is qualified under Regulations made under the *Aeronautics Act* to be registered as owner of an aircraft in Canada under those Regulations
  - the person who commits the act or omission is a Canadian citizen
  - the complainant is a Canadian citizen, or
  - the person who commits the act or omission is, after the commission thereof, present in Canada
60. Section 8 of the *Crimes Against Humanity and War Crimes Act* sets out the bases of jurisdiction for Canada to be able to prosecute the offences of genocide, crimes against humanity, war crimes and breaches of responsibility that have been committed outside of Canada. Section 8 also states that a person who is alleged to have committed genocide, crimes against humanity, war crimes or breach of responsibility outside of Canada may be prosecuted for that offence if:
- “(a) at the time the offence is alleged to have been committed
- the person was a Canadian citizen or was employed by Canada in a civilian or military capacity; or
  - the person was a citizen of a state that was engaged in an armed conflict against Canada, or was employed in a civilian or military capacity by such a state; or
  - the victim of the alleged offence was a Canadian citizen; or
  - the victim of the alleged offence was a citizen of a state that was allied with Canada in an armed conflict; or
  - after the offence is alleged to have been committed, the person is present in Canada.”

61. This provision allows for the exercise of universal jurisdiction where the accused is present in Canada after the offence is alleged to have been committed.

## **Article 6: Custody and Other Legal Measures**

62. Canada's First Report indicated that a peace officer who has reasonable grounds to believe that a person has committed an indictable offence, such as torture, may arrest that person without warrant for the purpose of criminal proceedings.
63. All extradition treaties entered into by Canada and the *Extradition Act* provide that a provisional warrant of arrest may be obtained to secure the physical custody of a fugitive. However, a person arrested for extradition will be discharged if the proper supporting documentation is not received within the period of time set out in the *Extradition Act* or under the relevant treaty, or if the Minister does not issue an authority to proceed under the *Extradition Act*.

## **Article 7: Prosecution of Offences**

64. Over the past several years, the Government of Canada has taken significant measures to ensure that our country does not provide safe haven for war criminals. The message is clear: those individuals who have committed a war crime, a crime against humanity or any other reprehensible act during times of conflict, regardless of when or where these crimes occurred, are not welcome in Canada.
65. As a responsible member of the global community, Canada's War Crimes Program is a priority for the Canadian government. It is the intention of the Government of Canada that the War Crimes Program has the ability to take action against individuals who are suspected of committing war crimes or crimes against humanity, by using the most appropriate of six complementary tools: extradition; transfer to the international tribunals; denial of refugee protection; deportation and denaturalization proceedings; denial of access to Canada; and domestic criminal prosecutions.
66. An Interdepartmental Operations Group created in 1998 is the vehicle through which the Government of Canada coordinates all of the war crimes operations it undertakes. One of the purposes of the Group is to ensure that Canada complies with its international obligations. This includes the investigation, prosecution and extradition of war criminals, as well as cooperation with the two international tribunals set up for this purpose, namely: the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR).

67. The Interdepartmental Operations Group ensures that the Government of Canada has properly addressed all allegations of war crimes and crimes against humanity against Canadian citizens or persons present in Canada. In order to meet this objective, the Royal Canadian Mounted Police and the Department of Justice investigate allegations involving reprehensible acts that could lead to a possible criminal prosecution or revocation of citizenship, while Citizenship and Immigration Canada pursues the application of remedies under the *Immigration Act*.
68. Starting in December of 1999, officials began to review all allegations against individuals involved in genocide, war crimes and crimes against humanity. In excess of 800 files were reviewed, most of which were active Citizenship and Immigration files. As a result of this review, files were opened by the Department of Justice War Crimes Section for all allegations of genocide and war crimes from international armed conflicts, most of which stemmed from the Yugoslav and Rwandan conflicts, and for the most serious allegations of crimes against humanity. Approximately 10 percent of the files reviewed fell within these categories, and they are being investigated. It is rarely the case that sufficient evidence to successfully pursue a charge will be found within Canada. Investigators almost always must conduct interviews and examine documents abroad. Where there is evidence of torture sufficient to create a reasonable likelihood of conviction by Canadian courts, appropriate charges will be laid.

## **Article 8: Extradition Agreements**

69. Under the new *Extradition Act*, extradition agreements, including multilateral agreements like the Convention against Torture, that are in force and to which Canada is a party and that contain a provision respecting the extradition of persons, are “extradition agreements” for the purposes of the Act. The Convention may be used as the basis for extradition to another State party.

## **Article 9: Mutual Judicial Assistance**

70. Canada's Second Report noted that the *Mutual Legal Assistance in Criminal Matters Act* provides the legal framework for the implementation of treaties between Canada and other states for the purposes of fostering cooperation in the investigation and prosecution of crimes. The Act provides for five basic forms of assistance: (1) the gathering of evidence, including taking statements and testimony; (2) the execution of search warrants; (3) the temporary transfer of prisoners for the purpose of testifying or providing other assistance; (4) the lending of exhibits; and (5) assistance with respect to proceeds of crime.

71. Between April 1996 and April 2000, Canada entered into treaties regarding mutual legal assistance with various countries, including Austria, Greece, Hungary, Israel, Norway, Peru, Poland, Portugal, Romania and Ukraine. In the event of an alleged case of torture, and in absence of a mutual legal assistance treaty, mutual legal assistance would also be available on the basis of ad hoc administrative arrangements or on the basis of non-treaty assistance.

## **Article 10: Education and Training**

### **Royal Canadian Mounted Police**

72. The Basic Training Program for new entrants into the Royal Canadian Mounted Police (RCMP) is given to all new entrants who hold peace officer status. These peace officers are the RCMP's service providers who have the legal authority to search, seize and detain/arrest, based on conditions being satisfied under the *Criminal Code*.
73. Since Canada's Third Report, the RCMP has further developed and implemented Community Policing. Part of this philosophy is to apply to any situation a problem-solving model called CAPRA, which is the acronym for the five words that are at the root of the RCMP's preferred problem-solving approach: Clients, Analysis, Partnerships, Response, Assessment.
74. The Cadet Training Program (CTP) is based on the community policing philosophy and CAPRA using problem-based learning as the methodology. Instead of teaching content, the CTP teaches process so that the cadets are responsible for their own learning while a trained facilitator guides them.
75. The CAPRA process and scenario-based learning requires that cadets learn about different cultures, as it is a component of the "acquiring and analyzing" portion of the problem-solving model. The goal of the RCMP's training approach (including cultural awareness) is to develop continuous learners who are able to provide a police service that is inclusive of every community, and who are respectful and compassionate in serving the unique needs of each community. The whole nature of "process" is one of discovery and interest that supports and encourages open mindedness, and appreciation and respect for diverse cultures. It is felt that this aspect of the RCMP's training mitigates against behaviour that could be termed torture.
76. The RCMP provides training on sections of the *Criminal Code* which deal with the protection of persons acting under authority, and what the Code terms "excessive force" and "use of force." Torture in section 269.1 of the *Criminal Code* is reviewed in scenario-based situations and cadets are required to conduct further research.

77. The RCMP also teaches and continually reinforces the application of the *Canadian Charter of Rights and Freedoms* as it applies to interviews, detention, arrests and imprisonment. The RCMP ensures that changes to policy based on Canadian judicial decisions (case law) or any amendments to legal statutes are communicated to all personnel through policy manuals provided in electronic format.
78. Charter rights are reviewed during ongoing training courses such as the Basic Investigator's Course, Advanced Interview and Interrogation Course, and all RCMP courses where the subject matter includes the investigation of persons for criminal activity. The RCMP has developed a clear operational policy concerning interviews/interrogations that makes reference to the Convention against Torture and specifically states that: "A member will not employ any tactic which involves the administration of or consent to cruel, inhuman or degrading treatment or punishment of any person."
79. The RCMP's continuous learning website can be found at: [www.rcmp-learning.org](http://www.rcmp-learning.org).

### **Correctional Service**

80. All staff members of the Correctional Service of Canada are required to be familiar with the constitutional, legislative, regulatory and policy framework that governs the conditions, care, treatment and custody of federal offenders. Staff receive induction and refresher training in the interpretation and application of those sections of the *Criminal Code* which give specific authority for the use of force in the correctional context. As part of their mandatory 12-week induction training, new correctional officer recruits are introduced to the Correctional Service of Canada's *Use of Force Management Model*, which allows for verbal intervention, conflict resolution and negotiation to be used, where appropriate. It is the experience of Correctional Service of Canada that effective communication, negotiation and assessment skills can, in most cases, negate the need for the use of force. As required, refresher training includes re-qualification and/or certification in the use of firearms, chemical agents, restraint equipment, batons and the physical handling of inmates. A National Use of Force Trainer's Conference was held in September 1999.
81. During induction training, recruits apply case law criteria in assessing whether certain administrative actions taken by correctional authorities constitute cruel and unusual punishment within the meaning of section 12 of the *Canadian Charter of Rights and Freedoms*.

## Canadian Forces

82. The Somalia mission taught the Canadian Forces (CF) many valuable lessons, including the need to ensure that all CF personnel deployed on a mission more clearly understand and apply international humanitarian law and the rules of engagement. In 1997, the CF adopted its Code of Conduct, which provides explicit instructions about respect for the Convention against Torture (Rule 6), the prohibition against torture and inhumane treatment. Members of the CF are subject to the *Criminal Code*, and would be subject to prosecution for any act of torture or other violation of the provisions of the *Criminal Code* dealing with cruel or inhuman treatment. The *Code of Conduct for Canadian Forces Personnel* has been rewritten to make it more user friendly, and an interactive CD-ROM has been developed to facilitate the teaching of its contents.
83. The CF have developed and published a manual entitled *The Law of Armed Conflict at the Operational and Tactical Level* (LOAC) which gives detailed direction on the treatment of prisoners of war, the sick and wounded, and civilians. Human rights standards have been incorporated into the CF's law of armed conflict training curriculum. LOAC training in the CF is made up of lectures and courses delivered at all levels from recruit school and basic officer training, up to the CF Command. LOAC scenarios have also been incorporated into army computer-simulated exercises which are conducted from the sub-unit up to the formation (brigade) level. Although LOAC applies as a matter of law only during armed conflicts, the CF has adopted the policy that, as a minimum, all Canadian military personnel shall apply the spirit and the principles of LOAC in all peace support operations other than armed conflicts.
84. The CF are considering ways to expand the availability of LOAC instruction. Possibilities include the development of intermediate or advanced LOAC courses, and the delivery of basic LOAC instruction via computer-based training.
85. To respond to the recommendations made in the *Report of the Commission of Inquiry into the Deployment of Canadian Forces to Somalia* and five other reports on issues such as military justice, the Minister of National Defence established a "Monitoring Committee on Change" in 1997. The Monitoring Committee's terms of reference include receiving reports on the implementation of the recommendations contained in the March 25, 1997 Report to the Prime Minister on Leadership and Management in the Canadian Forces; the Report of the Special Advisory Group on Military Justice and Military Police Investigation Services; the Report of the Commission of Inquiry into the Deployment of Canadian Forces to Somalia; and other change initiatives across the CF and the Department of National Defence. The recommendations deal, *inter alia*, with accountability issues (e.g., military discipline and military leadership in the context of accountability) and operational issues (e.g., the chain of command,

the rules of engagement, operational readiness, mission planning, and overall military planning, practical and ethical elements of military training, both general and in preparation for specific missions).

86. In February 2000, the Monitoring Committee reported on the status of implementation of the recommendations in the various reports. Included is a chapter on accountability which sets out the status of implementation of the various recommendations of the Somalia Report, with the recommendation that “formal criteria be adopted for accountability of leaders in the Canadian Forces,” and the recommendation that the values, principles and processes of accountability be incorporated into education and training. The Report can be found at:  
[http://www.forces.ca/menu/press/Reports/monitor\\_com\\_final/eng/cover\\_e.htm](http://www.forces.ca/menu/press/Reports/monitor_com_final/eng/cover_e.htm).

### **Immigration Enforcement Officers**

87. Citizenship and Immigration Canada (CIC) introduced a policy entitled “The Respectful Workplace,” as well as a values and ethics training component in its training program for enforcement personnel. All enforcement officers are also trained in the use of force policy, which includes legal requirements, the exercise of judgment, safety, theories related to the use of force, and practical proficiency to an approved standard. In the near future, CIC will also be introducing personal suitability testing for enforcement officers. All of these policy and training initiatives are part of the Department’s ongoing commitment to ensure the safety and security of the Canadian public, CIC clients and employees by reinforcing the professionalism of enforcement personnel.

### **Funding for Victims of Torture**

88. Governments in Canada — at both the federal and provincial levels — provide funding for the treatment of torture victims in a number of ways. There is direct financial support from federal, provincial and municipal governments to Canadian Centres for Victims of Torture in Calgary, Edmonton, Montreal, Ottawa, Toronto and Vancouver. In addition, the federal government provides \$60,000 to the UN Fund for Victims of Torture, which helps support a number of these centres.
89. A network of organizations in Canada provides related training to front-line workers, social services workers and medical personnel. The Réseau d’intervention auprès des personnes ayant subi la violence organisée and the Network of Counsellors & Network Committee to Assist Survivors of War and Torture are two such agencies. Some of the member organizations receive funding from CIC, as well as other government and voluntary sources.



90. One such agency, the Canadian Centre for Victims of Torture (CCVT), provides direct and indirect services to immigrants and refugees who have experienced torture. These services include language training, job search assistance, referrals, translation and counselling. In both 1999-2000 and 2000-01, the CCVT received in excess of \$400,000 from Citizenship and Immigration Canada to provide those services. The Government of Ontario also provides approximately \$30,000 annually to the Toronto Centre.

## **Article 11: Treatment of Persons Arrested, Detained or Imprisoned**

### **Correctional Service**

91. The legislation governing the treatment of offenders sentenced to a term of imprisonment of two years or more by the courts is the *Corrections and Conditional Release Act (CCRA)*. Promulgated in 1992, the CCRA replaced the now repealed *Penitentiary Act* and *Parole Act*, and is currently under revision by the Parliamentary Sub-Committee following extensive public and legislative review. Section 3 of the CCRA stipulates that the purpose of the federal correctional system is to:

“ . . . contribute to the maintenance of a just, peaceful and safe society by:

- carrying out sentences imposed by courts through the safe and humane custody and supervision of offenders; and
- assisting the rehabilitation of offenders and their reintegration into the community as law-abiding citizens through the provision of programs in penitentiaries and in the community.”

92. The Correctional Service of Canada is responsible for the safe, secure and humane control and custody of federally sentenced offenders. As of June 2000, there were 23,400 offenders under the supervision of Correctional Service. Approximately 58 percent of the total offender population is incarcerated and the remainder is supervised in the community. Female offenders represent approximately 2.75 percent of the total incarcerated population while Aboriginal offenders represent 17 percent.
93. Section 4 of the CCRA sets down the legislative principles upon which sentences of imprisonment are to be administered. Based on the rule of law, these principles affirm the duty to act fairly and reflect constitutionally entrenched Charter rights and freedoms. Section 4(e) of the CCRA affirms that “offenders retain the rights and privileges of all members of society, except those rights and privileges that are necessarily removed or restricted as a consequence

of the sentence.” Finally, section 4(g) requires that correctional decisions be made in a fair and forthright manner, and provides offenders access to an effective grievance resolution process.

## **Use of Force**

94. 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. Section 4(d) of the CCRA requires that Correctional Service use the “least restrictive” measures in controlling offenders, consistent with the protection of the public, staff and offenders. 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 is proportional to the risks and circumstances. Correctional officers may use “reasonable” and “necessary” force to: prevent or suppress the commission of an offence by an inmate; protect themselves against unprovoked assaults; suppress riots; and prevent escape from medium and maximum security penitentiaries.
95. All instances of the use of force must be reported to the institutional head for review. When the institutional head has reason to suspect that the amount of force used may have been excessive, he/she shall formally call for an investigation.
96. Correctional 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. The health care officer signs the “Use of Force” form indicating that examination and treatment of inmates has been provided, as required.
97. The practice of videotaping use of force incidents was nationally implemented in February 1997, in response to a recommendation made by the *Commission of Inquiry into Certain Events at the Prison for Women* (Arbour Report, 1996). In May 2000, further policy directions were issued to clarify specific responsibilities and accountabilities within Correctional Service for ensuring that use of force incidents are thoroughly and objectively reviewed. Under the policy, any use of force situation involving cell extractions, Institutional Emergency Response Team deployments, major security incidents, strip searches and other incidents where force may be necessary or expected to be used must be videotaped. The purpose of videotaping is to determine whether the use of force was appropriate, and carried out in accordance with policy and applicable legislation. The use of force videotape is reviewed at the institutional, regional and national levels, and, when necessary, corrective measures are taken as a means of ensuring compliance with policies and procedures. A copy of the videotape

is forwarded to the Office of the Correctional Investigator (OCI)<sup>5</sup> within 20 calendar days of the occurrence of the incident.

### **Commission of Inquiry into Certain Events at the Prison for Women**

98. *Canada's Third Report* contains a detailed summary of Madame Justice Arbour's findings and recommendations of the *Commission of Inquiry into Certain Events at the Prison for Women* in Kingston (the Commission of Inquiry), submitted to the Solicitor General of Canada in April 1996. The Commission of Inquiry investigated the circumstances surrounding a number of events that occurred in April 1994 at the Prison for Women in Kingston. Among other issues, the Commission's findings of fact dealt with the segregation unit at the Prison for Women, strip searches, body cavity searches, involuntary transfers, and the complaint and grievance process. Madame Justice Arbour's Report proposed a number of recommendations to address broader systemic concerns involving compliance with the rule of law in the management of segregation, accountability in operations, cross-gender staffing, Aboriginal women offenders and the future of women's corrections in Canada.
99. Madame Justice Arbour's report has had a major and far-reaching impact on the Correctional Service in the development of an organizational culture more respectful of offender rights. As noted in *Canada's Third Report*, the majority of Madame Justice Arbour's recommendations were accepted by Correctional Service and have since been implemented. The most significant developments to date include:
- amendments to prohibit male staff from participating in or witnessing a strip search of a female offender, even in emergency situations
  - the appointment of the first Deputy Commissioner for Women in June 1996
  - a provision that all National Boards of Investigation include a community member independent of the Correctional Service, and that convening orders for Boards of Investigation include reference to legal compliance
  - a prohibition against using, as a first line of response, Institutional Emergency Response Teams consisting of male staff in women's facilities
  - the appointment of a Monitor to report on the implementation of cross-gender staffing policy
  - compensation to the offenders involved in the Prison for Women incident, which has been negotiated and settled

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<sup>5</sup> The OCI is independent of Correctional Service Canada and acts as an ombudsman for federally sentenced offenders. Further information on the OCI is provided later in this report.

## **Developments Respecting Correctional Institutions for Women**

100. In September 1996, there were 45-50 women classified as maximum security. Since that time, the number of maximum security federally sentenced women has decreased significantly. The majority (93 percent) of women offenders are now at minimum and medium security classification. Over the past two years, the number of women classified as maximum security has averaged between 25-30.
101. Women classified as maximum security represent approximately 7 percent of the women offender population, compared to 12 percent of the male offender population being classified as maximum security. The overall lower risk of women offenders is also reflected in the fact that there is a greater proportion of women offenders in the community than incarcerated. Approximately 60 percent of women offenders are in the community, compared to approximately 40 percent of men offenders.
102. Between August 1995 and January 1997, the Correctional Service of Canada opened five new regional facilities for women offenders, including the Okimaw Ohci Aboriginal Healing Lodge located on the Nekaneet Reserve, near Maple Creek, Saskatchewan. Prior to 1995, there was only one federal facility for women offenders in Canada — the Prison for Women located in Kingston, Ontario (the focus of Justice Arbour's inquiry). All women sentenced to a federal term of incarceration were transferred to the Prison for Women, regardless of where they lived or had committed their offence(s). All women offenders were incarcerated in a maximum security environment, irrespective of their individual security ratings.
103. In 1996, shortly after most of the women at the Prison for Women were transferred to the regional facilities, it became evident that a small portion of the population (approximately 15 percent) was unable to function in the new facilities' community living environment. These women required a greater degree of structure, intervention and control. As an interim measure, Correctional Service incarcerated women offenders classified as maximum security in three units co-located within existing male facilities in Saskatchewan, Québec and Nova Scotia. These co-located units are physically separate from the remainder of the institution in terms of accommodation, programs and exercise. No contact is permitted between male and female inmates.

104. At the time of their transfer, the Correctional Service of Canada made a commitment to develop a national strategy for high-risk, high-need women offenders. The Solicitor General of Canada announced the details of a National Strategy for High Need Women Offenders on September 3, 1999. Over the next two years, "high needs" women were to be transferred from the Prison for Women and the units co-located in men's institutions to specially designed Enhanced Security Units and Structured Living Environment houses within the perimeters of the regional women's facilities. The Enhanced Security Units provide a high level of intervention and supervision for approximately 30 women across Canada now classified as maximum security. Thirty-five other offenders who have special needs and/or mental health problems will be placed in the Structured Living Environment houses.
105. The National Strategy included a commitment to close the Prison for Women, as well as the units co-located within the men's institutions, by the fall of 2001. However, on July 6, 2000, months ahead of initial forecasts, the Solicitor General officially announced the closure of the Prison for Women. The closing of this infamous prison after 66 years in operation is a concrete symbol of the government's desire to establish a more humane, fair, safe and effective approach to the management of correctional services for women. Today, nearly all of the approximately 350 federal women offenders in custody live in the five new facilities.

### **Cross-Gender Monitoring**

106. Fulfilling a recommendation of the Commission of Inquiry, an independent Monitor was appointed to assess and report to the Deputy Commissioner for Women, over a three-year period commencing January 1998, on the impact of cross-gender staffing in the living units of the new regional women's facilities. Correctional Service is actively addressing all issues raised in the reports of the independent Monitor. In its second annual report, released in January 2000, the Monitor proposed for consultation and discussion several interim recommendations which would permit male staff to remain in front-line positions provided certain conditions and restrictions continue to be met. These include the following: (1) current recruitment, screening and training policies and procedures remain in place; (2) appropriate roles for male staff are enforced; and (3) men do not exceed 20 percent of the Primary Worker complement.
107. Since the implementation of cross-gender staffing at the regional facilities, there have been no reported instances of sexual harassment, abuse or exploitation of women offenders by male Primary Workers brought to the attention of the Correctional Service of Canada. The third and final report will be released in 2001.

### **Safeguards with Respect to Strip and Body Cavity Searches of Inmates**

108. Policies governing searches and seizure of contraband have been amended in three areas, responding to observations or recommendations of the Commission of Inquiry. The amendments provide for an explicit, national policy standard that requires a routine, rather than discretionary, strip search of inmates admitted to administrative segregation or as soon thereafter as circumstances permit, rendering the directive in line with general practice. Amendments also include a prohibition against male staff from participating in or witnessing a strip search of a female offender at any time, even in emergency situations.
109. With the provision of the new policy, staff are now required to provide inmates a reasonable opportunity to contact legal counsel prior to seeking written consent to a body cavity search. It also requires medical professionals to perform the body cavity search in an appropriate, non-emergency environment.

### **Developments Respecting Conditions in Correctional Institutions for Aboriginal Persons**

110. Canada recognizes that the over-representation of Aboriginal people in correctional institutions is one of the most pressing matters facing effective corrections today.
111. The Correctional Service of Canada has developed a National Strategy on Aboriginal Corrections, which focuses on advancing effective corrections with respect to Aboriginal persons. With culturally appropriate programs and a greater role for the Aboriginal community in corrections, it is expected that the reintegration potential for Aboriginal offenders will be increased, thereby enhancing the opportunities for them to be safely reintegrated into their communities.
112. In 1992, the *Corrections and Conditional Release Act* (CCRA) established sections 81 and 84 to further increase the involvement of Aboriginal communities in the provision of correctional services to Aboriginal offenders.
113. A comprehensive Aboriginal strategy was set out in 1997-1998 with the following components: (1) Strengthened Institutional Programming; (2) Aboriginal Community Corrections; (3) Resourcing; (4) Communications/Information; (5) Inter-Sectoral/Partnerships; and (6) Aboriginal Employment. In March of 1999, the Correctional Service of Canada approved the Framework on the Enhanced Role of Aboriginal Communities in Corrections. Funds were approved for these programs on July 27, 2000.

114. Federal institutions have started introducing Aboriginal-focussed healing programs and curriculum and have initiated the development of Healing Lodges in various parts of the country. Currently, there are five Healing Lodges in operation and another two are under construction. The Minister has approved construction of additional Healing Lodges to total an additional 120 beds as part of the Enhanced Role Initiative, reflective of the Service's respect of the physical space and programming needs of Aboriginal culture. Conversions of three existing federal institutions are also under way.
115. Correctional Service recognizes that Healing Lodges allow for the needs of Aboriginal offenders under federal sentence to be addressed through Aboriginal teachings, ceremonies, contact with Elders and children, and interaction with nature. Program delivery is premised on individualized plans, a holistic approach, interactive relationships with the community and a focus on release preparation.
116. Correctional Service continues to consult with Aboriginal leaders, federal and provincial governments, and service providers, in order to address the disproportionate rate of incarceration of Aboriginal offenders and to develop necessary interventions. In addition, Correctional Service is working with other federal departments, provincial agencies and international contacts to further these objectives and developments.

### **Inmate Discipline**

117. Inmate discipline is intended to be corrective in nature, promoting individual responsibility and accountability. Sanctions are applied proportionate to the seriousness of the offence and the degree of responsibility the inmate bears for its commission. Sanctions for an offender found guilty of a minor disciplinary offence range from a warning or a verbal reprimand to a loss of privileges<sup>6</sup> for up to seven days, a fine or performance of extra duties. For more serious offences, an offender may lose privileges for up to 30 days, or be segregated from other inmates.
118. An Independent Chairperson conducts the hearing of a serious disciplinary offence while minor offences are presided over by the Institutional Head. Upon appeal by the aggrieved party, the Trial Division of the Federal Court may review the decision of the Independent Chairperson.
119. Disciplinary segregation is a sanction imposed upon offenders charged and found guilty of a serious disciplinary offence, and may not exceed 30 days for a single offence or 45 days for

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<sup>6</sup> Loss of privileges may include, for example, a prohibition to participate in extra-curricular activities not indicated in the offenders' Correctional Plan.

multiple offences. Segregated inmates are accorded the same rights, privileges and conditions as those extended to inmates in the general population, except those that require the association of other inmates, or that cannot reasonably be given owing to limitations specific to the administrative segregation area, or to security requirements.

## **Administrative Segregation**

120. Administrative segregation is considered an exceptional measure, to be used only for specific safety and security reasons and only if there is no other reasonable alternative. Although the CCRA does not specify the maximum length of time for an inmate's stay in administrative segregation, the Act does require that segregated inmates be returned to the general population in the institution, or in another institution, at the earliest appropriate time.
121. Throughout an inmate's confinement in administrative segregation there are mandated reviews and hearings that must be conducted at specific intervals. An inmate involuntarily placed in administrative segregation shall receive a written explanation outlining the reasons for his segregated status within one working day of the placement. A Segregation Review Board, consisting of Correctional Service personnel, conducts review hearings of cases where inmates are involuntarily segregated 5 working days after placement, on the 30<sup>th</sup> calendar day after placement, and at least every 30 days thereafter, for as long as the inmate remains in segregation.
122. In order to ensure that segregated inmates understand their procedural rights, they are notified in writing of the review dates, their right to attend and the subsequent recommendation of the Review Board within 48 hours of the decision.
123. An offender's state of health and health care needs must be taken into account in all decisions relating to administrative segregation. A written psychological or psychiatric opinion respecting the offender's capacity to remain in segregation is required at least once every 30 consecutive days of segregation. Visits to segregated units by senior institutional staff, as well as health care professionals, are also conducted on a daily basis.
124. Following the submission of Madame Justice Arbour's report, Correctional Service established a Task Force on Segregation in July 1996. In January 1997, a new Commissioner's Directive on administrative segregation was issued that explicitly acknowledged an offender's right to retain and instruct counsel immediately upon placement in segregation. In 1998, this provision was further clarified in that the delay to contact legal counsel would not exceed 24 hours. Madame Justice Arbour's concern that segregated offenders are entitled to one hour of daily



exercise was also recognized. The Task Force, consisting of members from both within and outside Correctional Service, reported its findings in March 1997.

125. Responding to specific concerns raised by the Commission of Inquiry and consistent with the Task Force's advice, a number of initiatives, including national audits of segregation units, training standards and an Enhanced Segregation Review Model were undertaken to strengthen compliance with the procedural requirements of the law. Correctional Service implemented an enhanced segregation review model beginning in 1997. The enhanced model includes the designation of a Regional Segregation Oversight Manager, responsible for reviewing the case of any inmate in administrative segregation every 60 days. The Oversight Manager monitors all aspects of the administrative segregation review process, ensuring that segregation is used as a matter of last resort and that segregation is run in compliance with the law.
126. In October 2000, the Government of Canada responded to a parliamentary sub-committee on the *Conditions and Correctional Release Act* (CCRA), and proposed an Enhanced Segregation Review process that includes external membership. This process provides the proper balance between independent adjudication and the promotion of appropriate accountability by the Correctional Service of Canada. This model will be implemented on a pilot basis in all regions and a detailed independent evaluation will be undertaken. The development of the pilot may be guided by a steering committee comprised of internal and external members.
127. Correctional Service reports that during 1999-2000, there were 2,305 admissions to voluntary administrative segregation and 5,588 admissions to involuntary administrative segregation. Of those admissions to involuntary administrative segregation, 10.8 percent (603) lasted for more than 60 days.

### **Special Handling Unit**

128. As the most secure facility in the Correctional Service of Canada, 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 an operational maximum security facility. With the closure of the Prairies SHU in October 1997, Correctional Service now operates one SHU at the Regional Reception Centre in Ste-Anne-des-Plaines, which is national in scope and operated by the Québec Region on behalf of Correctional Service. After an inmate has been transferred to the SHU for assessment by way of an involuntary transfer under the authority of the concerned Regional Deputy Commissioner, formal admission and transfer from the SHU are decided by the National Review Committee (NRC) following a thorough assessment period to determine if

- the inmate meets the criteria, or if the risk could be more appropriately managed in a maximum security facility.
129. The NRC submitted its annual report in May 2000, which outlines the basis upon which it renders a decision, the timeframes during which these are executed, the population profile and details pertaining to the duration of inmate incarceration in the SHU. It also offers a general directory of the programs offered which meet the specific needs of their inmate population, with the continuation of its mandate to assist SHU inmates to behave in a responsible manner, so as to facilitate their integration in a maximum security institution.
130. As of March 31, 2000, the SHU population of 77 inmates represented 0.6 of 1 percent of Correctional Service's total incarcerated male population, an increase of 10 from the previous year.
131. The inmates transferred to the SHU for assessment and then denied admission by the NRC are spending on average less than four months at the SHU before being transferred out. This is indicative of continued improvements in this area, as in 1996-1997 an average stay of 9.43 months was reported.
132. All inmates incarcerated at the SHU have their case reviewed every four months by the NRC to determine the maintenance of SHU status or for transfer to a maximum security facility.
133. Overall, the SHU has experienced a substantial decrease in the timeframes for the transfer of offenders from the SHU, following a decision by the NRC. These timeframes continue to be monitored closely by the NRC through interim quarterly reports.

### **Working Group on Human Rights**

134. In May 1997, the Correctional Service of Canada established a Working Group on Human Rights, chaired by Maxwell Yalden, former Chief Commissioner of the Canadian Human Rights Commission and currently a member of the United Nations Human Rights Committee. The Working Group reviewed Correctional Service's international and domestic human rights obligations and developed recommendations to ensure compliance with its human rights commitments. The Working Group reported its findings and recommendations in December 1997. A follow-up study of the human rights dimensions of community corrections was completed in May 1999. These two reports affirm that Canada's correctional system is a sound reflection of the rule of law in human rights matters and that Correctional Service must remain scrupulously vigilant in monitoring and respecting the rights of individuals under its care and custody.

## International Relations

135. The Correctional Service of Canada has developed a much acclaimed program of international work in corrections and criminal justice reform and development. For example, Correctional Service has pursued correctional reform initiatives in Lithuania and has been actively involved in peace building efforts and humanitarian aid (e.g., a shipment of boots for correctional officers) in Kosovo. Correctional Service has worked with its foreign counterparts to bring about change to these justice systems through the provision of technical expertise and advice, and the sharing of correctional knowledge and best practices. Many countries now actively seek out Canada's help in providing technical assistance and expert advice in support of their efforts to develop their own corrections and criminal justice systems. Correctional Service has, over the past years, provided technical assistance to such countries as Haiti, Namibia, Ghana, Bahamas, Bermuda, Cameroon, Benin and Mozambique.

## Immigration

136. The Government of Canada is of the view that withholding a person's liberty is a serious matter and this decision should not be taken lightly. The *Immigration Act* contains provisions that permit detention of individuals, but it also contains legislated provisions for the review of this decision on a regular basis. Detention facilities are accessible to the public, and detention reviews are carried out in public.
137. Citizenship and Immigration Canada (CIC) issued new detention policy guidelines on October 28, 1998, to improve consistency in detention decisions made by Department officials. These guidelines were developed in light of Canada's domestic and international human rights obligations, and CIC employees were given training on them.
138. The Chair of the Immigration and Refugee Board issued "Guidelines on Detention," effective March 12, 1998. These guidelines were developed in light of Canada's domestic and international human rights obligations, and are to be applied by immigration adjudicators and members of the Adjudication Division of the Board.
139. Where a person is under the age of 18 years, and especially in cases of unaccompanied minors, the decision to detain is always guided by article 3 of the *Convention on the Rights of the Child*, which provides that, in all actions, the best interests of the child shall be a primary consideration. The government acknowledges that under most circumstances, the best interests of the child are better served by not detaining. The detention of minors is used as a last resort; a preferred option is to have minors released into the care of provincial child welfare agencies.

When minors are detained, CIC makes every effort to ensure that unaccompanied minors have separate quarters from the adult population, that on-site medical staff are available, and that suitable programs, including access to education, are provided. Children in detention are closely monitored and have access to common areas where toys, games, television, books and outdoor recreation activities are made available. A working group within the Department has been formed to examine existing policies and procedures for minors, and to identify where further guidelines, policies or practices need to be developed. Once an initial assessment has been completed, stakeholders will be invited to participate in the process.

140. Citizenship and Immigration Canada facilities have been visited by organizations such as the UN High Commissioner for Refugees, the UN Special Rapporteur on the Human Rights of Migrants (in September 2000) and the Canadian Council for Refugees. At the request of the Government of Canada, the Inter-American Commission for Human Rights visited Canada in the fall of 1997. The Commission met privately with detainees in facilities in Toronto and Montréal and also observed detention review hearings. The Commission concluded that the immigration detention centres appeared to meet the generally applicable minimum standards for detention. CIC is currently discussing with the Canadian Red Cross the possibility of establishing a formal, structured monitoring program.
141. Immigration officials are actively researching and examining alternatives for a more suitable facility to replace the existing immigration detention centre in Toronto, Ontario. CIC is also considering a renovation and building proposal to improve its detention facility in Laval, Québec, which houses women and minor children. New facilities, as well as renovations to existing facilities, will be in accordance with the standards for immigration detention centres.

## **Article 12: Prompt and Impartial Investigation, and Article 13: Allegations of Torture**

### **Correctional Service**

142. The Correctional Service of Canada is responsible for the safety and protection of federally sentenced offenders under its jurisdiction from torture. It is policy to separate the offender(s) from an alleged aggressor by transferring one or more of the parties, or through the use of segregation to ensure the protection of the complainant. Correctional Service also monitors existing and possible incompatibles in its offender management database.
143. Between April 1999 and March 2000, Correctional Service recorded 75 major violent incidents, involving eight inmate murders, two major assaults on staff, 43 major assaults on inmates, six major inmate fights, five cases of hostage taking and 11 suicides. Investigations of

these incidents include the provision of a more focussed mechanism for disseminating information and direction, as well as corrective action.

144. Correctional Service has recently established a Suicide Review Committee to examine the findings and recommendations from individual suicide investigations and to bring summary recommendations to the attention of senior management.
145. Correctional Service administers a complaint and three-level grievance process. This provides opportunities for informal resolution at the initial stage and subsequent access to higher levels of authority. If an offender is unable or chooses not to resolve a complaint through discussions with staff, a written grievance may be submitted to the Institutional Head or District Director. If the offender is dissatisfied with the rendered decision or if he/she feels that action was not taken in accordance with the decision, a written grievance may be submitted to the Regional Deputy Coordinator. The third and final stage of the Offender Complaints and Grievances process involves a grievance submitted to the Assistant Commissioner, Corporate Development, at National Headquarters. The decision rendered by the third level may be appealed at court. The offender has the option to mediate the complaint at all levels and at any stage of its progress.
146. The grievance system embodies the principles of fairness, confidentiality and accessibility to all offenders without negative consequences. Complaints that significantly impact retained rights and freedoms are assigned priority for investigation, resolution and written response. The Deputy Commissioner for Women reviews all national level grievances submitted by women offenders.
147. From April 1995 to March 2000, a total of 79,560 complaints and 31,362 grievances were recorded. Of these, 94,607 complaints and grievances were resolved at the institutional level, and 5,316 complaints were forwarded to the national level for investigation and response — 11 of which dealt with use of force. Nine of these eleven complaints were dismissed after investigation, and the remaining two were upheld in part for reasons unrelated to the use of force.

### **Office of the Correctional Investigator**

148. Offender complaints may also be made, in confidence, to the Correctional Investigator, who is independent of Correctional Service and acts as an ombudsman for federally sentenced offenders. Investigations can be undertaken at the Correctional Investigator's own initiative, at the request of the Solicitor General of Canada, or upon receipt of a complaint lodged by or on behalf of an offender. The Correctional Investigator reports to Parliament through the Minister of the Solicitor General of Canada. Investigators working for the Office of the Correctional

Investigators have full access to federal penitentiaries and parole offices, as well as any information held or controlled by Correctional Service. Each year the Correctional Investigator processes approximately 5,000 complaints. The Correctional Investigator is also mandated to review Correctional Service investigative reports concerning incidents where an inmate has died or suffered serious bodily injury.

### **Offender Access to Legal Assistance and Privileged Correspondents**

149. Offenders are provided with reasonable access to legal counsel, to the courts and their agents, as well as appropriate legal and regulatory documents. An offender is informed of his/her right to legal counsel and given reasonable opportunity to retain and instruct legal counsel, without delay:
- upon arrest
  - prior to a disciplinary hearing on a serious offence
  - prior to consenting to a body cavity search
  - following notification of an involuntary transfer or completion of an emergency transfer, and
  - in any case within not more than 24 hours following placement in administrative segregation
150. Offenders may write to a number of privileged correspondents under sealed envelope. Privileged correspondents include, but are not limited to: Members of Parliament, Provincial Legislatures and the Canadian Senate; the Canadian Human Rights Commission; Official Languages, Information and Privacy Commissioners; legal counsel; court judges and provincial ombudspersons. Offenders also have recourse to the Federal Court.

### **Royal Canadian Mounted Police Public Complaints Commission**

151. The Royal Canadian Mounted Police (RCMP) Public Complaints Commission (the Commission) was created in 1988 as an independent, civilian agency (not part of the RCMP) with a mandate to oversee Canada's national police force. The Commission receives complaints from the public about the conduct of members of the RCMP and, pursuant to the legislation, initially must refer these to the RCMP for investigation and disposition. If the person who made the complaint (the complainant) is not satisfied with how the RCMP has dealt with the complaint, he/she has the right to ask for an independent review. The Commission may also initiate investigations, public hearings and hearings in the public interest.
152. The mandate of the Commission is set out in Parts VI and VII of the *Royal Canadian Mounted Police Act*. Its main activities are:

- receiving complaints from the public
- reviewing the RCMP disposition of complaints when requested to do so by complainants who are not satisfied with the RCMP's disposition of their complaints, and
- conducting investigations and hearings

153. Complaints may arise as follows:

- from members of the public, directly to the RCMP
- from members of the public, to the Commission or to provincial policing authorities, and
- if initiated by the Chair of the Commission

154. The Commission is not a decision-making body; rather, it submits reports to the RCMP Commissioner that may include recommendations after public complaints have been investigated and/or reviewed. These reports are forwarded to the Solicitor General, who is the Minister responsible for the RCMP. Such recommendations may deal with specific matters of conduct or address broad issues relating to RCMP policy and practice. The Commission carries out its functions as objectively as possible. When evaluating a complaint, the Commission does not act as an advocate either for the complainant or for members of the RCMP. Rather, its role is to conduct an independent inquiry and reach objective conclusions based on the available information.

155. There are about 2,500 complains a year. Approximately half of these are made directly to the Commission, which then refers them to the RCMP. The vast majority of these complaints are resolved by the RCMP to the satisfaction of complainants and without the necessity of further involvement on the part of the Commission. The Commission receives approximately 250 requests for review each year. For the most part, the Commission's reviews support the disposition of the complaints by the RCMP. However, in about a quarter of these review cases, the Commission disagrees with the RCMP disposition of the complaint and may make recommendations to remedy shortcomings of policy and procedure. These recommendations can result in a range of corrective actions applied to individual situations, as well as broader policy changes with application across the RCMP.

## Reviews

156. Each complaint is dealt with as follows: first, the RCMP conducts an investigation; and then, the Commissioner of the RCMP reports the results of the investigation to the complainant. If the complainant is not satisfied with the RCMP disposition of the complaint and has asked for a review by the Commission, then the Commission Chair may ask the RCMP or the Commission to investigate further, that is, if the initial investigation seems to have been inadequate or if the

Chair considers that further inquiry is warranted. The Commission Chair may also initiate his/her own investigation in the public interest; or the Commission Chair may hold a public hearing.

157. If the Chair of the Commission is satisfied with the RCMP's disposition of a complaint, the Chair reports this finding in writing to the complainant, the RCMP members involved, the Commissioner of the RCMP and the Solicitor General.
158. If the Chair of the Commission is not satisfied, he/she sends an interim report to the Commissioner of the RCMP and to the Solicitor General. This report is treated as follows: first, the Commissioner of the RCMP informs the Chair and the Solicitor General in writing of any action to be taken in response to the Chair's findings and recommendations, including the rationale for decisions not to take any action. Following this, the Chair prepares a final report that includes the text of the Commissioner's response, as well as the Chair's final recommendations, if any, and sends it to the complainant, the RCMP members involved, the Commissioner of the RCMP and the Solicitor General.

## Hearings

159. The Chair of the Commission has the discretion, at any time, to institute a public hearing or to inquire into a specific complaint. However, this usually happens after information gathered during an RCMP or Commission investigation has been weighed. The Commission Chair can also exercise discretion, when he/she deems it advisable in the public interest, to inquire into a complaint about conduct whether or not there was a prior investigation by the RCMP. This is called a public interest hearing. A hearing panel of one or more members of the Commission is then established to conduct the hearing.
160. An interim report by the panel sets out its findings, and makes recommendations to improve RCMP operations or to correct inadequacies that may have led to the complaint. The hearing panel sends its interim report to the Commissioner of the RCMP, the Solicitor General, the complainant, the RCMP member(s) complained against, and members of the public who ask to be informed.
161. The RCMP Commissioner is required to respond to the report indicating whether the RCMP will act on the report's findings and recommendations. If the Commissioner decides not to act on the recommendations set out in the report, the Commissioner must include the reasons for not doing so. After considering the Commissioner's response, the Chair of the Commission issues a final report.



162. For the period covering April 1999 to March 2000: 1,289 complaints have been forwarded to the RCMP for investigation; 63 complaints became reviews, 66 complaints were informally resolved by the RCMP; 10 complaints were withdrawn; and two were outside the jurisdiction of the Commission.

## **Canadian Forces**

163. Following the report of the public inquiry into the deployment of the Canadian Forces (CF) to Somalia in 1993, which was submitted to the Governor-in-Council in June 1997, and other studies into the military justice system, the Parliament of Canada enacted significant amendments to the *National Defence Act* that came into force on September 1, 1999. Among those reforms was the establishment of an independent Director of Military Prosecutions empowered to prefer charges and conduct the prosecutions at all courts martial. In addition, a National Investigation Service was formed and given the task of investigating all serious offences. The Investigation Service is comprised of trained military police investigators and is empowered to lay charges under the *Code of Service Discipline*, independently of the operational commanders.
164. A Military Police Complaints Commission has been established with the mandate to investigate and report on any complaints about the conduct of a member of the military police. In addition, the military police may complain to the Commission with regard to any perceived interference in a police investigation. This serves to ensure that the investigation of offences is carried out in an independent and impartial manner.
165. The courts martial of the CF members arising from the events in Somalia in 1993 were reported in Canada's Third Report. In a preliminary motion at his court martial, Master Corporal Matchee was found unfit to stand trial by reason of a mental disorder, namely, permanent, organic brain damage. Should his condition ever improve sufficiently, Master Corporal Matchee may be subject to a resumed trial on the charges of the second degree murder and torture of Shidane Arone. Under Canadian law, the case must be reviewed in court every two years to determine whether the prosecution is still in a position to adduce sufficient admissible evidence to put the accused on trial. The most recent review concluded, on June 20, 2000, that the prosecution may adduce such evidence. The charges are therefore still before the court.

## **Immigration**

166. With respect to persons in Immigration Detention Centres, all complaints are recorded and investigated, and the results are then communicated to the detainees. Documentation is available to all detainees which explains these complaint procedures.

## Article 14: Redress and Compensation

167. If torture has occurred, the individual could sue the government for damages in the Federal Court or provincial courts. If the claim is based in whole or part on section 12 of the *Canadian Charter of Rights and Freedoms* (which prohibits cruel and unusual treatment or punishment), a court could award damages under section 24(1) of the Charter.
168. The *Crimes Against Humanity and War Crimes Act* recognizes the need to provide restitution to victims of torture. Sections 30 and 32 of this Act provide for the establishment of a Crimes Against Humanity Fund. Monies obtained through the enforcement in Canada of orders of the International Criminal Court for reparation, forfeiture or fines imposed are paid into the Fund. Additional monies paid into the Fund include any donations received and the net proceeds of the disposition of any property that is seized or restrained in relation to the commission of a proceeds or money laundering offence under this Act and that is forfeited to Her Majesty the Queen. As well, amounts paid or recovered as fines imposed in relation to proceeds of crime prosecutions under this Act will be paid into the Crimes Against Humanity Fund. The Attorney General of Canada would have the discretion to make payments out of the Fund in accordance with a request from the International Criminal Court or to appropriate beneficiaries, including the victims and their families.
169. Section 672.5(14) of the *Criminal Code* provides for victims' impact statements. It stipulates that a victim of an offence may prepare and file with the court or Review Board a written statement describing the harm done to, or loss suffered by, the victim arising from the commission of the offence.
170. On December 1, 1999, an *Act to amend the Criminal Code* (victims of crime) and another Act in consequence came into force. The objective of this legislation was to enhance the safety, security and privacy of victims of crime in the criminal justice system. This enactment also recognized that victims of crime deserve a criminal justice system that treats them with courtesy, compassion and respect and that is responsive to their needs. The key changes made to the *Criminal Code* were the following:
- to ensure that victims are informed about opportunities to prepare a victim impact statement and permit victims to read the statement out loud in Court if they choose
  - to require police and judges to consider the safety of victims in all bail decisions
  - to make it easier for victims and witnesses to participate in trials by expanding protections for young victims and witnesses from personal cross-examination by accused persons representing themselves; expanding opportunities for victims and witnesses to have a

- support person present when giving testimony; and permitting a judge to ban the publication of the identity of victims and witnesses in appropriate circumstances, and
- to require all offenders to pay an automatic victim surcharge (an additional monetary penalty), which will increase revenue for provinces and territories to expand and improve victim services
171. The grievance procedure in section 74 of the *Corrections and Conditional Release Regulations* does not expressly provide for compensation if a grievance is upheld. Before compensation would be considered, the inmate would have to show some quantifiable damage. In that event, a decision may be made to pay compensation, either as settlement of a claim if Correctional Service is liable, or as an *ex gratia* payment.

## **Article 15: Statements of Torture as Evidence in Proceedings**

172. Section 269.1 of the *Criminal Code* stipulates that in any proceedings over which the Parliament of Canada has jurisdiction, any statement obtained as a result of the commission of torture under this section is inadmissible in evidence, except as evidence that the statement was so obtained.
173. In *India v. Singh* (1996), 108 Canadian Criminal Cases (3d) 274, the Government of India requested the extradition of the alleged fugitive Singh on the basis of a charge of conspiracy to commit murder. The fugitive argued that most of the evidence relied upon by the requesting state was inadmissible and that in any event there was insufficient evidence to support his committal for extradition. Oliver J. of the British Columbia Supreme Court stated that, as an extradition judge, his role was to determine whether there was sufficient evidence to order the fugitive committed for surrender. In examining the evidence, Oliver J. said that the burden of proving that the confessional statements were made as a result of the commission of torture rested upon the fugitive who made that allegation. He also said that undoubtedly the individuals who were alleged by the defence to have participated in acts of torture were officials within the meaning of section 269.1(2)(d) of the *Criminal Code*. In the case of Singh's statement, in the absence of any denial on the part of the alleged torturers, he held that it was established, on a balance of probabilities, that the detainee was tortured, and having regard to section 269.1(4) of the *Criminal Code*, the confessional statement of the detainee was inadmissible. Oliver J. finally denied the application for a warrant of committal pursuant to section 18 of the *Extradition Act*.

## Article 16: Prevention of Other Acts of Cruel, Inhuman or Degrading Treatment or Punishment

### Corporal Punishment

174. Section 43 of the *Criminal Code* provides a defence to a criminal charge to parents, schoolteachers and other persons standing in the place of a parent, if that parent, schoolteacher or other individual *in loco parentis* exercises reasonable force towards a pupil or child and if that force is for corrective purposes.
175. The Government of Canada's response to the issue of corporal punishment has been two-fold. First, through Health Canada and the Department of Justice, the government has supported parenting education measures that advocate against the use of corporal punishment and encourage the use of other methods of child discipline. Second, the criminal law continues to prohibit the abuse of children. In this regard, it should be noted that Canadian children are protected not only by criminal law, but also by provincial and territorial child protection legislation which safeguards the welfare of children.
176. In 1999, the Canadian Foundation for Children, Youth and the Law instituted a constitutional challenge under the *Canadian Charter of Rights and Freedoms* to section 43 of the *Criminal Code*. The Foundation argued that section 43 of the *Criminal Code* infringes upon children's rights under the following sections of the Charter: section 7 (the right to life, liberty and security of the person, and the right not to be deprived thereof except in accordance with the principles of fundamental justice), section 12 (the right against cruel and unusual treatment or punishment) and section 15 (equality rights). The Foundation also argued that this section of the *Criminal Code* was contrary to the *Convention on the Rights of the Child*.
177. In its arguments, the Government of Canada specifically stated that it did not advocate or support the use of corporal punishment as a means of child discipline and referred to its supporting educational materials and activities. However, the government supported its existing criminal law approach to the issue, namely, to criminalize the use of unreasonable corrective measures by parents, teachers or others *in loco parentis*, but not to impose criminal sanctions for the use of normative discipline that is undertaken in a reasonable way and that takes into account the needs and the best interests of a child.
178. The Court agreed with the arguments of the government and found section 43 of the *Criminal Code* was constitutional. The Ontario Court of Appeal (*Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)*, [2002] O.J. No. 61) upheld the constitutionality of section 43 of the *Criminal Code* and found that it reflects a reasonable

balance of the interests of children, parents, teachers and Canadian society in accordance with the *Canadian Charter of Rights and Freedoms*. In that case, the Court of Appeal held that section 43 is not a legislative foundation for any state imposed punishment on a child and does not subject a child to treatment by the state. The Court also concluded that:

“The section permits limited physical punishment of the child by a limited class of people without the punishment being a criminal assault. . . .

“For exemption from the criminal law this section requires that the force be applied to the child by a parent, surrogate parent or teacher. The force must be reasonable in the circumstances which will inevitably include consideration of the age and character of the child, the circumstances of the punishment, its gravity, the misconduct of the child giving rise to it, the likely effect of the punishment on the child and whether the child suffered any injuries. Finally, the person applying the force must intend it for ‘correction’ and the child being ‘corrected’ must be capable of learning from the correction.

“. . . the state interest is to avoid the harm to family life that could come with the criminalizing of this conduct.”

179. The Canadian Foundation for Children, Youth and the Law is seeking leave to appeal to the Supreme Court of Canada the judgment rendered by the Ontario Court of Appeal.
180. *An Act to amend the Criminal Code (child prostitution, child sex tourism, criminal harassment, and female genital mutilation, S.C. 1997, c. 6)* entered into force on May 26, 1997. It provides increased protection to women and children against abuse and exploitation. These reforms strengthen the criminal justice system’s response to child prostitution, whether within or outside Canada, by creating tougher sentences for those who use violence to force children into prostitution for profit, and by instituting measures to make it easier for child victims to testify against their exploiters.
181. The *Criminal Code* was also amended to specifically state that the practice of female genital mutilation (FGM) is illegal in Canada. This amendment will serve as a useful tool in the government’s efforts to educate Canadians regarding the health risks associated with this practice. In addition to these *Criminal Code* amendments, the government is actively involved in an educational program available to the communities where the practice is more prevalent.

## **Response to Concerns and Recommendations of the Committee against Torture Issued in November 2000**

### **Use of Pepper Spray — Asia-Pacific Economic Cooperation (APEC) Hearing (paragraph 58(a))**

182. In the aftermath of the Royal Canadian Mounted Police (RCMP) involvement in demonstrations at the University of British Columbia during the Asia-Pacific Economic Cooperation (APEC) Conference in November 1997, the RCMP Public Complaints Commission (whose mandate is explained earlier in this report) received a large number of complaints about the conduct of certain members of the RCMP during those events. As a consequence, the Chair of the Commission instituted a public interest hearing into these matters. In the conduct of its work, the hearing was expected to examine, among other things, aspects of complaints regarding the use of force (i.e., use of pepper spray, dog handling and the use of physical force), interference with freedom of speech and treatment of people detained at police stations.
183. During this hearing, various parties brought legal challenges to the Federal Court of Canada. It was originally expected that the hearing of witnesses would be complete by the end of 1999. However, the sheer number of witnesses to be heard and the unprecedented number of legal and other issues that had to be dealt with meant that testimony from witnesses did not wrap up until March 31, 2000. Between March 1999 and April 2000, the Chair, Mr. Justice Ted Hughes, heard evidence from 156 witnesses. Final submissions from counsel were completed in June 2000. The Public Complaints Commission's final report on the APEC public interest hearing, including the written response from the Commissioner of the RCMP, will soon be made available to the Solicitor General, all parties to the hearing and to the public. It will also be available on the Commission website: <http://www.cpc-cpp.gc.ca/ereleases.asp>.

### **Implementation of Madame Justice Arbour's Report**

184. Madame Justice Arbour's Report was submitted to the Solicitor General of Canada in April 1996. The Correctional Service of Canada subsequently developed a comprehensive action plan to respond to the recommendations of the Arbour Report.
185. The majority of the recommendations from the Arbour Report have been implemented, including:
- the appointment of the first Deputy Commissioner for Women, Nancy Stableforth, in June 1996

- amendment of policy to ensure that male staff never participate in or witness a strip search of a female offender
  - Institutional Emergency Response Teams (IERT) consisting of male staff will not be used as a first response in women's facilities; also, if and when a male IERT is used as a back-up response, their role will be to contain the situation only
  - a provision that all National Boards of Investigation include a community member independent of Correctional Service and that convening orders for Boards of Investigation include reference to legal compliance
  - the appointment of a Monitor to report on the implementation of cross-gender staffing policy
  - compensation to the inmates involved in the Prison for Women (PFW) incident has been negotiated and settled
186. Several of the recommendations speak to issues which Correctional Service considers to be ongoing operational issues, for example, the simplification of policy process, research on women offender issues, and collaboration with provincial and territorial corrections on women offender issues and management.
187. As recommended by Madame Justice Arbour, a position of Deputy Commissioner of Women was created. It was decided that the position would have functional rather than line authority. It was felt that placing authority for federally sentenced women's facilities outside of the regional authority for all other facilities and programs would undermine the integration of the women's program into the entire correctional structure. It was also felt that a separation of the line authority for women and male offenders would undermine the regional structure and tend to marginalize the women offender facilities. Although the Deputy Commissioner of Women does not have direct line authority for the women's facilities, as the functional authority she is actively involved in the operations of these facilities and must be consulted on all major decisions affecting women offenders.
188. In 1998, the Deputy Commissioner for Women issued a *National Operating Protocol — Front Line Staffing*. This policy describes the approved role of male operational staff and reiterates the commitment that no male staff will be involved in strip searches. The office of the Deputy Commissioner for Women reviews video tapes of use of force situations and reports of use of force with *all* offenders, to ensure compliance with the National Protocol. To date, the review has not revealed any situations where male staff have either witnessed or participated in the strip searches of women offenders. The women offenders sector of the Correctional Service of Canada will continue to review these videos of the use of force, and any allegations of breach of the national policy will be reviewed.

189. One recommendation called for independent adjudication for segregation. In October 2000, the Government of Canada responded to a parliamentary sub-committee on the *Conditions and Correctional Release Act* and proposed an Enhanced Segregation Review process that includes external membership. The government believes this provides the proper balance between independent adjudication and the promotion of appropriate accountability by the Correctional Service of Canada. This model will be implemented on a pilot basis in all regions and a detailed independent evaluation will be undertaken. The development of the pilot may be guided by a Steering Committee comprised of internal and external members.
190. Another recommendation in progress relates to the question of the completion of the three-year project for independent monitoring of the cross-gender staffing policy in women's facilities. The Cross-Gender Staffing Monitor's first of three annual reports was released October 9, 1998. The second report was released on February 2, 2000, and the third report is scheduled for release in January 2001. Correctional Service is actively addressing any issues raised in the reports of the independent Monitor.
191. In summary, the vast majority of recommendations from Madame Justice Arbour's report have been implemented or are actively being addressed on an ongoing basis. This report has had a significant positive impact on improvements to correctional policies and programs for both women and male offenders.

### **Use of Force and Involuntary Sedation During Removals (paragraph 58 (c))**

192. Government policy mandates that the removal of individuals from Canada be carried out in an orderly and humane manner, to ensure the safety of the individual being removed, as well as any escorting officers, flight crew and other passengers.
193. As an example of the types of situations faced by escorting officers, some individuals who object to being removed from Canada will react by causing a disturbance at the time of boarding or during a flight. Such disturbances can include physical violence towards themselves or others, shouting, screaming, spitting, and biting.
194. Standards have been set in law enforcement situations for the restraint of individuals in custody. These standards also apply to the removal of individuals from Canada. The use of restraining devices is permissible in circumstances where there is no other realistic way for the escorting officer to effect the removal in a safe and secure manner.
195. The escorting officer must have reasonable grounds to believe that an individual poses a safety or security risk before restraints can be used. Such grounds usually occur from a thorough



review of the case file and all available information concerning the individual's background and temperament. If any force is used in the application of the restraining device, it must not exceed the amount necessary to control an individual's behaviour so that removal can proceed. In cases where the use of force is necessary, the officer must comply with the reporting requirements as set out by the Department's Use of Force and Disengagement Policy. In addition to restraints, protective headgear may be used if necessary to prevent individuals from injuring themselves.

196. With respect to the involuntary sedation of individuals, the policy and practice in this area are under review. Currently, this is an extraordinary procedure, rarely used, which can be executed only with the concurrence of the courts. In such cases, the sedative must be administered by a medical doctor, who must accompany the individual and the escorting officer for the removal.

### **Pre-Removal Risk Assessment Serious Criminals or Security Risks (paragraph 59(b))**

197. A risk assessment is made in all cases where it is alleged that someone may face torture upon removal as described under article 3 of this report. Minimal procedural guarantees are illustrated in the *Suresh* case. Each Bill that becomes law comes with training sessions to the immigration officers, including those who will be responsible for risk assessment.

### **Prosecutions and Defences to Prosecutions (paragraphs 58(g), 58(h), 59(c) and (d))**

198. The Committee against Torture has made the recommendation to "prosecute every case of alleged torture in a territory under its jurisdiction where it does not extradite the alleged torturer and the evidence warrants it, and prior to any deportation." Most allegations that a person in Canada has committed torture derive from decisions of the Immigration and Refugee Board that a person is ineligible for refugee protection because there are reasonable grounds to believe that person has committed torture. The standard of proof required for the Board to reach such a conclusion is much lower than that required to convict a person of criminal wrongdoing in a Canadian court. Moreover, the Board's findings are usually based on the alleged torturer's own testimony before it. The *Canadian Charter of Rights and Freedoms* prohibits the use of such testimony in subsequent criminal court proceedings. Canadian law also allows the accused to remain silent during criminal investigations or prosecutions; therefore, the evidence in such cases usually does not warrant criminal prosecution in Canada. Where there is a realistic prospect of obtaining sufficient admissible evidence abroad, a criminal investigation will be pursued.

199. The Government of Canada reviewed with great attention the concern expressed in paragraph 5(h) of the Concluding Observations with regard to defences available to an accused torturer.
200. With respect to the defences of *autrefois acquit* and *autrefois convict* in the context of foreign procedures conducted for the purpose of shielding an accused from criminal responsibility, the Government of Canada holds the following view.
201. The general rule against “double jeopardy” exists in Canadian law as a form of special plea to a criminal charge. A person who has previously been subject to jeopardy may raise the special pleas of *autrefois acquit* or *autrefois convict*. Section 11(h) of the *Canadian Charter of Rights and Freedoms* establishes that any person charged with an offence has the right, if finally acquitted of the offence, not to be tried for it again, and, if finally found guilty and punished for the offence, not to be tried or punished for it again. Given its broad wording, s.11(h) is at least *prima facie* applicable to acquittals entered in foreign jurisdictions, provided that the administration of foreign justice is capable of international respect and that the accused is deserving of being accorded the fairness of section 11(h) because he or she was in real jeopardy.
202. Section 7(6) of the *Criminal Code* implements in legislation the constitutional safeguard in section 11(h) of the Charter. It provides that a person who has been tried and dealt with outside of Canada in respect of an offence in such a manner that, if that person had been tried and dealt with in Canada, he/she would be able to plead *autrefois acquit*, *autrefois convict* or pardon, and he/she would be able to plead any of these special pleas, then he/she may plead such pleas in Canada in respect of a Canadian prosecution for the same offence. This provision is clearer in excluding the possibility of a “sham” trial founding the basis for a special plea. The foreign trial must have been conducted in such manner that, if it had been a Canadian trial, the plea would be available. A “sham” trial would not meet this criteria.
203. Consequently, the protection offered by section 11(h) of the Charter and section 7(6) of the *Criminal Code* would not extend to “sham” proceedings. If an acquittal is a fraudulent one, the accused was never in jeopardy and, as such, should not be protected from a second prosecution. There has to be a real legal basis for the decision, and where a trial is a “sham,” no proper legal basis for the original decision existed, and as such, a plea of *autrefois acquit* would not be available. It is also submitted that where sentencing was conducted in a manner which was manifestly unjust and unreasonable, punishment did not truly occur. As such, section 11(h) would not be engaged.

204. The Committee against Torture also suggested that the defence that an offence was committed in obedience of the law in force at the time be removed from the current Canadian legislation. Section 269.1 of the *Criminal Code* was specifically created to fully comply with the requirements of the Convention against Torture, and includes all the elements of article 2 of the Convention. Nevertheless, the Canadian government is examining whether it would be advisable to prepare further legislative measures, taking into account all of the relevant factors.
205. Finally, the Committee recommended the removal from Canadian legislation of the defence that an accused had a motivation other than an intention to be inhumane. An intent to be inhumane is not an essential element of the crime of torture as created by section 269.1 of the *Criminal Code*.

### **Investigative Body (paragraph 59 (e))**

206. Section 12 of the *Canadian Charter of Rights and Freedoms* provides that everyone has the right not to be subjected to any cruel and unusual treatment or punishment. It does not specifically use the word “torture,” but as torture is an aggravated form of mistreatment, section 12 of the Charter also prohibits acts of torture. Section 24 of the Charter permits anyone whose Charter rights have been infringed upon or denied to apply to a court of competent jurisdiction for an appropriate and just remedy. Therefore, Canadian courts are competent to receive complaints regarding allegations of torture or any cruel and unusual treatment or punishment, and the victims can obtain redress and adequate compensation.

### **Training of Canadian Forces Members (paragraph 59 (f))**

207. In addition to the *Code of Conduct for Canadian Forces Personnel*, there are training measures in place to ensure Canadian Forces members do not themselves commit, and can also recognize, torture, inhumane treatment or excessive use of force when it occurs. Training of both Canadian and international peacekeeping personnel — both military and civilian — on international humanitarian law and human rights law is provided at the Pearson Peacekeeping Centre and the Canadian Forces Peace Support Training Centre. A specific manual on the use of force sets out precise instructions on the permissible degrees of force and respect for rules of engagement of peacekeeping missions: *The Law of Armed Conflict at the Operational and Tactical Level* (LOAC). In 2000, Canada released a training manual on gender and peacekeeping, for use in training peacekeepers on a gender perspective to international humanitarian law and peacekeeping.
208. Additional information is provided on the *Code of Conduct for Canadian Forces Personnel* and on the LOAC manual under article 10 of this report.

## Documentation

209. The following documents are filed with the Committee, along with the present report:

- *Canadian Charter of Rights and Freedoms*
- *Crimes Against Humanity and War Crimes Act*
- *Extradition Act*
- *Mutual Legal Assistance in Criminal Matters Act*
- *Code of Conduct for CF Personnel*
- *Corrections and Conditional Release Act*

## **PART III**

### **Measures Adopted by the Governments of the Provinces**

## Newfoundland

### Introduction

210. This report updates the information contained in the *Third Report of Canada on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* with respect to developments in Newfoundland between April 1996 and April 2000.

### Article 2: Legislative, Administrative, Judicial or Other Measures

211. The responsibility for the delivery of Youth Correctional Services has been shared between the Department of Justice and the Department of Health and Community Services since March 1996. The Division of Corrections and Community Services, Department of Justice provides secure custody and remand services for young persons aged 12-17 years. Regional Health and Community Service Boards now administer the remaining youth correctional services, including: open custody (group homes and foster homes); community supervision (probation); alternative measures (diversion from court); and the preparation of pre-sentence reports.
212. A major independent report on Youth Secure Custody commissioned by the provincial government was submitted on April 1, 1996. All 57 recommendations have either been implemented or are in the process of being implemented, including:
- conducting exit interviews with young persons on release from custody regarding their treatment while in custody
  - replacing an antiquated youth detention facility in St. John's
  - promoting more avenues for young persons in custody to maintain contact with social workers and significant others in the community

### Article 10: Education and Training

213. The Division of Corrections and Community Services has revised its policies and procedures regarding the Use of Force continuum, and is now developing a format for delivery of this training to correctional staff.

214. Clinicians who work in the mental health field are trained to diagnose and treat post- traumatic stress disorder. This would include psychiatrists and others working in the mental health field.

### **Article 11: Treatment of Persons Arrested, Detained or Imprisoned**

215. The Division of Corrections is in the process of recruiting a qualified professional to conduct a comprehensive review of all divisional policies and procedures — including those pertaining to safety and security, and medical services, as well as offender programming and management — to ensure that such policies are current and consistent with national/international standards and conventions.

## Prince Edward Island

### Introduction

216. This report updates the information contained in the *Third Report of Canada on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* with respect to developments in Prince Edward Island between April 1996 and April 2000.

### Article 2: Legislative, Administrative, Judicial or Other Measures

217. The following measures proscribe acts of torture or cruel and unusual punishment in Prince Edward Island (PEI):
- (a) The *Canadian Charter of Rights and Freedoms* operates in PEI, as in other provinces, via the criminal law process. An accused charged with an offence may bring a Charter application to the court, pursuant to sections 7, 9 or 12, as a defence or other factor that mitigates against the charge.
  - (b) The *Child and Family Services Act* and the *Adult Protection Act* continue to play the same role as reported in PEI's submission to the *First Report of Canada*, that is, to protect children from neglect and abuse, and to protect an adult who is unable to protect him/herself.
  - (c) The *Schools Act* protects students from harsh punishment by teachers and other school officials. Sections 6-15 of the *Schools Act, Students and Parents Regulations*, enable both a principal and a school board to suspend or expel a student under limited circumstances. These provisions set out limitations to suspension/expulsion including the requirements of just cause as defined in these regulations, the necessity of reporting the suspension to the school board, and the availability of an appeal process to student and parent.

Teachers are also subject to the *Criminal Code* and the criminal courts dealt with two cases involving sexual abuse complaints by students against their teachers. In both instances, charges were laid but no convictions were entered. As a condition of their employment, the province's teachers are required to follow the discipline policies and



guidelines set by the school boards. Corporal punishment is not permitted in public schools. Every school in PEI must distribute a student handbook setting out rules for students, and the consequences that may result from infractions.

- (d) The *Correctional Services Act* was proclaimed in 1992, replacing the *Jails Act* and the *Corrections Act*. The new Act governs the management and treatment of prisoners by provincial correction's personnel, promoting a humane standard of treatment by limiting force to the minimum amount necessary to manage extreme situations. The Act places limits on penalties for prisoners who violate rules. Section 24 of the *Correctional Services Act Regulations* sets out the specific penalties that a centre manager (formerly known as a jailer) may impose, including: withdrawal of privileges; performance of extra duties; payment for damages caused by the inmate; segregation for a maximum of four days; and forfeiture of remission time.

Segregation may be imposed for a maximum of four days but only upon approval of the Director of Correctional Services. Section 15(f) of the Regulations impose criteria for segregation, including: informing the inmate of the reason for segregation, and informing the centre manager of the segregation no more than 48 hours after it has begun. Procedures governing searches of inmates are set out in section of the Regulations. Section 15 provides an obligation that a correction officer ensure that inmates receive adequate meals, as well as medical attention where the need exists.

## **Article 3: Expulsion or Extradition**

### **The Immigration Context**

218. Citizenship and Immigration Canada (CIC) operates an office in Charlottetown to process refugees who arrive in PEI. CIC compiles statistics for government-sponsored refugees only, not privately sponsored claimants. The refugees who are admitted to the province are here mainly because of war and displacement in their homelands.
219. CIC funds a number of settlement programs for refugees in PEI, including: a language program through a local community college; a Resettlement Assistance Program; an income support program; and an Immigrant Settlement and Adaptation Program that applies to all immigrants, not just refugees. This latter program involves referring the refugees to agencies for personal counselling, employment training, etc.
220. The Resettlement Assistance Program is delivered by the PEI Association for Newcomers to Canada, a local non-profit organization funded by CIC, Human Resources Development

Canada and Canadian Heritage. Under this program, temporary accommodations, food, money, as well as orientation to the community and Canadian currency, etc., are provided, along with assistance with locating permanent accommodations. The Newcomers Association also sponsors a host program where volunteers are matched up with newcomers to assist with their orientation to the community, as well as the formation of a general support system. The CIC income support program provides general financial assistance to refugees for one year.

221. In 1999, 105 refugees came to PEI from Kosovo, and 62 remain after one year. In addition, 55 refugees arrived from other countries that year, including Yugoslavia, Burma, Afghanistan and Ethiopia. In 1998, there were 38 arrivals from El Salvador and Yugoslavia. In 1997, 59 refugees arrived from Ethiopia, Guatemala, Yugoslavia, Sudan, and other countries, and in 1996, 54 arrived, mainly from Guatemala and Mexico.
222. Most of the refugees arriving in the province were selected by immigration officials based on a profile of how well they would likely fit into PEI society. Under a new selection system, refugees will now be admitted on the basis of the degree of danger they are in. Many Kosovar refugees arrived in PEI under ministerial permits, or as part of an urgent protection pilot program.
223. Outside additional numbers based on urgent protection or humanitarian concern, the Government of PEI has an agreement with CIC to accommodate a certain number of refugees per year. In the year 2000, the province agreed to accept more than 60 refugees. As of August 2000, only 20 percent of this quota had arrived, although it is common for new arrivals to come in the fall.
224. As residents of the province, refugees and landed immigrants may qualify for benefits under the *Drug Cost Assistance Act* and the *Health and Community Services Act*. While basic health services are available to refugees and immigrants, there is a recognized need for this group of residents to have increased access to family physicians. The practical result of a shortage of physicians is that refugees and immigrants have trouble accessing non-emergency health services.
225. The Association would like to see an increase in awareness of the need for professional counselling and support services for refugees who have experienced extreme trauma, including torture and other human rights violations in their country of origin. The Canadian Mental Health Association issues a directory of self-help groups in PEI, but there is currently no listing for a group that specifically offers help to refugees.

226. The Canadian Centre for Victims of Torture (based in Toronto) has proposed providing training sessions for PEI settlement workers — those who work with refugee claimants. Due to staff changes at the Toronto organization, no training had taken place at the time of this report.

## **Article 7: Prosecution of Offences**

227. Prince Edward Island complies with this article as the province must enforce the prohibition against torture in the federal *Criminal Code* (s. 245.4), and the prohibition against cruel or inhuman treatment or punishment in the *Canadian Charter of Rights and Freedoms* (s. 12).

## **Article 10: Education and Training**

228. The Justice Institute of Canada, located in Prince Edward Island, trains police officers, correction officials, conservation enforcement officers, security personnel, and other provincial and private law enforcement officers in Atlantic Canada. Training in the use of force is given throughout the duration of these programs to ensure that officers will learn to deal with situations properly, and maintain a low incidence of allegations about inappropriate use of force in PEI. The training is based on the maxim in section 25 of the *Criminal Code* of Canada that officers use “as much force as is necessary,” and is consistent with law enforcement training in other jurisdictions. Training ranges from how to use verbal strategies such as crisis intervention, mediation and negotiation for lower intensity situations, to the use of intermediate weapons and lethal force for persons who exhibit a high level of resistance. Theory, scenarios, computer simulation and on-the-job training are also used to impart information and to develop skills.

## **Article 11: Treatment of Persons Arrested, Detained or Imprisoned**

229. The objective of this article, to prevent cases of torture of persons arrested, detained or imprisoned, is met by PEI's *Correctional Services Act*, as described under articles 2 and 13.

## **Article 12: Prompt and Impartial Investigation**

230. Suspected incidents of torture would be subject to police investigation as part of the enforcement of the federal *Criminal Code* provision, s. 245.4. No prosecutions have taken place under this section.
231. In addition, two provincial laws, the *Coroners Act*, R.S.P.E.I. 1957, c. 10, and the *Vital Statistics Act*, R.S.P.E.I. 1974, c. V-6, require special investigations where a person appears to have died as the result of “violence,” “misadventure,” “unlawful means,” “misconduct,” or in

other suspicious or sudden circumstances. The *Vital Statistics Act* requires an investigation before a burial permit may be issued.

232. The *Coroners Act* requires that any person who has reason to believe a deceased person has died in any of the above circumstances must immediately notify the Coroner. A jail keeper or superintendent must also notify the Coroner in the case of the death of a prisoner in a jail, reformatory or lock-up.

### **Article 13: Allegations of Torture**

233. The Public Complaints Commission is an independent federal body where members of the public can submit complaints regarding the on-duty conduct of Royal Canadian Mounted Police (RCMP) officers. In PEI, the process begins when a member of the public complains to the relevant police detachment. An investigator is assigned to conduct an investigation and submit a report to the head sergeant. The sergeant then makes an internal recommendation, including a follow-up process. If the complainant is not satisfied, he/she may appeal to the Public Complaints Commission. The Commission reviews the complaint file and decides whether the investigation was properly conducted, and whether the conclusion reached was justified. The Commission then has the discretion to either ask for a follow-up from the detachment, or conduct its own investigation.
234. Between 1992 and 1996, approximately 88 complaints were made to provincial detachments in PEI, and 29 complaints were made directly to the Commission. In 1997, 13 complaints were made to provincial detachments. Three of these complaints were resolved informally after an agreement was reached with the investigating officer. The other 10 were resolved formally following a full investigation. Two of these complaints were submitted to the Public Complaints Commission which determined that the investigation and recommendations were satisfactory. In 1998, six complaints were made to provincial detachments, and one to the Public Complaints Commission. Of these seven complaints, one was resolved informally while the other six were resolved formally. In 1999, there were five complaints to provincial detachments, and seven to the Commission. Of these, three were resolved informally and nine formally.
235. Currently, in PEI, there is no mechanism for a review of municipal police officers' actions, other than a complaint to the chief of the force involved. There is no police commission in the province, but there is a complaint/investigation process which works as follows: when a person complains about the conduct of a police officer, the officer in charge of public relations investigates the complaint and reports to the chief of police.

236. Most complaints are resolved at this stage, but if the complainant is unhappy with the outcome he/she can voice concerns to the Police Committee, a subcommittee of municipal councils. The Police Committee is made up of a chair; one council member; the director of public services; and two advisors, including the chief of police and the officer responsible for public relations. This Committee oversees the day-to-day activities of the police force to ensure that policies and procedures are being correctly followed. The police have a code of discipline and, depending upon the nature of the complaint, the process for handling complaints may involve a formal disciplinary committee that the mayor of the municipality oversees. The complainant may also contact the Attorney General if he/she feels that their complaint was not dealt with correctly or that there was an attempt to cover something up. Additionally, if it is a serious criminal matter or if the complainant deems it necessary, the Police Committee may invite an outside police agency to investigate the matter.
237. Currently, no statistics are available to determine the number of complaints to Police Committees or their disposition.
238. The *Correctional Services Act* gives the Lieutenant Governor-in-Council authority to make regulations pertaining to the treatment of inmates in provincial correction facilities. Under the 1992 *Correctional Services Act*, the Director of Community and Correctional Services is responsible for the administration of correctional services under the direction of the Attorney General. The Director may establish, amend and enforce a code of conduct for centre managers and employees. Under the old *Jails Act*, the Minister was directly responsible for the administration of the Act, and the jailer (now called the centre manager), in carrying out duties for the care, custody and discipline of inmates, reported directly to the Minister. No code of conduct was prescribed by the Act, nor was there a provision, as is contained in section 15 of the *Correctional Services Act*, for employees to be investigated and examined in regard to their conduct.

## **Article 14: Redress and Compensation**

239. In PEI, compensation for criminal injury is available to victims who receive injuries from crimes committed after the 1989 proclamation of the *Victims of Crime Act*. To be eligible for compensation, the injury must involve actual bodily harm, which includes mental shock. Persons who incur financial loss or expenses resulting from a victim's injury or death may also apply for compensation through Victim Services, the agency responsible for administering compensation claims. If there is evidence that a crime occurred, compensation may be available, even when the offender is not apprehended or convicted. The crime must still have been reported to police, and the victim must cooperate in the investigation. Between 1996 and 1999, a total of 109 victims were compensated: 22 in 1996, 25 in 1997, 30 in 1998 and 32 in 1999.

## Nova Scotia

### Introduction

240. This report updates the information contained in the *Third Report of Canada on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* with respect to developments in Nova Scotia between April 1996 and April 2000.

### Article 2: Legislative, Administrative, Judicial or Other Measures

241. The provincial Department of Justice enforces the provisions of the Canadian *Criminal Code*, including section 269.1, which specifically categorizes torture as an indictable offence and eliminates the defence of superior orders.
242. The Nova Scotia *Hospitals Act*, R.S.N.S. 1989, c. 208, states that, if a peace officer apprehends and detains a person for a medical examination that may result in admission to a psychiatric facility, the officer must file a full report with the Attorney General within 24 hours of the apprehension. The person detained must receive the medical examination within 24 hours of admission, and a person who is formally admitted may apply to have his or her declaration of capacity or competency reviewed by a review board.

### Article 6: Custody and Other Legal Measures, and Article 7: Prosecution of Offences

243. The *Liberty of the Subject Act*, R.S.N.S. 1989, c. 253, is the provincial *habeas corpus* legislation. It guarantees that there shall be no abrogation or abridgement of the remedy by the writ of *habeas corpus* at common law and further guarantees that the remedy exists in full force and is the undeniable right of the people of the province of Nova Scotia.

### Article 10: Education and Training

244. All provincial corrections officers receive a mandatory basic training course that includes an examination of the *Canadian Charter of Rights and Freedoms*. Since 1992, approximately 25 percent of corrections officers have taken additional training in Verbal Crisis Intervention, a

course designed to reduce physical intervention. The training is still being offered to those officers who have not yet had the opportunity to take part. The Correctional Services Program, taught at the community college level, is developing a Program Advisory Committee comprised of members from youth corrections, group homes, federal and provincial departments of justice and university criminology departments. The Program examines the *Canadian Charter of Rights and Freedoms* and the *Nova Scotia Human Rights Act*.

245. In March 1996, Nova Scotia became the first province in Canada to implement a province-wide Use of Force Policy. This policy addresses unnecessary force and injury to police or suspects and outlines the use of alternative methods to lethal force. Approximately 97 percent of the province's peace officers have already taken the two-day course associated with the policy; and the course will continue to be offered on a yearly basis for all officers.
246. As outlined in Canada's Third Report, the province established a "Critical Incident Investigation Task Force," comprised of representatives from the Royal Canadian Mounted Police (RCMP), municipal police, Military Police, the Department of Natural Resources, the Department of Fisheries and Ports Canada. The Task Force investigates any death or serious injury to, or caused by, a peace officer. The investigation is headed by an agency other than the agency involved in the incident and a public report is issued.

## **Article 11: Treatment of Persons Arrested, Detained or Imprisoned**

247. The *Corrections Act*, R.S.N.S. 1989, c. 103, provides for the safe custody and security of offenders and for the inspection of lock-up facilities and compliance with prescribed standards.

## **Article 12: Prompt and Impartial Investigation**

248. The *Fatality Inquiries Act*, R.S.N.S. 1989, c. 164, provides for an investigation into the cause and manner of the death of a person in a jail or prison, or other location where there is reasonable cause to suspect that the person died by violence or through culpable negligence.

## **Article 13: Allegations of Torture**

249. Under the *Police Act*, R.S.N.S. 1989, c. 348, the Nova Scotia Police Commission continues to be responsible for investigating complaints against the police. Complaints that are not resolved by the Commission may be referred to the Review Board, which must hold a public hearing and provide written reasons for its decisions. The Review Board may vary or affirm penalties against officers or award costs.

250. Regulations made pursuant to the *Police Act* require municipal police departments to report internal disciplinary matters to the Police Commission. The Annual Report of the Nova Scotia Police Commission is made available through public libraries and the Nova Scotia government bookstore.
251. The *Ombudsman Act*, R.S.N.S. 1989, c. 327, authorizes staff from the Office of the Ombudsman to enter premises and investigate allegations of any offence against an inmate of a corrections facility or against a patient in a psychiatric hospital. Where other avenues of redress exist, the staff may examine both whether the process and policy is fair and, if so, whether the process was followed correctly.
252. The Office of the Ombudsman maintains records of correctional facilities complaints independent of those filed against the parent Department of Justice. The Office conducts monthly visits to all youth correctional facilities and maintains a Registry of Complaints which is open to both inmates and non-management staff of those facilities.

#### **Article 14: Redress and Compensation**

253. The *Fatal Injuries Act*, R.S.N.S. 1989, c. 163, provides for the right of family members to maintain an action and recover damages for a death caused by neglect or a wrongful act.
254. Under the *Proceedings Against the Crown Act*, R.S.N.S. 1989, c. 360, the government is subject to liability for torts committed by its agents and officers, including officers performing legal duties.



## New Brunswick

### Introduction

255. This report outlines changes made since Canada's Third Report and provides additional information regarding New Brunswick's adherence to the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. It covers the period from April 1996 to April 2000.
256. New Brunswick is committed to the principles of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* and to fully implementing the provisions of the Convention within its jurisdiction.

### Article 2: Legislative, Administrative, Judicial or Other Measures

257. The *Custody and Detention of Young Persons Act*, R.S.N.B. 1973, c. C-40, recognizes and declares that young persons who commit offences have special needs and require guidance and assistance. They have rights and freedoms in their own right, including those stated in the *Canadian Charter of Rights and Freedoms* and, in particular, a right to be heard in the course of, and to participate in, the processes that lead to decisions that affect them.

### Article 10: Education and Training

258. There is no training facility for police officers in New Brunswick. The regional training facility for police officers is the Atlantic Police Academy, located in Summerside, Prince Edward Island. The training of police officers is consistent with the principles of the *Canadian Charter of Rights and Freedoms*, the *Criminal Code* of Canada and the United Nations (UN) Convention against Torture, all of which are referred to in the course of the programs. Training includes information on inmate rights, procedures for handling suspects, methods of restraint and consequences of the use of force. The Atlantic Police Academy is also involved with providing continuous on-the-job training.
259. There are two nursing programs in New Brunswick, the Faculty of Nursing at the University of New Brunswick, and l'École des sciences infirmières at l'Université de Moncton. The Faculty of Nursing has introduced specific content into its Year II curriculum dealing with the care of persons who have been subjected to torture or other cruel, inhuman or degrading treatment. In

Year II, III, and IV of the program, students work in a variety of community and tertiary care agencies where application of this knowledge is reinforced. L'École des sciences infirmières has, as part of its curriculum, training on the care of victims of physical and sexual abuse, regardless of the cause of the alleged abuse. The content of some of the optional courses offered to future nurses provides discussion with respect to human rights and the spirit of the Convention against Torture. Students also receive experience within a variety of community and tertiary care settings.

260. Policy and procedures have been developed with the New Brunswick Foster Families Association to investigate allegations of abuse or neglect involving foster children who are in care of the Minister.
261. Interdepartmental Protocols for Child Victims of Abuse have been developed in order to ensure that all efforts in New Brunswick to protect children from abuse and neglect are effective and sensitive to the needs of children. In these protocols, there is a specific section in relation to Foster Homes and Children's Group Care Facilities. Specifically, the protocols prohibit the use of physical discipline in New Brunswick foster homes and group homes.
262. The University of New Brunswick Faculty of Law offers two courses directly related to the UN Convention against Torture. These courses are:
  - International Humanitarian Law 4133, which is an introduction to theories, policies, practices, and rules of the law of armed conflict and international humanitarian law
  - Human Rights Law 3908, which presents international human rights and Canadian human rights in the context of the UN Convention
263. The Department of Political Science at St. Thomas University offers many courses wherein the general topic of torture and other inhuman or degrading treatment or punishment is dealt with. These courses are: History/Human Rights 3913 — Canada and Modern War Crimes; Criminology 3243 — Corrections; Criminology 3133 — Criminal Law and the *Canadian Charter of Rights and Freedoms* (discussion on the UN Convention and on s. 12 of the Charter); Criminology 3223 — Young Offenders; and Criminology 3123 — Contemporary Issues.
264. The student chapter of Amnesty International hosted a conference at Mount Allison College that attracted students and interested citizens from eastern Canada. Among the key speakers were a number of distinguished and notable international human rights activists, such as the Executive Director of Médecins sans frontières and Stephen Lewis, Former Canadian Ambassador to the UN.

265. The Faculté de Droit (Faculty of Law) of l'Université de Moncton offers a course entitled Droits fondamentaux, specifically oriented to the study of all fundamental rights, and another entitled Droit international public, which studies human rights. In addition to those two courses, beginning in September 2000, a third course, Droit de l'immigration (immigration rights) will teach such fundamental rights as political asylum, and of specific reasons that can lead to granting political asylum like torture and cruelty.
266. Furthermore, the Department of Sociology of the Faculté des Sciences sociales is presently preparing a program for a Minor in Criminology, which is due to start in September 2000. The program will comprise two Criminology courses that would present content directly related to human rights, and specifically to those rights for which the Convention against Torture was adopted.
267. The New Brunswick Community College in Miramichi City, which runs the Correctional Techniques Program, the Youth Care Workers Program and the Criminal Justice Program, has taken steps to implement education on the Convention against Torture into these three training areas. The content on the Convention has been added to the Correctional Operations course and the Youth Care Operations course, one of which must be studied by every student in the above mentioned programs. These operations courses contain specific content dealing with: "code of conduct" guidelines for correctional workers; the *Canadian Charter of Rights and Freedoms*, with specific reference to section 12 on the legal right not to be subjected to cruel and unusual punishment; *Criminal Code* of Canada guidelines for the use of reasonable force and the Correctional Jurisdiction Policy on use of excessive force; and information on harassment in relation to co-workers and clients in the criminal justice system.
268. The New Brunswick Community College in Dieppe offers a Correctional Technique Program that integrates the *Canadian Charter of Rights and Freedoms*, with specific reference to section 12 on the legal right to not be subjected to cruel and unusual punishment, and *Criminal Code* of Canada guidelines for the use of reasonable force and the Correctional Jurisdiction Policy on use of force guidelines and policies. Starting next year, the Dieppe College will be ready to initiate the content of the UN Convention.

## **Article 11: Treatment of Persons Arrested, Detained or Imprisoned**

269. The 1992 report *Policing Arrangements in New Brunswick: 2000 and Beyond* (the Grant Report) recommended several changes to provincial policing arrangements, including the development of professional standards for policing agencies.

270. Standards were developed through an extensive consultative process and on May 1, 1997, by virtue of section 1.1(3) of the *Police Act*, R.S.N.B. 1973, c. P-9.2, the New Brunswick Policing Standards came into effect as Ministerial Directives. The Solicitor General directed that municipal and regional police forces in the province would have five years from this date to meet the Standards, either from within or by means of purchase of service from the Royal Canadian Mounted Police (RCMP) or a municipal or regional police force. The New Brunswick Policing Standards reflect the best-prescribed professional requirements and practices for police services and allow for local implementation flexibility.
271. The New Brunswick Policing Standards include a chapter relating to the organization and operational aspects of young offender services which, due to the special legal status of young persons/offenders, states that clear policy and procedures should be developed in accordance with the *Canadian Charter of Rights and Freedoms* and the current legislation. In addition, Part 6 of the Standards deals with prisoner/court-related operations and with issues of prisoner transportation, holding facilities and court security.

### **Article 13: Allegations of Torture**

272. In April 1996, the Department of Public Safety established a *Police Act* Review Committee, made up of representatives from all groups with a direct interest in the delivery of policing services. The Committee's mandate is to examine the *Police Act* and to make recommendations to the Department for legislative amendments.
273. In November 1998, the *Police Act* Review Committee began an extensive review of Part III of the *Police Act* relating to complaints and the discipline of members of police forces. In view of the developments that have occurred in this area since this part of the Act was introduced, the Committee decided to conduct a full review of the discipline process, rather than simply amend specific provisions. It is anticipated that a package outlining proposed changes to the *Police Act* will be available in May 2000. At that time, the key stakeholders will review it before a recommendation is made to the government.
274. The *Police Act* empowers the New Brunswick Police Commission to investigate directly, on its own motion, in response to a complaint, or at the request of a board of police commissioners or a municipal council, any matter relating to any aspect of the policing of any area of the province. The Commission may refer a complaint related to the conduct of a member of a police force to the chief of police (so long as the chief is not the subject of the complaint), or investigate the complaint itself by appointing an investigator or conducting a hearing. The *Police Act* also requires chiefs of police to inform the Police Commission within 20 days of all complaints received. In the case where an investigation has been referred to a chief of police by the

Commission, the chief must submit to the Commission the full details of the investigation within 20 days of its completion.

275. Regulation 86-49 under the *Police Act* (known as the Discipline Regulation) sets forth a Discipline Code, which provides, *inter alia*, that it is incumbent upon every police officer within the province to respect the rights of all persons, to perform his duties impartially in accordance with the law and without abusing his authority and to conduct himself/herself at all times in a manner that will not bring discredit upon his/her role as a police officer.
276. Specifically, section 39(1) of Regulation 86-49 provides that it is a major violation of the Code for any police officer to be discourteous or disrespectful toward any member of the public or to use any unnecessary force upon or apply cruel treatment to any prisoner or other person with whom he/she may come in contact in the performance of his/her duties.
277. The Discipline Code also provides that workplace harassment may constitute a major or minor violation, and includes provisions dealing with abuse of authority and discrimination.
278. Under the provisions of the *Police Act*, if a complaint results in a finding of guilt with respect to a major violation of the Code, the police officer may be disciplined in several ways, including suspension or dismissal.

## **Article 14: Redress and Compensation**

279. The New Brunswick Department of Public Safety provides a range of services to victims of crime in the province. The mandate of the New Brunswick Victim Services Program is to provide a range of support services, ensuring that victims are informed of their rights and responsibilities, that they are referred to services and remedies available to them and that they are treated with courtesy and compassion with a minimum of inconvenience from their involvement in the criminal justice system. This program is self-sufficient, being totally funded from revenue received from a victim surcharge collected on federal and provincial offences in the province. The legislative authority for the establishment and delivery of victim services rests with the *Criminal Code* of Canada and the New Brunswick *Victim Services Act*.
280. Services provided to victims of crime include:
- provision of information on services available for victims of crime
  - support and preparation of victims to testify in court

- assistance in preparation of victim impact statements for court, ensuring that victims are aware they may voluntarily prepare and read an impact statement in court at the time of sentencing, in accordance with the *Criminal Code* of Canada
  - provision of counselling services, including trauma counselling, to assist victims in dealing with trauma and to be able to testify in court
  - referral and payment for short-term counselling by registered therapists to deal with the effects of being victimized
  - crime compensation
  - referrals as needed to community agencies providing services to victims of crime
281. The New Brunswick *Victim Services Act* provides for: the collection of victim surcharges on provincial offences; the provision of grants to community agencies for the delivery of services to victims, promotion of victim services, distribution of information for victim services and research on victims of crime; and the delivery of victim services in the province, including the administration of the compensation for victims of crime.
282. In 1996, the New Brunswick *Compensation for Victims of Crime Act* was repealed and the Compensation Program now falls under the Regulations of the *Victim Services Act*.

## Québec

### Introduction

283. 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. Unless otherwise indicated, this report updates, to April 31, 2000, the information contained in Canada's previous reports on the application of this Convention.

### Article 2: Legislative, Administrative, Judicial or Other Measures

284. Québec's *Charter of Human Rights and Freedoms*, R.S.Q., c. C-12, enacted by the National Assembly in 1975, stipulates that "every human has a right to life, and to personal security, inviolability and freedom." Legislative and administrative measures have been taken in accordance with this fundamental provision to ensure compliance with the Convention.
285. Under the *Act Respecting Police Organization*, R.S.Q., c. O-8.1, all special constables and police officers in Québec are subject to the same rules of conduct, as prescribed by the Québec Police Code of Ethics (Code de déontologie des policiers du Québec, R.R.Q., c. O-8.1, r. 1). The Police Ethics Commissioner and the Police Ethics Committee (Comité de déontologie policière) monitor compliance with this Code and receive public complaints about police conduct. In October 1997, the National Assembly passed amendments to the *Act Respecting Police Organization* with a view to amending the police code of ethics. The basic principles of the system, namely, transparency, accessibility and the independence of complementary jurisdictions, were maintained. The new legislation emphasizes conciliation as a means of resolving public complaints and as an alternative to court remedy. Among other things, the new system stipulates that all admissible complaints are subject to conciliation, except for complaints set out in the Act which must be reviewed by the Commissioner — in particular those involving death or serious injury, criminal offences, recidivism or other serious matters, as well as issues in which the public trust of police officers may be seriously compromised. The changes to the conciliation procedure also include private review of complaints as opposed to a hearing before a tribunal, since it is incumbent on the parties to express themselves without legal representation so that, together, they can reach a better understanding of the circumstances and put their agreement in writing.

## **Article 4: Criminalization of Torture**

286. The *Criminal Code* (s. 269.1) prohibits torture of a citizen by a public official. Only one citizen invoked this provision during the period covered. The decision is still pending, as the legal proceedings provide that the accused, a member of the military, will be committed to stand trial in October 2000.

## **Article 10: Education and Training**

287. The Québec Ministry of Public Security continued to provide training to new correctional services officers with respect to human rights and freedoms. In recent years, training has also addressed physical intervention in a double cell and positional asphyxia in situations requiring the use of force.

288. With regard to the training of police officers, the Québec Ministry of Education continues to provide college-level professional and technical training, as set out in paragraph 169 of Canada's Third Report on the application of this Convention.

289. In December 1999, a bill intended to replace the *Police Act* and the *Act Respecting Police Organization* was tabled in Québec's National Assembly. Essentially, this bill repeats the provisions regarding police operations and would incorporate ethics provisions that are currently part of the *Act Respecting Police Organization*. The bill requires all police force directors to establish occupational training plans. The bill also requires all municipalities to pass a regulation regarding the members of its police services and institutes a monitoring board for the Sûreté du Québec.

290. Bill 86 also provides for the creation of a national police school to replace the Québec Institut de police. The school would provide initial training for police patrol, investigations and police management.

## **Article 11: Treatment of Persons Arrested, Detained or Imprisoned**

291. With respect to the police, in addition to enforcing the various actions mentioned in paragraph 173 of Canada's Third Report, the Ministry of Public Security undertook to implement the measures relating to the government's policy on conjugal violence, which was publicly released in December 1995. These actions, taken in conjunction with police services, are intended to provide for the protection, integrity and security of victims of conjugal violence and of those close to them. The implementation of various police measures to combat conjugal violence had the following positive effects:



- The vast majority of police officers register instances of conjugal violence with the Québec Police Information Centre.
  - Nearly all police officers seize any firearms present in cases of conjugal violence.
  - A large proportion of police services inform victims of the release conditions of their presumed aggressor.
292. For over two years, an awareness campaign pertaining to violence against women has been directed to the general population and to youth in particular. It seeks to make people aware of the unacceptable and criminal phenomenon of violence against women, especially in their relationship with a spouse or significant other.
293. The police services used various tools at their disposal, with regard to detention and handling, in order to respect the rights of those arrested, detained or incarcerated, including a Guide to Police Practices. This Guide is intended to ensure respect of the *Charter of Human Rights and Freedoms*, by providing, among other things, instructions on the use of force, arrest, detention and investigation techniques.
294. With respect to correctional services, the number of individuals admitted to detention facilities is dropping steadily. In 1995-96, for example, 65,461 individuals entered prison. This figure dropped to 62,985 in 1996-97, 56,954 in 1997-98 and 49,791 in 1998-99. Preliminary figures for 1999-2000 suggest that this decline in admissions is continuing. This consistent decline is the result of using alternatives to detention, such as suspension of driver's licences and more frequent imposition of community service.
295. Several directives relating to correctional services were developed or updated in order to ensure respect for individuals arrested, detained or incarcerated. Among other things, they address such issues as health care for incarcerated persons, standards for the use and application of constraint instruments, and the use of firearms.

### **Article 13: Allegations of Torture, and Article 14: Redress and Compensation**

296. 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 1,188 complaints in 1999-2000 (April 1, 1999 to March 30, 2000), involving 1,934 police officers. 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 677 complaints (56 percent), tried conciliation between the parties in 283 cases (23 percent) and decided to investigate 206 cases (17 percent). After these investigations, the Commissioner decided to commit 122 police officers to appear before the Police Ethics Board with regard to 77 cases.

297. With respect to correctional services, individuals claiming to have been mistreated by correctional services can file a complaint with civil or criminal court and, if the evidence allows, be compensated for the injustice suffered or receive a statement of guilt against the assailant. In the case of *Gauthier v. Beaumont*, [1998] 2 R.C.S. 3, an individual suspected of theft was the target of abusive conduct by officers of the Québec police service. In this instance, the Supreme Court of Canada ruled that the conduct of the police had violated the complainant's rights guaranteed under sections 1 and 4 of the Québec *Charter of Human Rights and Freedoms*. The Court sentenced the officers to pay \$50,000 in pecuniary damages and \$200,000 for emotional injury under section 49(1) of the Québec Charter. The Court also sentenced the officers to pay \$50,000 in exemplary damages under section 49(2) of the Québec Charter for intentionally infringing on the complainant's rights. In *Leroux v. Communauté Urbaine de Montréal*, [1997] R.J.Q. 1970, the Superior Court sentenced the officers and their employer to pay \$132,000 in compensation for illegal arrest and detention, insults and mistreatment of an individual who was arrested and ended up in hospital, including \$122,000 in pecuniary damages and for emotional injury under section 49(1) of the Québec Charter, and \$10,000 in exemplary damages under section 49(2) of the Québec Charter. In the decision of *Protection de la Jeunesse — 988* (1999), J.E. 99-1550, the Québec Superior Court stayed proceedings relating to an alleged theft in accordance with section 24(1) of the *Canadian Charter of Rights and Freedoms*, as reparation for the abusive use of force by police officers during the arrest of a young offender, in violation of section 12 of the Charter. In that case, it was clear that the respondent would have received either probation or discharge in any case. In *R. v. Serré* (1999), J.E. 99-1033, the Québec Court of Appeal ruled that the stay of proceedings under section 24(1) of the Canadian Charter was not appropriate, as reparation for the mistreatment inflicted by prison guards in this instance, following an attempted escape during which one of the guards was taken hostage and assaulted.
298. Two authorities in Québec, the Commission québécoise des droits de la personne et des droits de la jeunesse (Human Rights and Youth Rights Protection Commission) and the Protecteur du citoyen (ombudsman), regularly monitor and intervene in the management of detention facilities in the province. For example, the Commission has adopted an analysis grid and statement of

principles regarding the use of confinement in the case of a child in compulsory foster care. In the Commission's view, confinement should only be used in exceptional circumstances and as a last resort, if necessary. All disciplinary measures should be taken in the child's best interests.

## **Article 16: Prevention of Other Acts of Cruel, Inhuman or Degrading Treatment or Punishment**

299. Section 43 of the *Criminal Code* stipulates that "Every schoolteacher, parent or person standing in the place of a parent is justified in using force by way of correction toward a pupil or child, as the case may be, who is under his care, if the force does not exceed what is reasonable under the circumstances." Serious consideration is currently being given to the need to retain this section.
300. During the period covered, two decisions were made citing section 43 of the *Criminal Code*. In *St-Amour v. Peterson*, [1998] R.R.A. 103 (C.S.), the Québec Superior Court concluded that a school bus driver, who was not facing any criminal charges, had used reasonable force by pushing a student blocking the centre aisle into his seat. In the case of *Laroche v. R.* (1999), J.E. 99-338, the Court of Appeal ruled that throwing a handful of sand into a child's face could not be considered as justified correction under section 43 of the *Criminal Code*, and could therefore not stand as a valid defence against a charge of assault.

## Ontario

### Introduction

301. The information provided in this report is an update to *Canada's Third Report on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* with respect to developments in Ontario. It covers the period from April 1996 to April 2000.

### General Information

302. Torture is a criminal offence and Ontario is dedicated to strong and effective law enforcement.
303. Ontario's correctional system is going through an extensive change that will fundamentally alter the way in which services are delivered to inmates. These changes have been implemented with a focus on rebalancing the corrections system to reflect the rights of victims and to institute a meaningful consequence for offenders. In addition, a strict discipline project aimed at reducing recidivism, and specifically tailored to 16- and 17-year-old male repeat offenders, is currently under way. A structured program regimen emphasizing work skills and education has also been established throughout the young offender system.
304. Ontario is committed to ensuring that public safety is the highest priority in inmate release decisions. Strengthened parole policies, vigorous enforcement of the terms and conditions of parole, and a reduction in the parole grant rate have been effective changes in maintaining public security. Change within the corrections system is also being delivered through a large capital renewal project that will eliminate economic inefficiencies and halt the structural deterioration of the province's correctional facilities. To this end, the government is currently in the process of replacing its aging adult facilities with modern, more humane institutions.

### Article 1: Definition of Torture

305. On May 21, 1996, the Ontario Human Rights Commission released its Policy on Female Genital Mutilation (FGM). It is the Commission's position that the practice of FGM offends the inherent dignity of women and girl children, and infringes on their rights as set out in the *Ontario Human Rights Code*. The Commission will, therefore, accept, investigate and make a

determination on any complaints involving FGM filed by victims of the practice or their legal guardian.

## **Article 2: Legislative, Administrative, Judicial or Other Measures**

306. The *Ministry of Correctional Services Act* and related regulations, directives, policies, procedures, training and standards prohibit acts of mistreatment of persons in custody in Ontario's correctional facilities. The Ministry of Correctional Services monitors compliance in provincial correctional facilities.
307. In Ontario, the standards for correctional staff, facilities and inmates include:
- a statement of ethical principles — ethical standards for correctional staff in carrying out their duties
  - conditions of confinement — policies regarding the conditions of provincial correctional facilities, and standards of accommodations, programs and health care of inmates
  - principles governing confinement — principles regarding inmate rights and privileges, requirements for inmates and penalties for non-compliance
308. Under Ontario's *Police Services Act* (PSA), administered by the Ministry of the Solicitor General, municipalities are responsible for providing adequate and effective police services, and the Lieutenant Governor-in-Council has the authority to establish prescribed standards governing the delivery of adequate and effective police services.
309. Under the *Police Adequacy and Effectiveness Standards Regulation* (January 1999) of the PSA, police services must perform certain core functions and meet certain service delivery requirements, including putting in place, by the year 2001, the requirement for development of policies and procedures with respect to arrest, prisoner care and control, and criminal investigation management. This also applies to the Ontario Provincial Police (OPP).
310. The Ministry of the Solicitor General issues guidelines to assist police services boards, chiefs of police, the OPP and municipalities with their understanding and implementation of the PSA and its Regulations.
311. A new *Policing Standards Manual* was issued in February 2000, which contains 58 guidelines and sample board policies developed to support the *Adequacy Standards Regulation*. The Manual includes new guidelines on arrest, prisoner care and control, and criminal investigation management. The guidelines on arrest are in compliance with legal and constitutional

requirements. The Ontario Civilian Commission on Police Services has the mandate to hold hearings and impose remedies with respect to non-compliance on these guidelines.

312. The *Major Case Management Manual* sets out procedures specific to interviewing. The Ministry of the Solicitor General developed a training model and Regulations under the PSA, as well as supporting standards relating to the use of force by police.

## **Article 10: Education and Training**

313. All staff of the Ministry of Community and Social Services are trained in the requirements pertaining to the use of force on clients, as set out in the Ministry's *Young Offender Services Manual*. These requirements cover the following key areas:

- use of physical or mechanical restraints
- use of secure isolation
- maintenance of discipline
- control of contraband
- use of searches
- apprehension of youth
- use of punishment

314. All correctional officers in provincial correctional facilities receive basic and advanced training, including education and information regarding prohibition against mistreatment in correctional settings. In addition, all correctional staff receive education and training in relevant statutes and regulations, security protocols, principles of ethics, the proper use of force and the effective use of non-physical intervention.

315. Under the *Police Services Act* (PSA) and related policies and procedures, municipal police services and the Ontario Provincial Police (OPP) are required to provide adequate training, education and information to police officers on procedures for arrest and detention, custody, interrogation, investigation and the use of force.

## **Article 11: Treatment of Persons Arrested, Detained or Imprisoned**

316. All youth in the Ministry of Community and Social Services young offender facilities come under the jurisdiction of the *Child and Family Services Act* which sets out rights and protections for children, including:

- the right to speak in private and receive visits from his/her solicitor or another person representing the child
  - controls on the use of secure isolation
  - regular advice to children regarding their rights
317. Compliance review mechanisms ensure that standards set out in the *Young Offender Services Manual* regarding rights, complaint procedures, serious occurrence reports, child abuse, use of punishment, searches, mechanical restraints and mandatory criminal reference checks for staff, are adhered to.
318. Both the Ministry of Correctional Services and the Ministry of the Solicitor General periodically review the statutes, policies and procedures related to the prohibition against abuse of persons during arrest, interrogation, investigation, interview, detention and custody.

## **Article 12: Prompt and Impartial Investigation, and Article 13: Allegations of Torture**

319. The serious occurrence procedures of the Ministry of Community and Social Services require that all serious occurrences involving children and vulnerable adults must be reported by the licensee/service provider to the Ministry within 24 hours, including serious injuries and allegations of abuse.
320. The Ministry of Correctional Services' Independent Investigations Unit ensures that persons involved in the provincial correctional system have a means to complain about abuse by Ministry employees, and to ensure a prompt and impartial investigation into complaints.
321. Persons involved in the provincial correctional system may complain about abuse to the Office of the Ombudsman, the Information and Privacy Commissioner, the Ontario Human Rights Commission, or the Correctional Investigator of Canada. In provincial correctional facilities, all correspondence to or from these agencies is not opened or examined for contraband or inappropriate content. Investigations by these agencies are independent and are afforded the full cooperation of the Ministry of Correctional Services.
322. The PSA establishes a public complaints system in which any member of the public who is directly affected by the conduct of a police officer, or by the policies or services provided by a police service, may make a complaint. A complaint may be made either directly to the police service named in the complaint or to the Ontario Civilian Commission on Police Services, an independent, civilian, quasi-judicial agency that has the authority to investigate complaints, to hold and adjudicate hearings, as well as to impose remedies.

## **Article 16: Prevention of Other Acts of Cruel, Inhuman or Degrading Treatment or Punishment**

323. Under Ontario's *Child and Family Services Act*, every licensee is required to maintain an up-to-date written statement of policies and procedures setting out methods of maintaining discipline and procedures governing punishment and isolation methods that may be used in the residence. No licensee is permitted to use deliberate harsh or degrading measures to humiliate a resident or undermine a resident's self-respect.
324. The Government of Ontario recently passed new legislation intended to enhance safety, security and respect in schools. Three new initiatives have been developed as a result of this new legislation:
- Criminal reference checks for everyone teaching or working in schools with regular access to students. The Ministry of Education has also requested that school boards review their hiring practices and procedures for identifying and reporting cases of alleged or suspected sexual misconduct.
  - Strict discipline schooling programs for students who have been expelled from school for serious incidents, such as bringing a firearm to school. Strict discipline schooling programs, or their equivalents, for expelled students will provide a structured approach to help students turn their lives around so that they can return to and succeed in the regular school program.
  - The new legislation gives the Minister of Education authority to set parameters regarding in-school suspensions and/or other forms of discipline, and provides direction as to the mitigating circumstances to consider when determining the consequences for students who do not abide by the rules of the school. Mitigating circumstances, as well as the ability for schools to adopt a progressive discipline scheme for less serious incidents, better ensures that mandatory consequences (e.g., suspensions or expulsions) do not have a disproportionately harsh impact on, for example, exceptional pupils.
325. In order to prevent acts of cruel, inhuman or degrading treatment or punishment in provincial correctional facilities, the Ministry of Correctional Services monitors compliance with relevant statutes, regulations, policies and procedures, and training and standards regarding the proper use of force and the effective use of non-physical intervention and communications.



## Manitoba

### Introduction

326. This report updates the information contained in the *Third Report of Canada on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* with respect to developments in Manitoba between April 1996 and April 2000.

### Article 2: Legislative, Administrative, Judicial or Other Measures

327. Manitoba's *Corrections Act* and its Regulation were repealed upon the proclamation of the *Correctional Services Act* on October 1, 1999. The Correctional Services Regulation 128/99 also came into force on this same date. The comprehensive review and redrafting of this new legislation now more completely addresses rights and responsibilities within a progressive and contemporary context that includes the *Canadian Charter of Rights and Freedoms* and other legislative factors. The new Act and the expanded regulatory authority are now applicable to all custodial or community corrections (both youth and adult).
328. The Act now contains "Purpose" statements as well as a section on General Principles. One of the stated purposes is "the safe, secure and humane accommodation of persons who are in lawful custody," and another is "appropriate programs, services and encouragement to assist offenders to lead law-abiding and useful lives." The Regulation has a section on "principles and procedures of supervision and discipline" relative to youth custodial facilities. Alternative resolutions are sought in handling disciplinary offences in adult custodial facilities.
329. Correctional policy has also undergone redrafting to reference the authority contained in this new Act and Regulation. The Regulation itself is required to have a consultative review by the Minister for any amendment or repeal, within five years of its coming into force.
330. In addition to extensive training of new recruits, mandatory refresher courses are required by policy for all correctional staff to maintain their competency, particularly with respect to dealing with emergencies, including "non-violent crisis prevention."

## **Article 10: Education and Training**

331. Within corrections, training has developed progressively over the past number of years in Manitoba with dedicated management, qualified staff trainers and updated curriculum that provides initial training of core competencies for new staff. Refresher training in critical skill areas is also scheduled.
332. Responses to major disturbances in custodial facilities previously responded to by police services are now safely and professionally dealt with by staff specifically trained as an emergency response unit. In addition, individual facilities have trained response teams for specific conflict resolutions, when required.
333. Facility staff members in Manitoba work cooperatively with police services on the control of gang problems involving street gang members organizing gang-related activity while incarcerated. Preventive security within facilities initiate liaison with the provincial gang intervention strategy to exchange information to effectively manage gang-related issues that have surfaced over the past number of years.
334. A comprehensive policy on the use of restraint equipment and pepper spray has been approved, consistent with necessary training and accountability measures.
335. In the mental health field, a new *Mental Health Act* (proclaimed on October 29, 1999) has increased the rights of involuntary patients to access or refuse treatment. It has also developed a system for seeking consent for treatment in situations where a patient lacks the capacity to provide such consent. The legislation has also increased the responsibilities of physicians who seek to confine patients in psychiatric facilities.
336. The policies of psychiatric facilities are reviewed on an ongoing basis in Manitoba (every three years). For example, a restraint/seclusion literature review is currently being done by the Selkirk Mental Health Centre to assess how these procedures co-relate with the core values of care, hope and empowerment of such centres.

## **Article 11: Treatment of Persons Arrested, Detained or Imprisoned**

337. The *Mental Health Act* also enables the Minister to establish standards committees for mental health facilities, and enables the Director of Psychiatric Services to require reports from the Medical Director of a facility with respect to the detention, care and treatment of persons in that facility.

## Article 12: Prompt and Impartial Investigation

338. The area of “investigations” has been more clearly addressed in the new *Correctional Services Act*. The Act also prohibits the obstruction of an investigation, inquiry, review or inspection. A current initiative involves the development of a policy on handling investigations within corrections. A draft policy, including consultation from Labour Management and Human Resources, is under review.
339. In May 2001, the Government of Manitoba also enacted the *Protection of Persons in Care Act*, which provides a mechanism for impartial investigation for the aging population in personal care homes and hospitals.

## Article 13: Allegations of Torture

340. One of the principles articulated in the new corrections legislation states that “Offenders, and the guardians of offenders who are young persons, should be involved in decisions made in the administration of this Act that affect the offender whenever appropriate.” The “Complaints and Appeals” part of the Regulation also consolidates the process required in the Act for dealing with the outcome of prescribed decisions or complaints about “any condition or situation in the facility that affects the inmate.”
341. Under the Corrections Regulation, offenders are granted access to telephone communications and advised that such communications may be subject to interception. The Regulation also lists the persons or offices that are privileged, in which case correspondence will not be inspected or read. This includes government ministers, the Human Rights Commission, the Ombudsman, lawyers representing the offender, and senior correctional officials or others carrying out a legal responsibility.

## Article 14: Redress and Compensation

342. The latest legislation on victims is Manitoba's *Victims' Bill of Rights*, which was passed on June 29, 1998, and proclaimed into force on August 31, 2001, in conjunction with the Designated Offences Regulation. It replaced the *Victims' Rights Act* that had been given Royal Assent a year earlier, which in turn had repealed the *Criminal Injuries Compensation Act* and the *Justice for Victims of Crime Act*. This new legislation is being implemented in phases, with the second phase being introduced January 31, 2002, and listing additional offences on which victims are entitled to services. The plan is to eventually designate all the offences, but in a manner that follows the completion of the support system capacity to serve the victims' needs.

343. "The Victims' Assistance Fund" and the "Compensation for Victims of Crime" that were part of the *Victims' Rights Act* have been continued in the consolidation of this new Act, but are subject to amendment.

## **Article 16: Prevention of Other Acts of Cruel, Inhuman or Degrading Treatment or Punishment**

344. Canada's Second Report made reference to the replacement of the former Lieutenant Governor's Advisory Board of Review with the Review Board of Manitoba (*Criminal Code*). (Other provinces have similar bodies.) These review boards have come under continuous court supervision for compliance with the *Canadian Charter of Rights and Freedoms*. Currently, unproclaimed amendments to the governing legislation are under review, and presentations will be made to a federal parliamentary committee on the subject.
345. The province's *Mental Health Act* has strengthened the offence and penalty provisions for mistreatment of mentally disordered persons inside or outside psychiatric facilities.
346. The *Vulnerable Persons Living With a Mental Disability Act* was proclaimed on October 4, 1996. Originally, it had been assented to in 1993 when Part II of the former *Mental Health Act* had been repealed. It sets out a new regime for addressing the needs of persons who had previously been classified as "mentally retarded." Among other things, the legislation provides a variety of protections for vulnerable persons, and creates the Office of Vulnerable Persons' Commissioner.

## **Documentation**

347. The following documents are filed with the Committee, along with the present report:
- *The Correctional Services Act*
  - *The Correctional Services Regulations 128/99*
  - *The Mental Health Act*
  - *The Protection of Persons in Care Act*
  - *The Victims' Bill of Rights*
  - *The Vulnerable Persons Living with a Mental Disability Act*

## Saskatchewan

### Introduction

348. This report updates the information contained in the *Third Report of Canada on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* with respect to developments in Saskatchewan between April 1996 and April 2000.

### Additional Information Required by the Committee

349. When the Committee against Torture reviewed Canada's Third Report, the Committee asked questions related to certain incidents involving Aboriginal people and the Saskatoon City Police. Saskatchewan's submission to this report will deal with that issue.
350. In February 2000, Darrel Night, an Aboriginal man, alleged that two Saskatoon City Police officers picked him up, drove him outside the city and dropped him off in sub-zero weather to walk back to Saskatoon. The frozen bodies of two Aboriginal men had been found earlier in the winter near the Queen Elizabeth Power Station. It was alleged that these individuals may also have been the victims of police drop-offs.
351. Since that time, an extensive investigation of these two deaths, plus three others (Darcy Dean Ironchild, Lloyd Dustyhorn, Rodney Naistus, Lawrence Wegner and Neil Stonechild), as well as other allegations of police mistreatment, has been under way.
352. The investigation of the Darrel Night incident resulted in the charging of two Saskatoon City Police officers who were convicted of unlawful confinement in October 2001. Each was sentenced to eight months' imprisonment. Those sentences are currently under appeal.
353. Investigations into the deaths of Darcy Dean Ironchild, Lloyd Dustyhorn, Rodney Naistus, and Lawrence Wegner have concluded. A review of the investigations by the Public Prosecutions Division of Saskatchewan Justice determined that criminal charges were not warranted. The Minister of Justice ordered coroner's inquests into these four deaths. In Saskatchewan, such inquests are open to the public, and evidence is given before a six-person jury, which is summoned at random. In addition to establishing when and where the death occurred, and the

medical cause of death, the coroner's jury may make recommendations to prevent similar deaths in the future.

354. The inquest into the death of Darcy Dean Ironchild took place December 12-14, 2000, in Saskatoon. The 33-year-old died in the early morning hours of February 19, 2000. He had been taken into custody by Saskatoon City Police for public intoxication early in the evening of February 18, 2000. Mr. Ironchild was kept under observation in cells until around midnight, when he was released and sent home in a taxi. The jury concluded that Mr. Ironchild's death was accidental, and that the cause of death was an overdose of chloral hydrate. The jury made a number of recommendations with respect to the prevention of "double-doctoring" for the purpose of obtaining multiple prescriptions for drugs. The jury also recommended a review of police policies on their contact with and care of intoxicated persons, and that federal, provincial and local governments should fund a multicultural detoxification centre where an intoxicated person could be taken rather than remaining in police custody.
355. The inquest into the death of Lloyd Joseph Dustyhorn took place May 8-10, 2001, in Saskatoon. The 53-year-old died in the early morning hours of January 19, 2000. He had been taken into custody by Saskatoon City Police for public intoxication on the evening of January 18, 2000. Mr. Dustyhorn was kept under observation in cells until early morning of January 19, 2000, when he was released and transported home by Saskatoon City Police. The jury found that Mr. Dustyhorn's death was accidental and caused by hypothermia. This jury also recommended the establishment of an emergency detoxification centre in Saskatoon where non-violent intoxicated persons could be taken rather than remaining in police custody. Improved communications and record keeping regarding detainees were also recommended, as were improvements in the education and training of detention staff in the areas of dealing with intoxicated persons and Aboriginal awareness and sensitivity.
356. The inquest into the death of Rodney Hank Naistus was held October 30-November 2, 2001, in Saskatoon. The body of the 25-year-old man was found in the late morning of January 29, 2000, in the southwest industrial area of Saskatoon. He was last seen alive in the early morning hours of January 29, 2000, in the downtown area. While the jury was able to identify the cause of death as hypothermia, it was unable to determine the circumstances that led to Mr. Naistus' death. The jury's recommendations all related to police policies and police/Aboriginal relations.
357. An inquest into the death of Lawrence Kim Wegner was held in January and February of 2002 in Saskatoon. The body of the 30-year-old man was found February 3, 2000, in a field south of the city of Saskatoon's landfill. He was last seen alive in the early morning hours of January 31, 2000, in the southwest area of the city. As with the Naistus inquest, the jury found

- the cause of death to be hypothermia, but was unable to determine the circumstances that led to Mr. Wegner's death. The jury provided a number of recommendations related to mental health and addictions services; police procedures with respect to communications, scene preservation and the interviewing of witnesses; as well general recommendations having to do with cross-cultural awareness training for police and improvement of access to the justice system for Aboriginal people.
358. The body of Neil Stonechild was exhumed in late April 2001. The investigation into Mr. Stonechild's death is continuing.
359. In addition to the criminal investigation, the office of the Saskatchewan Police Complaints Investigator has hired additional staff to look into specific complaints of police actions that are not criminal acts.
360. On November 15, 2001, the Attorney General for Saskatchewan announced the establishment of the Commission on First Nations and Métis Peoples and Justice Reform. This independent Commission will engage in a problem-solving dialogue with the people of Saskatchewan, in particular with Aboriginal communities and organizations, to identify reforms that will improve the justice system for all citizens of the province. The goal of the Commission is to identify efficient, effective and financially responsible reforms to the justice system.

## Alberta

### Introduction

361. This report updates the information contained in the *Third Report of Canada on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* with respect to developments in Alberta between April 1996 and April 2000.

### General Information

362. The role of the provincial Ombudsman, as reported by Alberta in the Canada's Third Report on this Convention, remains unchanged.

### Article 2: Legislative, Administrative, Judicial or Other Measures

363. Provisions under Alberta's *Mental Health Act* and the *Public Health Act*, allowing for the detention of involuntary patients for examination and treatment, remain in place.
364. There has been no new case law relevant to the implementation of the Convention.

### Article 10: Education and Training

365. Police officers in Alberta continue to receive training that defines the limits of force that can be used by an officer.

### Article 11: Treatment of Persons Arrested, Detained or Imprisoned

366. The Correctional Services Division of Alberta Justice has a considerable number of policies that reinforce the need to treat incarcerated offenders equitably. Policies include appeal mechanisms to correctional and third party officials, and reviews of staff decisions by senior correctional staff. Training initiatives are predicated on policy directives. All new and incumbent staff receive complete training on all aspects of policy, including approved security and disciplinary methods, offender management techniques, conflict resolution and protections available to offenders.



## Article 12: Prompt and Impartial Investigation

367. The provisions of the *Fatality Inquiries Act*, as reported by Alberta in the Canada's Third Report on this Convention, remain in effect.
368. No complaints have been received by either the Law Enforcement Review Board or the Criminal Injuries Appeal Board regarding the use of torture or other cruel, inhuman or degrading treatment or punishment.
369. The "no physical discipline" policy with respect to the province's foster homes and foster parents, as reported by Alberta in the Canada's Third Report, remains in effect.
370. The *Protection of Persons in Care Act*, passed in 1997, is legislation designed to protect adults in care facilities from abuse. The Act helps Alberta adults, especially those who are vulnerable, live with dignity and respect. The Act protects adults in publicly-funded care facilities such as hospitals, seniors' lodges, group homes and nursing homes.
371. Alberta's *Protection of Persons in Care Act*:
- defines abuse
  - makes it mandatory for people who suspect abuse to report it
  - establishes a toll-free telephone line where people can report abuse
  - protects people who report abuse in good faith from retaliatory action
  - specifies penalties for failing to report suspected abuse and for knowingly making false reports
  - sets out a process for investigating and resolving reports of abuse
  - requires a criminal record check for new employees and volunteers working in care facilities

## Article 14: Redress and Compensation

372. Persons who allege that they are victims of municipal police may complain in writing to the Chief of Police and may appeal the disposition of their complaint to the Police Commission or to the Law Enforcement Review Board, an independent quasi-judicial body established under the *Alberta Police Act*.
373. Persons who allege that they are victims of the Royal Canadian Mounted Police (RCMP) may complain in writing to the RCMP Assistant Commissioner "K" Division or the RCMP Public Complaints Commission, which is an independent body created by Parliament to ensure that

- complaints against the RCMP are examined impartially. Appeals of the decisions of the Assistant Commissioner may be made to the RCMP Public Complaints Commission.
374. Persons who allege that they are victims of a First Nation Police Service may complain in writing to the Chief of Police and may appeal the disposition of their complaint to the First Nation Review Board, an independent body set up under the Tripartite Policing Agreement.
375. The *Alberta Victims of Crime Act* was proclaimed on November 1, 1997. The Act provides financial benefits for innocent victims injured during the commission of a crime and helps to fund organizations that assist crime victims. Funding for these programs is provided by surcharges collected on fine revenue.
376. Financial benefits are paid to those injured during a crime on a one-time basis in accordance with the severity of the injuries sustained. If an applicant is dissatisfied with the decision of the Director of the Financial Benefits Program, he/she may request a hearing before the Criminal Injuries Appeal Board. This Board is made up of three members appointed by the Government of Alberta.

## British Columbia

### Introduction

377. This report updates the information contained in the *Third Report of Canada on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* with respect to developments in British Columbia. It covers the reporting period from April 1996 to April 2000.

### Article 2: Legislative, Administrative, Judicial or Other Measures

378. As elaborated in Canada's Third Report, the Attorney General of British Columbia (BC) is responsible for the enforcement of provincial statutes and prosecution of criminal offences which occur within the province. No provision of BC law or policy may be invoked as a justification for torture or other inhumane treatment. In fact, torture is a criminal offence under section 269.1(1) of the *Criminal Code* of Canada, which applies to all jurisdictions in Canada and carries a maximum penalty of 14 years' imprisonment. The definition of torture in section 269.1(1) complies with the definition articulated in article 1 of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.

379. Further measures that may serve to prevent torture include the existence of various professional codes of conduct. With respect to the police, both municipal police officers and officers of the Aboriginal police departments are regulated by the *Code of Professional Conduct Regulation*, BC Reg. 205/98. This Code delineates 12 categories of "disciplinary defaults" including, but not limited to, discreditable conduct, neglect of duty, abuse of authority, improper use and care of firearms and conduct constituting an offence. Sanctions range from a verbal or written reprimand to dismissal.

380. In addition, police departments are required to comply with *Provincial Standards for Municipal Police Departments in British Columbia*, Order in Council No. 748. The purpose of the approximately 400 Standards is to identify minimum acceptable standards for police on topics which range from the use of dogs to the storage of firearms. The Police Services Division of the Ministry of the Attorney General periodically audits police departments in the province to ensure that they are complying with these standards. Examples of relevant standards are included in Appendix BC-1. A copy of the *Code of Professional Conduct Regulation* and

- the *Use of Force Regulation*, BC Reg. 203/98, are filed with the Committee, along with the present report.
381. Standards of conduct for provincial correctional officers are set out in Ministry of Attorney *Adult Custody Policy Manual*, *Community Corrections Policy Manual* and General documents such as *Standards of Conduct for Correction Branch Employees*, *Correctional Centre Rules and Regulations*. The Corrections Branch standard of conduct with respect to use of reasonable force is filed with the Committee, along with the present report.
382. Similar standards of conduct exist for sheriffs who are responsible for court security and for prisoner escort. The provisions of the *Deputy Sheriff's Code of Conduct* which relate to physical restraint, the use of firearms/batons and the use of pepper spray are filed with the Committee, along with the present report.
383. Doctors and nurses working in psychiatric facilities are also bound by their respective professional codes of conduct. Further regulations and rules may be superimposed over these professional standards by the particular psychiatric facility in question. For example, Riverview, one of the largest psychiatric facilities in the Vancouver region, has developed its own set of written policies around staff conduct. Finally, all employees of psychiatric facilities are subject to section 17(2) of the *Mental Health Act*, R.S.B.C. 1996, c. 288, which prohibits the mistreatment of patients. The provision states: "A person employed in a Provincial mental health facility or a private mental hospital, or any other person having charge of a patient, who ill treats, assaults or willfully neglects a patient commits an offence punishable under the *Offence Act*."

### Article 3: Expulsion or Extradition

384. As outlined in paragraph 263 of Canada's Third Report, the Legal Services Society of British Columbia provides legal services (legal aid) for immigration-related proceedings which could result in deportation to applicants who meet the income eligibility guidelines. Although the Society does not track the number of refugee claimants who allege torture, such reports are not uncommon. The statistics provided in the table below detail the total number of immigration and refugee legal aid referrals in British Columbia for each fiscal year from 1996 to 2000.

Fiscal Year	Dates	Immigration and Refugee Referrals
1996-1997	April 1, 1996–March 31, 1997	2430
1997-1998	April 1, 1997–March 31, 1998	2690

1998-1999	April 1, 1998–March 31, 1999	3094
1999-2000	April 1, 1999–March 31, 2000	3949

## **Article 6: Custody and Other Legal Measures, and Article 7: Prosecution of Offences**

385. The Corrections Branch of the Ministry of the Attorney General admits into custody only those persons who have appeared before the courts and have been bound by a criminal order issued by law. The decision to prosecute or extradite remains with the office of the provincial crown counsel.
386. If an accused facing a charge of torture is found either not fit to stand trial or not criminally responsible by reason of mental disorder, he or she will be placed in an appropriate psychiatric facility rather than a prison. Once in the psychiatric facility, the individual is under the authority of the provincial Review Board. The Review Board must review the file within three months of the court's disposition and then once a year after that. The Board must release the person if there is no danger to the community. If there is a risk to the community, the Review Board can either keep the individual in the psychiatric facility or order a conditional release.

## **Article 10: Education and Training**

387. Medical education and training in British Columbia are carried out in two principal ways. First, medical students follow the medical curriculum at the University of British Columbia. Practising physicians keep their skills current by participating in Continuing Medical Education (CME) courses.
388. The medical program offered to medical students covers a broad range of topics. As such, it does not specifically focus on the treatment of victims of torture.
389. With respect to ongoing doctor training, management at CME indicate that training doctors to be able to deal with victims of torture is an area of key concern to the organization. However, as CME courses are self-funded, meaning that program costs must be recouped from course fees, demand drives course development.
390. The provisions for police and correctional officer training remain in effect as outlined in paragraphs 266 and 267 of Canada's Third Report.

## Article 11: Treatment of Persons Arrested, Detained or Imprisoned

### Interrogation

391. The *Canadian Charter of Rights and Freedoms* applies to the actions of all government officials including the police, sheriffs and correctional officers. When a person is detained or arrested, police must inform that person of his or her right to retain and instruct counsel without delay. In a practical sense, this translates into providing access to a telephone and a telephone directory, as well as information about legal aid.
392. Further protection is offered in section 7 of the Charter. This provision encompasses the right against self-incrimination, as well as guaranteeing the right to life and security of the person. Thus, police cannot obtain confessions through violence or torture.
393. Government and police departments have developed other specialized rules concerning the interviewing of young people. In order to comply with the *Young Offenders (British Columbia) Act*, R.S.B.C. 1996, c. 494, Police Standard D11.2.3 requires that each police department develop a written policy governing the procedures for interviewing young persons, including provision for consulting with legal counsel, parents, guardians, relatives or other appropriate adults.

### Custody

394. In British Columbia, custody of prisoners and inmates is the responsibility of the Attorney General. Within the Court Services Branch, Sheriffs' Services provides in-court custody and prisoner escort. The Corrections Branch provides care, custody and control of remanded and sentenced inmates and, in some cases, immigration-related detainees.
395. Strict guidelines govern the use of force against persons in the custody of the state. For example, correctional officers may use force in their capacity as peace officers pursuant to the *Criminal Code* of Canada as well as to the *BC Correctional Centre Rules and Regulations* and *Standards of Conduct for Corrections Branch Employees*. Reasonable force may be used only to: prevent the commission or continuation of an offence; maintain or restore order; apprehend an offender; prevent an offender from an act of self-harm; or assist another officer in any of the above conditions. Corrections Branch policies further define the situations and circumstances in which force may be applied. The guiding principle is that the force used must not exceed that which is necessary to effect control, and that it must be discontinued at the earliest reasonable opportunity.

396. Persons who have been found unfit to stand trial for a criminal offence, or not criminally responsible by reason of mental disorder, will be placed in appropriate psychiatric facilities. The director of the psychiatric unit or facility is responsible for the patients in the facility.

## **Article 12: Prompt and Impartial Investigation, and Article 13: Allegations of Torture**

397. The Office of the Police Complaint Commissioner was created on July 1, 1998, replacing the BC Police Commission as the body to investigate complaints lodged against municipal police in British Columbia. The complaint procedure created for this purpose under the *Police Act*, R.S.B.C. 1996, c. 367, provides for the appointment of an independent Complaint Commissioner who is responsible for overseeing the handling of complaints against municipal police officers. The Commissioner acts in the public interest to ensure that complaints are handled in a manner specified by the Act. Specifically regarding complaints, the Complaint Commissioner is responsible for the receiving and recording of complaints, and advising and assisting complainants, as well as the officers complained against, chiefs of police and police boards.
398. The first step taken in every formal complaint against the municipal police is an internal investigation conducted by the chief constable of the police department in question. If the Complaint Commissioner is not satisfied with the internal investigation, he/she may order a public hearing or recommend that the complaint proceed to a hearing. Retired judges generally conduct these hearings.
399. The Office of the Police Complaint Commissioner keeps statistics as to the numbers and kinds of complaints received and prepares quarterly statistical reports. The first quarterly report of 2000 is filed with the Committee, along with the present report, as an example of the work undertaken by the Commissioner. For the purposes of analyzing the quarterly report, it should be noted that a "public trust complaint" includes complaints where physical or emotional harm has been alleged.
400. Complaints involving members of Aboriginal police departments are not governed by the Office of the Police Complaint Commissioner, but rather the *Special Provincial Constable Complaint Procedure Regulation*, BC Reg. 206/98. A copy of this Regulation is submitted with the present report. Precise statistics as to the number of complaints lodged against members of Aboriginal police departments are unavailable.
401. Inmates held in provincial correctional centres also have rights of complaint established under the *Correctional Centre Rules and Regulations*. Section 40 establishes the process for

inmates to file written complaints to an officer, centre Director, District Director or Regional Director. The person receiving the complaint must investigate the complaint and respond back to the inmate within seven days. Section 41 establishes a process whereby inmates may make a written complaint or grievance to the Director of Investigation, Inspection and Standards Office (II&SO).

402. In certain circumstances, such as when a handgun has been discharged to protect life or to prevent grievous bodily harm, II&SO may also be called upon to investigate incidents involving sheriffs. Ministry of the Attorney General Sheriff Services indicate that a "Critical Incident Review Policy" is currently under development.
403. A final complaint mechanism is the Ombudsman, which is established as an independent body reporting to the province's Legislature. Section 10 of the *Ombudsman Act*, R.S.B.C. 1996, c. 340, states that the Ombudsman acting on a complaint or on his/her own initiative may investigate a decision or recommendation made, an act done or omitted, or a procedure used by an authority that aggrieves or may aggrieve a person. Authorities that may be the subject of such an investigation include government ministries, municipalities, regional districts and hospitals. The *Ombudsman Act* is filed with the Committee, along with the present report.

## **Article 14: Redress and Compensation**

404. There are two principal statutes which are designed to assist those who have been victims of crime: the *Victims of Crime Act*, R.S.B.C. 1996, c. 478, and the *Criminal Injury Compensation Act*, R.S.B.C. 1996, c. 85. While these Acts are not specifically aimed at victims of torture, they provide services and support to all victims of crime, including those who have experienced severe physical or sexual assault, and other forms of cruel and degrading treatment.

405. The following are the goals of the *Victims of Crime Act*, enacted on July 1, 1996:

To the extent that it is practicable, the government must promote the following goals:

- (a) to develop victim services and promote equal access to victim services at all locations throughout British Columbia
- (b) to have victims adequately protected against intimidation and retaliation



- (c) to have property of victims obtained by offenders in the course of offences returned promptly to the victims by the police if the retention is not needed for investigation or prosecution purposes
  - (d) to have justice system personnel trained to respond appropriately to victims
  - (e) to give proper recognition to the need of victims for timely investigation and prosecution of offences
  - (f) to have facilities in courthouses that accommodate victims awaiting courtroom appearance separate from the accused and witnesses for the accused
  - (g) to afford victims throughout British Columbia equal access to
    - (i) courtrooms and prosecutors' offices that are designed to be used by persons with physical disabilities
    - (ii) interpreters for speakers of any language
    - (iii) culturally sensitive services for Aboriginal persons and members of ethnocultural minorities
406. The second victim-oriented Act, the *Criminal Injury Compensation Act*, is designed to compensate people who have been injured or killed in BC as a result of certain criminal offences. Notably, victims of torture (s. 269.1 of the *Criminal Code*) may seek compensation under the Act. Compensation may involve a financial award as well as medical aid including provision of artificial limbs, eyeglasses and hearing aids. Counselling may also be provided.
407. In addition to the *Victims of Crime Act* and the *Criminal Injury Compensation Act*, under the *Crown Proceeding Act*, R.S.B.C. 1996, c. 89, the provincial government is liable for torts committed by its agents and officers. Thus, if a British Columbian suffers cruel or degrading treatment at the hands of a government employee (including, for example, a municipal police officer), then that person could launch a civil action against both the individual officer and the province.

## **Article 16: Prevention of Other Acts of Cruel, Inhuman or Degrading Treatment or Punishment**

408. The British Columbia *Human Rights Code*, R.S.B.C. 1996, c. 210, prohibits discrimination in employment, housing, public services, publications on the grounds of race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex or sexual

orientation. Acts of cruel, inhuman or degrading treatment or punishment that do not amount to torture could be encompassed by the prohibitions contained in the Code. For example, human right complaints involving harassment in the workplace may involve cruel, inhuman or degrading treatment. Jurisprudence has made it clear that intent to discriminate is not required for conduct to contravene the Code.

409. The British Columbia Human Rights Commission, an independent body, administers the *Human Rights Code*. Any person may file a complaint alleging discrimination contrary to the Code. If the complaint falls within the jurisdiction of the Code, it will be referred to a Human Rights Officer for investigation. If the investigation reveals evidence of discrimination and the mediation has proved unsuccessful, the investigator will forward his or her report to the Commissioner of Investigation and Mediation. The Commissioner can either dismiss the complaint or refer it to the British Columbia Human Rights Tribunal for hearing.
410. If a Tribunal member determines that discrimination has occurred, there are various remedies that may be applied. First, the member must order the person to cease the contravention of the Code and refrain from committing the same or a similar contravention. Other possible remedies include: a declaratory order that the conduct complained of is discrimination contrary to the Code; an order that the respondent take steps to ameliorate the discriminatory practice or adopt and implement an employment equity program; or an order for compensation for lost wages or expenses incurred by the contravention. Finally, damages to compensate for injury to dignity, feelings and self-respect may also be awarded.
411. The British Columbia Human Rights Commission (and its predecessor the British Columbia Human Rights Council) plays an important public education role. Each year educational programs are offered to children and adults, schools and businesses. For example, in the 1998-99 fiscal year, the Commission's Education and Communication program initiated a 50<sup>th</sup> Anniversary Steering Committee made up of representatives from both provincial and federal government agencies in order to coordinate a variety of educational programs to recognize the 50<sup>th</sup> anniversary of the Universal Declaration of Human Rights.

## Documentation

412. The following documents are filed with the Committee, along with the present report:
- *Code of Professional Conduct Regulation*, BC Reg. 205/98
  - *Use of Force Regulation*, BC Reg. 203/98
  - *Corrections Branch Standards: Use of Reasonable Force*
  - *Deputy Sheriff's Code of Conduct*

- *Office of the Police Complaint Commissioner — Statistical Report: January 1 to March 31, 2000*
- *Special Provincial Constable Complaint Procedure Regulation*
- *Ombudsman Act, R.S.B.C. 1996, c. 340*

## Appendix BC-1

### Additional Materials Relevant to Article 2: Provincial Policing Standards

*Provincial Standards for Municipal Police Departments in British Columbia*, the first of their kind in Canada, were developed in 1992 as a joint project of the Police Commission and the British Columbia Association of Chiefs of Police by police officers seconded to the Commission. The Standards identify over 400 areas in which a police department should have policies, and audits are based on those Standards. The Standards aim to identify minimum acceptable standards for police that are uniformly applicable in all municipal departments.

The Standards addressing areas relevant to the UN Convention include the following:

(a) *Internal Investigations*

- Management Standard D6.1.1 requires the establishment of administrative policies for the purposes of creating a process to ensure that the integrity of departmental impartiality, fairness and objectivity is maintained when investigating members of the department.
- Management Standard D6.1.2 requires the establishment of written policy that specifies the activities of the internal investigation function, including recording, registering and controlling the investigation of complaints against officers; supervising and controlling the investigation of alleged or suspected misconduct within the department; maintaining the confidentiality of internal investigation and records; and acting as a resource for line supervisors.
- Operations Standard D6.2.1 details that a written policy requires the department to investigate all written complaints against the department or its employees in accordance with the *Police Act*.
- Operations Standard D6.2.3 notes that it is policy that the department maintain liaison with crown counsel in investigations involving alleged criminal conduct on the part of an employee.

(b) *Prisoner Transportation*

- Operations Standards D14.2.7 and D14.2.8 require the establishment of written policies describing methods to be used in transporting mentally disturbed, handicapped, sick or injured prisoners including how and when prisoners are to be restrained.

(c) *Detention Facilities*

- Standard E1.2.1 requires that detention facilities provide the following minimum conditions for prisoners: sufficient lighting; circulation of air in accordance with local public health standards; and a bed and bedding for each prisoner held in excess of eight hours.
- Standard E1.4.1 requires the establishment of a written policy to govern the securing of firearms in the holding facility.
- Standard E1.4.4 requires a security alarm system linked to a designated control point to ensure the safety of prisoners and staff.
- Standard E1.4.5 requires that a video surveillance and recording system be used in all prisoner booking areas to protect officers from unfounded allegations or, alternatively, to provide evidence if an investigation is launched.
- Standard E1.4.8 establishes specific booking-in procedures, including the recording of medications taken by the prisoner as well as his or her physical and psychological condition.
- Standards E.1.4.9 and E.1.4.10 require that young persons be detained separately from adult prisoners and that female prisoners be detained separately from male prisoners.
- Standard E1.4.11 calls for the establishment of a written policy describing methods for handling, detaining and segregating persons under the influence of alcohol or other drugs or who are violent or self-destructive.
- Standard E1.4.14 establishes that a journal be maintained in which significant or unusual occurrences are recorded, in addition to all other detention facility inspections required by these standards.
- Standard E1.5.1 requires a written policy identifying the policies and procedures to be followed when a prisoner is in need of medical assistance.

- Standards E6.1.2 and E6.1.3 require the development of a written policy to ensure that: a prisoner's opportunity for lawful release from custody is not impeded; every effort is made to provide privacy in contacts between counsel and prisoners; and every prisoner has access to a telephone, telephone directory and legal aid assistance.
- (d) *Use of Dogs*
- Management Standard D2.1.5 requires the establishment of a written policy that specifies the criteria for the deployment of dogs.

## **PART IV**

### **Measures Adopted by the Governments of the Territories**

## Nunavut

### Introduction

413. This report outlines the activities of the territory of Nunavut relevant to the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* between April 1999 and April 2000.

### General Information

414. On April 1, 1999, the new territory of Nunavut was created out of the Northwest Territories pursuant to section 3 of the *Nunavut Act*, S.C. 1993, c. 28. Modeled on the *Northwest Territories Act* and the *Yukon Act*, the *Nunavut Act* bestows on the Government of Nunavut powers equivalent to those possessed by the other two territories. Under section 29 of the *Nunavut Act*, all territorial laws in force in the Northwest Territories immediately before the division were duplicated in Nunavut on April 1, 1999. All other laws in force in the Northwest Territories at that time (e.g., federal laws, common law) were continued in Nunavut, to the extent that they could apply to the new territory.

### Article 2: Legislative, Administrative, Judicial or Other Measures

415. The law and policy of Nunavut in relation to the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* has not been modified in Nunavut during this reporting period and therefore remains as outlined in relation to the Northwest Territories in the First, Second and Third Reports of Canada.

### Documentation

416. The *Nunavut Act*, S.C. 1993, c. 28, is filed with the Committee, along with the present report.

## Northwest Territories

### Introduction

417. This report updates the information contained in the *Third Report of Canada on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* with respect to developments in Northwest Territories between April 1996 and April 2000.

### Article 2: Legislative, Administrative, Judicial or Other Measures

418. There have been no changes to the legislation or policies of the Government of the Northwest Territories during the reporting period. Legislative measures outlined in Canada's Third Report remain in effect.

### Article 10: Education and Training

419. No programs on the effects of torture were provided to medical personnel during this reporting period.

### Article 16: Prevention of Other Acts of Cruel, Inhuman or Degrading Treatment or Punishment

420. No relevant changes have been made to the *Mental Health Act* since the release of Canada's Third Report.



## Yukon

### Introduction

421. This report updates the information contained in the *Third Report of Canada on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* with respect to developments in Yukon between April 1996 and April 2000.

### Article 2: Legislative, Administrative, Judicial or Other Measures

422. The Yukon's *Torture Prohibition Act*, S.Y. 1988, c. 26, as previously reported, provides the primary means of civil redress against government officials for victims of torture. No amendments have been made to this Act and no cases were brought under this Act for the period of this report.

423. The *Corners Act*, S.Y. 1986, c. 35, provides for an investigation and subsequent inquiry of a death where there is reason to believe the death resulted from violence, misadventure or unfair means or a result of negligence, misconduct or malpractice.

424. The *Ombudsman Act*, S.Y. 1995, c. 17, allows an independent Ombudsman to investigate, at no cost to the complainant, how Yukon government departments, agencies, commissions and boards do business, their actions, decisions, practices and procedures.

### Article 12: Prompt and Impartial Investigation, Article 13: Allegations of Torture, and Article 14: Redress and Compensation

425. The *Ombudsman Act* ensures prompt and independent investigation into complaints against public officials. For the time period of this report, no complaints had been made to the Ombudsman regarding the use of torture and other cruel, inhumane or degrading treatment or punishment.

426. During the reporting period, there were 50 reported complaints to the Public Complaints Commission against Royal Canadian Mounted Police (RCMP) in Yukon. Of these, 33 were determined to be unfounded, and seven were investigated and then closed. At the end of the time period, 10 complaints were still active.

427. There were no complaints made by correctional inmates with regard to corrections officers charged with the custody of offenders in Yukon under the *Corrections Act*, S.Y. 1986, c. 26, during the period covered by this report.
428. There were no complaints pursuant to the *Torture Prohibition Act*, during the period covered by this report.