

**Additional Information in Response to Supplemental Questions of the Human Rights Committee on the occasion of its review of Canada's Fifth Report on the *International Covenant on Civil and Political Rights*: October 17 and 18, 2005**

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The following information supplements that which was provided by the Canadian delegation during its oral presentation of Canada's Fifth Report on the *International Covenant on Civil and Political Rights* on October 17 and 18, 2005, and in the written responses to the Human Rights Committee's advance list of issues. This information responds to many of the supplemental questions that were asked by members of the Committee.

The Human Rights Committee also asked supplemental questions on a number of other issues that were addressed either verbally by the members of the delegation or in the written submission on the advance list of issues. These included questions related to matrimonial property on reserve lands, criteria for aboriginal band membership, recommendations of the Special Rapporteur on Indigenous Peoples, interim measures, Arar inquiry, implementation of communications, addressing socio-economic issues underlying violence against aboriginal women, recommendations of the La Forest Report, distribution of Committee observations, Supreme Court references to international human rights instruments, juvenile detention, and detention of unaccompanied minors.

**Re-tabling of legislation repealing of section 67 of the *Canadian Human Rights Act*:**

In October 2002, during the 2<sup>nd</sup> Session of the 37<sup>th</sup> Parliament of Canada, the Government of Canada tabled Bill C-7, the *First Nations Governance Act*. This proposed new legislation dealt with a number of issues relating to the governance of First Nations communities, and included a provision that would have repealed section 67 of the *Canadian Human Rights Act (CHRA)*. Under Canadian parliamentary procedure, proposed new legislation is subject to a series of debates, committee proceedings and votes in both the House of Commons and the Senate. By June 2003, following extensive consideration of the legislation in committee, Bill C-7 had reached what is referred to as the "report stage" in the House of Commons. The Bill was still at this stage in November 2003 when Parliament was prorogued; i.e. when the 2<sup>nd</sup> Session of the 37<sup>th</sup> Parliament was ended. Under Canadian parliamentary procedure, the prorogation of Parliament abolishes all pending legislation; legislation that is abolished in this manner is said to "die on the order paper".

As noted above, repeal of section 67 was just one item included in the overall Bill C-7 legislative package, which dealt more generally with the governance of First Nations communities. For reasons unrelated to the section 67 repeal provision, the Government decided not to reintroduce this particular legislative package in the next session of Parliament. However, since that time, the Government has maintained its position that

section 67 should be repealed, and has been considering alternate legislative vehicles for doing so.

In 2004, the Government welcomed the Canadian Human Rights Commission's announcement that it would be undertaking a study of issues relating to the repeal of section 67, and has been awaiting the Commission's report. The repeal of section 67 raises a number of consequential issues, including the possible need for an interpretative clause vis-à-vis the application of the *CHRA* to First Nations communities, as well as issues relating to the appropriate institutional mechanisms for the administration of the *CHRA* in those communities. The Commission will be releasing its report on October 26, 2005, at which time the Government will be moving forward with its efforts to identify an appropriate legislative vehicle for reform, to address post-repeal implementation issues, and to ensure that First Nations groups and communities are appropriately consulted on these matters.

### **Community-based housing for people with mental disabilities:**

Housing issues are covered in Canada's Fifth Report on the *International Covenant on Economic, Social and Cultural Rights*, which was submitted to the Committee on Economic Social and Cultural Rights in August 2005. A copy of this report is submitted to the Human Rights Committee for reference. In addition, please note the following information and examples of provincial practices with respect to this issue.

In October 2005, the province of Newfoundland and Labrador released a new provincial policy framework for mental health and addictions services, *Working Together for Mental Health*. The framework is a comprehensive strategy for the mental health and addictions system that encompasses all age groups and the full continuum of mental health and addiction services. The five policy directions that are included in the framework are: (1) enhancing prevention and early intervention; (2) involving consumers and significant others; (3) building bridges for better access; (4) providing quality mental health and addictions services; and (5) demonstrating accountability.

The province of Newfoundland and Labrador will commence regional consultation on a new *Mental Health Act* in November 2005 with a goal of advancing legislation in the spring 2006 session of the House of Assembly. In its 2005 Budget, Newfoundland and Labrador committed 3.4 million towards resources for mental health and addictions services including \$1 million for enhanced mental health services for home and community supports.

The province of Alberta is working with management bodies to provide housing to people with mental disabilities (in particular brain-injured patients) and have seen partnerships formed utilizing affordable housing, homelessness funding and shelter funding. Some recent examples are P&S Investments Company in Red Deer who have developed projects in partnership with Canadian Mental Health to provide housing and supports to clients with mental health issues who continually cycle into homelessness and

end up back in the hospital or on the street. The province has also recently assisted the Schizophrenia Society with their plans to develop another project to house mental health clients. It has also met with the Mitchener Center in Red Deer and offered its assistance with their client relocation strategy where they want to relocate approximately 150 clients currently residing in the Mitchener Centre in alternative housing.

There are other projects that support people with mental illness. Part of the problem is the capacity of the non profit agencies in developing new projects and expanding their supportive housing portfolio and providing support services. However, Alberta has not noticed that the impact is greater on women than men.

In New Brunswick, government subsidized housing programs are not a guaranteed entitlement for any citizen, as the resource is finite. However, applicants are assessed on a rating system, and persons with disabilities are among the priority groups. In addition, when calculating eligibility for persons with disabilities to access government housing, and home adaptation renovations, the reported income level is reduced by the amount of the Federal Disability Tax Credit. This practice is intended to recognize extra expenses that a person may incur as a result of being disabled.

Manitoba Family Services and Housing provides community living support for persons with mental disabilities under its Supported Living program. Currently the program has a caseload of over 4200 individuals. Since 1999/00 the program's budget has increased by 132% from \$60.0 million to \$140.0 million. This means that this program has seen a greater average growth than most in government. While the program does provide a lot of support, it does have limited funds and waitlists do exist. The policy is to try to support the most critical needs individuals. Community capacity is also a consideration in providing residential services for persons with a mental disability. Sometimes it can take months to place an individual, in order to find the right environment, and with the housing market the way it is, it is possible for homes to get swept up before agencies can act, which makes the waiting time longer. The problem is one faced by persons with mental disabilities generally, not necessarily women. There are about 400 residents at the Manitoba Developmental Centre (MDC). While about seven residents a year move into the community, these are not the ones with critical needs.

The Province of British Columbia supports low income people in the province by providing a range of housing programs depending in the degree of need. Currently the government spends \$172 million on housing and oversees approximately 57,500 subsidized housing units.

The province supports several programs aimed at meeting the housing the needs of low-income British Columbians.

- **Provincial Housing Program (PHP)** helps fund the creation of new non-profit and co-operative developments that provide safe, secure and affordable housing for families and individuals. When the program concludes in 2006/07, 7,760 units will have been created.

- **Independent Living BC (ILBC)** is a housing-for-health partnership designed to meet the needs of seniors and people with disabilities who require some personal assistance, but do not need 24-hour facility care. By 2006/07, 3,500 units will have been created under the ILBC program.
- **Community Partnership Initiatives (CPI):** BC Housing supports its housing partners in the creation of innovative strategies through one-time grants, access to consulting services, and the provision of construction and long-term financing.
- **Provincial Homelessness Initiative (PHI)** is a newly announced initiative which emerged from the work of the Premier's Task Force on Homelessness, Mental Illness and Addictions. To date, long-term housing and support solutions to homelessness have been allocated in Fort St. John, Kelowna, Nanaimo, New Westminster, Prince George, Surrey, Terrace, Vancouver and Victoria.
- **Shelter Aid for Elderly Renters (SAFER)** provides direct cash assistance to eligible residents of British Columbia who are age 60 or over and pay rent for their home. Currently 11,929 senior households are assisted through this program. Recently the provincial government announced that 7,200 additional seniors will receive assistance under this program.

**Actions taken to address to issues or recommendations raised by the Special Rapporteur on Racism, Racial Discrimination, Xenophobia and Related Intolerance in the context of employment, housing, health, and education:**

The written submission to the advance list of issues provides several examples of measures taken in Canada to address the issues raised by the Special Rapporteur. A copy of *A Canada for All: Canada's Action Plan against Racism* was left with the Committee. It should also be noted that Canada is in the process of responding to a request from the Special Rapporteur regarding follow-up to his report, and is also in the process of finalizing its combined 17<sup>th</sup> and 18<sup>th</sup> reports on the *Convention on the Elimination of all forms of Racial Discrimination*. Further information follows below.

*A Canada for All*

Building on Canada's existing legal framework, and on the policies and programs currently in place, *A Canada for All: Canada's Action Plan Against Racism* establishes a horizontal approach across federal departments and agencies, and outlines a significant number of new and continuing commitments to combat racism. The action plan is organized into six areas identified as key priorities. These are: 1) assisting victims and groups vulnerable to racism and related forms of discrimination; 2) developing forward-looking approaches to promote diversity and combat racism; 3) strengthening the role of civil society; 4) strengthening regional and international co-operation; 5) educating children and youth on diversity and anti-racism; and 6) countering hate and bias.

The action plan outlines a series of new and ongoing measures that the Government of Canada will take to eliminate racism in Canadian society. Examples of new initiatives include the following:

- Inclusive Institutions Initiative will strengthen partnerships between federal institutions and ethno-cultural and ethnoracial communities to reflect Canadian diversity in federal policies, programs, and services.
- Law Enforcement and Aboriginal Diversity Network will provide law enforcement agencies at all levels across Canada with training, support, and information on effective practices that will improve their capacity to serve Aboriginal, ethno-cultural, and ethno-racial communities.
- Data Collection on Hate-Motivated Crime will standardize the collection of data related to crimes and incidents motivated by hate.
- Race-Based Issues In the Justice System will examine whether race-based considerations are interfering with the principle of equality under the law, particularly in relation to perceived racial-profiling and over-representation of certain groups in the justice system.
- Interventions for Victims and Perpetrators of Hate Crimes will identify the unique needs of victims of hate crimes and the most effective ways of responding to those needs, and will also identify interventions and sentences that ensure accountability for racially-motivated offenders and encourage rehabilitations.
- Signature by Canada of the Council of Europe's First Additional Protocol to the Convention on Cybercrime Concerning the Criminalisation of Acts of a Racist or Xenophobic Nature Committed Through Computer Systems in July 2005 signals Canada's intention to participate in the global fight against hate-speech circulated on the Internet.
- Countering Internet-Based Hate Crime proposes to combat hate via the Internet by working to establish a tip line to facilitate reporting, and working with Internet service providers to identify online hate.
- Welcoming Communities Strategy is a strategy that works with non-governmental organizations and provincial partners to foster a more welcoming environment in communities for newcomers to Canada.
- Racism-Free Workplace Strategy builds on existing employment equity measures; the Strategy will develop new measures, practical tools and best practices that will be promoted and shared, ensuring discriminatory barriers in Canadian labour markets are eliminated.

#### Commemorative and educational initiatives

As a society, looking to the future can be difficult when troubling memories from Canada's past go unacknowledged. The Department of Canadian Heritage has worked

with Canadian ethnocultural groups who carry such memories with them as a result of events that occurred in Canadian history during times of war, or as a result of immigration policies of the day. The objective of these efforts is to ensure that similar events never occur again.

In support of these ongoing efforts, the Government of Canada has committed \$25 million over the next three years for the Acknowledgment, Commemoration, and Education (ACE) Program. The program will fund commemorative and educational initiatives that will highlight the contributions that these groups have made to Canadian society and help build a better understanding among all Canadians of the strength of Canadian diversity.

Additional Provincial Information:

Under the British Columbia Settlement and Adaptation Program, funding is provided to third-party contractors to deliver settlement and language training services to new immigrants and refugees, including African newcomers. The Government of British Columbia currently provides funding to six agencies in seven cities to provide information and support services that specifically focus on the needs of African newcomers. Services are delivered by settlement counsellors who speak one or more African languages at the following agencies:

- Little Mountain Neighbourhood House (Vancouver)
- Immigrant Services Society of BC (Vancouver and New Westminster)
- MOSAIC (Vancouver, Burnaby and New Westminster)
- Options Services to Communities Society (Surrey)
- Richmond Multicultural Concerns Society (Richmond)
- Victoria Immigrant & Refugee Centre Society (Victoria)

Under the British Columbia Anti-Racism and Multiculturalism Program, the primary goal is to promote multiculturalism and eliminate racism. The program seeks to achieve this through increased public awareness and understanding of multiculturalism, racism or cross cultural relations; effective response mechanisms to combat racism and build safer communities; and effective partnerships that promote multiculturalism and elimination of racism. The program is directed at all communities and sectors, inclusive of African-Canadians.

The Province of British Columbia's Critical Incident Response Model (CIRM) assists communities throughout British Columbia to develop community-led responses to racism and hate activity. Local governments, community-based organizations, the provincial Hate Crime Team and other local members work together to develop a plan for responding to racism in their community. Each year, the Division will be working in at least 12 British Columbia communities in one of three stages in the model towards the eventual creation of a municipal protocol in addressing racism and hate activity.

The Province of British Columbia, through the Settlement and Multiculturalism Branch, also appoints the Multicultural Advisory Council to provide advice to the Minister on issues with respect to multiculturalism and performs any other duties or functions specified by the Minister as set out in s.5(1) of the British Columbia Multiculturalism Act.

*Strategic Framework for Action: A Strategy to Stimulate Joint Action on Multiculturalism and the Elimination of Racism in British Columbia* was developed in consultation with the Multicultural Advisory Council. The Strategic Framework outlines an action plan that will, through a shared commitment to multiculturalism and the elimination of racism, benefit all British Columbians through a society more open to critical thinking, more flexible in problem solving, and more socially engaged — a dynamic environment for creating economic innovation and social respect.

A Dialogue on Multiculturalism was held on February 14, 2005, in Vancouver. The forum was developed in partnership with the Department of Canadian Heritage, United Way, Laurier Institution, Vancouver Foundation, Hastings Institute, Scotiabank, Province of British Columbia and British Council. It was an avenue for the Multicultural Advisory Council to introduce the Strategic Framework, bring forward advice, and join community stakeholders, business leaders, government representatives and ministry staff to collaborate and develop innovative action items to support cultural diversity and eliminate racism in the province. The forum helped to further inform and complete the provincial strategy.

Quebec's Action Plan: Shared Values, Common Interests

In 2003, Quebec adopted its *Action Plan: Shared Values, Common Interests* for the period 2004-2007. With an additional budget of \$21 million, the Plan has five main components, including increasing openness to cultural diversity. Some 38 new measures have been developed to ensure implementation of the action plan. In the area of intercultural relations, in particular, Quebec's objectives are to increase openness to diversity by encouraging intercultural contact and dialogue, and combat racial discrimination and intercommunity tensions ([www.micc.gouv.qc.ca](http://www.micc.gouv.qc.ca)).

At the institutional level, the following mechanisms have been established:

- A network of intercultural relations advisors within the Government of Quebec. These advisors serve as entry points and designated contacts for cultural community liaison officers, offer advice to the authorities within their respective departments so that the reality of cultural communities can be taken into consideration, and monitor intercultural relations within their departments;
- An intercultural relations consulting service, which offers employers and human resources departments information, reference and support services in the area of employment diversity and intercultural management;

- A cultural community liaison office which works locally with cultural communities to encourage their full participation in Quebec society; fosters closer intercultural relations; and helps combat racism and exclusion. So far, the liaison office has set up coordinating groups for the North African, Bangladeshi and Latin American communities with a view to developing action plans in conjunction with these communities.

Following up on the *Action Plan: Shared Values, Common Interests*, in September 2005, Quebec launched a province-wide *Consultation on the Full Participation of Black Communities in Quebec Society*. In support of the consultation, led by a task force of four parliamentarians, a consultation document was prepared; it provides a complete and detailed portrait of Quebec's black communities today, and identifies orientations to support their economic success, consolidate family structures and social support, and develop social conditions for success ([www.micc.gouv.qc.ca](http://www.micc.gouv.qc.ca)).

The work that community organizations and public agencies are undertaking with cultural communities and the general public is supported by the recent implementation of three programs designed to promote closer intercultural relations and facilitate the integration of immigrants, as a means of preventing racism:

The *Programme d'accompagnement des nouveaux arrivants (PANA)*, implemented on January 1, 2005, enables community organizations to offer welcoming, settlement and accompaniment services for new arrivals; welcoming and settlement services for refugees and people in similar circumstances selected abroad for assistance by the government; and housing searches for newly arrived refugee claimants.

The *Programme d'appui aux relations civiques et interculturelles (PARCI)*, launched on June 18, 2004, offers financial assistance to community organizations for projects to develop knowledge and understanding of Quebec society among immigrants and members of cultural communities, and, among Quebecers, knowledge and understanding of the plural reality of their society. PARCI also supports projects to alleviate intercommunity tensions and combat prejudice, discrimination, intolerance, racism and exclusion based on colour, national or ethnic origin, or cultural or religious backgrounds.

The *Programme régional d'intégration (PRI)*, launched on April 1, 2004, supports joint action by local and regional partners with the objective of furthering the contribution of immigration to the development of Quebec's various regions, improve the circumstances in which immigrants are received, settled and integrated, and help the population in the regions to appreciate the economic, social and cultural contributions made by the members of cultural communities.



## **Canada's approach to diversity in policy-making**

The Canadian approach to embracing and managing diversity is a distinguishing characteristic of our country. To this extend, the Government of Canada works to create a favourable environment in the arts and cultural sector, premised on the belief that Canadians must have access to diverse Canadian voices and Canadian creative works. In the development of cultural policy, the Department of Canadian Heritage supports *creation* that is reflective of Canada's diversity and attains a high degree of excellence; and *access* for Canadians to diverse cultural expression.

Additionally, through the Multiculturalism Program, the Government works to advance the implementation of the *Canadian Multiculturalism Act*, and to promote the values and principles of multiculturalism in Canada by means of analysis and development of policy options. The program builds civic and cultural capacity in ethnoracial, ethnocultural, and religious communities and focuses its efforts on program and initiatives that seek to foster cross-cultural understanding, to combat racism, and to facilitate inclusion and participation of Canadians from diverse cultural backgrounds in all aspects of Canadian society, by eliminating systemic barriers. Fostering awareness of the impact of increased diversity and developing forward-looking policies and programs to address the challenges and opportunities of an ever-changing population are integral to helping sustain a society that values all of its members and treats them with dignity and respect. This approach reflects the federal government's commitment to diversity as one of Canada's main strengths, both at home and abroad.

The Annual Report on the operation of the *Canadian Multiculturalism Act* outlines some of the activities undertaken by federal departments and agencies to advance the values and principles of multiculturalism. It provides a snapshot of the Government's best practices in promoting multiculturalism in each department. The Annual Report details the Government's efforts to combat discrimination, promote cross-cultural understanding, and make Canadian institutions more representative of Canadian society. It highlights Government policies intended to help Canadians of all origins obtain employment and advancement in federal institutions. It illustrates how Government programs are creating opportunities for more Canadians to contribute to the continuing evolution of our country. And it showcases some of the data collection and research programs that will inform future government policies and programs so that they are even more responsive to Canada's multicultural reality.

## **Violence against Aboriginal women: further information on funding and police services**

Information on this topic was also provided verbally and in the written submission on the advance list of issues.

Canada is committed to working with Aboriginal Canadians and other partners to address the issues that affect the daily lives of Aboriginal women including violence. Any and all

violence against women is unacceptable in our society; however, the high rates of racialized and sexualized violence against Aboriginal women highlight an urgent problem that demands government action.

The Government of Canada recognizes the need for action in this area and, in May of this year, approved \$5 million in funding for the Native Women's Association of Canada's (NWAC) Sisters in Spirit initiative. NWAC initially asked for \$10 million over 2 years; however, once the Government met with NWAC and did a thorough analysis of what was feasible and reasonable to accomplish in a short period of time, and with support of federal departments in the implementation of the initiative in addition to the funding, it was decided that the Government would provide \$5 million over five years. There is an established process in place to ensure accountability to the taxpayers and once that process has taken place, the funds will be released. The accessing of new funds for any initiative must go through a rigorous process before the money can be released. The Government of Canada is working with NWAC to finalize the final documents so that we can release the funding as planned.

Status of Women's Family Violence Initiative (FVI), launched in 1988, has had a constant presence and influence in fostering a national approach to family violence issues. With the long-term goal of reducing the occurrence of family violence in Canada, the FVI promotes public awareness of the risk factors of family violence and the need for public involvement in responding to it; strengthens the criminal justice, health and housing systems to respond; and supports data collection, research and evaluation efforts to identify effective interventions. The issue of family violence has been integrated into ongoing programming in many government departments.

Status of Women Canada has made a commitment to use its Family Violence Initiative allocation (\$1 million over four years: 2003-04 to 2006-07) to fund national initiatives by Aboriginal women's organizations on issues of violence against Aboriginal women.

SWC supports initiatives that lead to systemic changes and alternatives, long-term prevention strategies. In 2004-05, over \$2.3 million in Women's Program funding was approved to support numerous initiatives undertaken by voluntary organizations at national, regional and local levels across Canada to address violence issues.

We continue to support the Canadian National Coalition of Experiential Women, which aims to develop options for women to exit prostitution; and who are trafficked. We also supported the Canadian Council of Refugees (March 2004) meeting with the Minister of Justice.

With respect to violence against Aboriginal women in British Columbia, through its membership in the Federal/Provincial/Territorial Ministers Responsible for the Status of Women, British Columbia works collaboratively with other jurisdictions to reduce and prevent violence against Aboriginal women by improving information and data to better inform policy, and by exploring opportunities within and among governments to address cross-jurisdictional challenges.

The British Columbia government funds a range of services that support and assist Aboriginal women experiencing violence including transition houses, counseling programs and outreach services. In addition, the government makes financial contributions to three transition houses that operate on-reserve. In 2005/06, Government provided funding to two provincial Aboriginal women's organizations for capacity building.

With respect to police services in Ontario:

In Ontario police services are required to have protocols for dealing with violence against persons. In particular, police services in Ontario are provided with guidelines to deal with domestic violence against women. Police services do not have a protocol to deal specifically with violence against Aboriginal women, because the concern in Ontario has been about domestic violence against women in general rather than violence against Aboriginal women specifically. The "Model Police Response to Domestic Violence" in the guidelines is applicable to all cases of domestic violence, including domestic violence against Aboriginal women. Initiatives in Ontario to deal with domestic violence include the following:

- The Ontario Women's Directorate (OWD) launched a four-year Domestic Violence Action Plan (DVAP) on December 13, 2004. The new program enhances existing domestic violence programs/services and implements new initiatives emphasizing prevention and improved community supports for abused women and their children.
- The Ministry of Community Safety and Correctional Services (MCSCS) continues to support the policing initiatives under the DVAP, as they promote the protection of women and children from domestic violence.
- In addition, MCSCS continues to promote the implementation of the Ontario Domestic Assault Risk Assessment (ODARA) tool, as the police use of risk assessment has been recommended by several Coroner's Juries (e.g., Hadley Inquest) and in the 2003/04 Annual Reports of the Coroner's Death Review Committee.

In February 2000, MCSCS released its guidelines to support implementation of the *Adequacy and Effectiveness of Police Services Regulation*, including the four guidelines that comprise the Model Police Response to Domestic Violence:

- Domestic Violence Occurrences;
- Bail and Violent Crime;
- Criminal Harassment; and
- Preventing and Responding to Occurrences Involving Firearms.

The position of MCSCS regarding racial profiling remains unchanged:

- Zero tolerance approach to racial profiling,
- Support for proactive efforts to increase awareness of racial profiling to lower the risk of discriminatory behaviours, processes, policies and procedures to ensure that systemic discrimination does not exist,
- No support for racial data collection because of the challenges in providing conclusive empirical data that sufficiently rule out factors other than race to explain findings.

It is a Code of Conduct offence under the *Police Services Act* (PSA) for officers to engage in discriminatory or racist behaviour.

Under the *Police Services Act* (PSA), every police service is required to deliver its services in accordance with the principles set out in the *PSA*, including the need for sensitivity to the pluralistic, multiracial and multicultural character of society.

#### **Access to the Quebec human rights commission:**

Following a complaint filed before the Quebec Human Rights Commission and Youth Protection, the Commission investigates on his own every situation using a non-adversary method. Under his terms and reference, the Commission then researches, for every situation denounced in the complaint or revealed during the investigation, every shred of evidence which would allow it to determine if it is best to favour negotiating a settlement between the person whose rights were allegedly infringed and the person responsible for this violation, to propose arbitration of the conflict or to submit the unsolved issue to a tribunal.

The Commission can cease its activities when it feels that it is useless to pursue the search for evidence or when the evidence collected is insufficient to bring the case before the court. Its decision is then explained in writing and notified in the sections indicated, if any, any recourse the Commission deems appropriate.

Each year, the Commission receives on average 17,000 requests, of which approximately 15% fall within the Commission's investigative jurisdiction and are subject to an admissibility review. The other requests do not comprise, at their face value, at least one of the elements required for them to be admissible, either a violation of a protected Charter right, a link between this violation and one of the grounds of discrimination prohibited in the Chart, or an exploitative situation of an elderly or disabled person.

Among the requests selected for an admissibility exam, on average each year: 3% were settled by the parties; 12% were rejected because the cases did not fall under the Commission's jurisdiction when, for example, this jurisdiction was second-guessed by court decisions; 18% were being evaluated for their admissibility; 17% were not

followed-up on because the claimant abandoned the pursuit or because the Commission is unable to reach him/her. Close to 50% resulted in an investigation.

According to a 2003 analysis, for the cases that were investigated : 23.1% of them were closed after the conflict was settled between the parties, of which the majority of cases included paying a compensation or accomplishing an action to repair the wrong suffered by the claimant, or correcting policies or practices that can violate the Charter;

In 9.1% of the cases, redress measures were proposed and a mandate to pursue was issued; in 17.4% of the cases the claimant requested a discontinuance; 50.4% of the cases were closed by a complaints committee. Among the cases that were closed: 61% of the them had insufficient evidence or it were deemed inappropriate for the court; in 34% of the cases, it was felt that it was useless to pursue the search for evidence and in 5% of the cases, other recourses were deemed more appropriate.

### **Civil society engagement and transparency:**

With respect to the issue of transparency and engagement of civil society in the review and reporting process, as noted by the Head of Delegation, non-governmental and aboriginal organizations were invited to attend an information and discussion session prior to Canada's appearance before the Human Rights Committee. The federal government routinely writes to non-governmental and aboriginal organizations and invites them to share their views on what issues should be covered. This process has been augmented recently by including the preliminary list of issues that have been identified to focus the report and inviting NGOs to comment on whether these are priorities in their view or whether there are other issues that should be covered in Canada's report. Federal departments also have processes in place for consulting with NGOs on specific programs and policies that serve to implement human rights. Federal government officials also have been discussing the feasibility and options for enhancing consultation with civil society in reporting and implementation of human rights treaties.

With respect to a non-governmental organization's suggestion related to the creation of a public intergovernmental coordinating body, the Continuing Committee of Officials on Human Rights (CCOHR), which has been in existence for 30 years, is the intergovernmental body through which governments consult and share information on the implementation of international human rights treaties with a view to enhancing compliance with Canada's international human rights obligations. It is the body which facilitates the preparation of Canada's reports to the UN on its implementation of human rights treaties and coordinates follow-up to the concluding observations of the treaty-monitoring bodies.

While the CCOHR is not a decision-making or enforcement body, the sharing of information and best practices ensures awareness of treaty obligations, including the views of treaty bodies, which can influence policy and program development, and in turn contributes to the implementation of the treaties. The members of the Committee report

to their respective governments, which are responsible for implementation on issues within their jurisdiction.

As is the norm with federal-provincial-territorial forum of this nature, the content of inter-governmental discussions is subject to confidentiality, and therefore records of CCOHR discussions are not publicly available. However, in order to improve and promote public awareness and access to human rights information, the CCOHR has been examining whether additional information related to the Committee can be disseminated publicly. For example, the CCOHR recently declassified the final agenda of its recent meeting and prepared the attached fact sheet. The Committee will continue to look at ways in which it can enhance the availability of information while respecting the need for governments to freely discuss and exchange their views.

It can also be noted that, as Secretariat to the Continuing Committee of Officials on Human Rights, the Human Rights Program at the Department of Canadian Heritage is able to receive information and views from civil society for further distribution to representatives on the Continuing Committee of Officials on Human Rights, as well as to federal departments. Information received is routinely shared in order to help inform intergovernmental and interdepartmental discussions. Provinces and territories can also receive and share information directly from NGOs.

### **Status of the Charter in relation to Covenant**

Justice Dickson of the Supreme Court of Canada (in dissent on the substantive issue but the following statement has been often cited by the Supreme Court) said in *Reference Re Public Service Employee Relations Act*<sup>1</sup> that “[t]he Charter conforms to the spirit of [the] contemporary international human rights movement, and it incorporates many of the policies and prescriptions of the various international documents pertaining to human rights”.

As an author<sup>2</sup> wrote in 1991, since the coming into force of the *Canadian Charter of Rights and Freedoms* in 1982, “there has been an exponential growth in the number of cases which refer to conventional international human rights law in the course of interpreting domestic law”. Although we are not aware of a more recent study, it can be said that Canadian courts, including the Supreme Court of Canada, still often refer to international human rights instruments. This shows that the Charter is not a barrier to consideration of the Covenant.

The most common use of international human rights standards in Charter litigation is as an interpretive tool -- both in defining the scope of a Charter right and the reasonable limitations which attach to it. In the same judgment in *Reference Re Public Service Employee Relations Act*, Justice Dickson indicated that “[t]he content of Canada’s

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<sup>1</sup> [1987] 1 S.C.R. 313.

<sup>2</sup> Bayefsky, A. F., *International Human Rights Law, Use in Canadian Charter of Rights and freedoms litigation*, Butterworths, Toronto, 1991.

international human rights obligations is an important indicia of the meaning of ‘the full benefit of the Charter’s protection’; that “the Charter should generally be presumed to provide protection at least as that afforded by similar provisions in international human rights documents which Canada has ratified” and that the “various sources of international human rights law - declarations, covenants, conventions, judicial and quasi-judicial decisions of international tribunals, customary norms - must, [...], be relevant and persuasive sources for interpretation of the Charter’s provisions”. These statements have also been cited with approval in subsequent judgments rendered by the Supreme Court.

The full extract is the following:

International law provides a fertile source of insight into the nature and scope of the freedom of association of workers....A body of treaties (or conventions) and customary norms now constitutes an international law of human rights under which the nations of the world have undertaken to adhere to the standards and principles necessary for ensuring freedom, dignity and social justice for their citizens. The Charter conforms to the spirit of this contemporary international human rights movement, and it incorporates many of the policies and prescriptions of the various international documents pertaining to human rights. The various sources of international human rights law - declarations, covenants, conventions, judicial and quasi-judicial decisions of international tribunals, customary norms - must, in my opinion, be relevant and persuasive sources for interpretation of the Charter’s provisions.

In particular, the similarity between the policies and provisions of the Charter and those of international human rights documents attaches considerable relevance to interpretations of those documents by adjudicative bodies, in much the same way that decisions of the United States courts under the bill of Rights, or decisions of the courts of other jurisdictions are relevant and may be persuasive. The relevance of these documents in Charter interpretation extends beyond the standards developed by adjudicative bodies under the documents to the documents themselves. As the Canadian judiciary approaches the often general and open textured language of the Charter, “the more detailed textual provisions of the treaties may aid in supplying content to such imprecise concepts as the right to life, freedom of association, and even the right to counsel”. (...)

Furthermore, Canada is a party to a number of international human rights Conventions which contain provisions similar or identical to those in the Charter. Canada has thus obliged itself internationally to ensure within its borders the protection of certain fundamental rights and freedoms which are also contained in the Charter. The general principles of constitutional interpretation require that these international obligations be a relevant and persuasive factor in Charter interpretation. (...) The content of Canada’s international human rights obligations is, in my view, an important indicia of the meaning of “the full benefit of the Charter’s protection”. I believe that the Charter should generally be presumed to provide protection at least as that afforded by similar provisions in international human rights documents which Canada has ratified.

In short, though I do not believe the judiciary is bound by the norms of international law in interpreting the Charter, these norms provide a relevant and persuasive source for

interpretation of the provisions of the Charter, especially when they arise out of Canada's international obligations under human rights conventions".

**Programs and services for women in British Columbia:**

Programs and services for women are an integral part of government. Women are a priority for the British Columbia government and this is demonstrated through the appointment of a full Cabinet Minister for Community Services with a key responsibility for Women's Issues as well. The British Columbia government has maintained essential programs and services for women, which include violence-related services, policy work and women's access to information and resources. Further information will be provided in Canada's next report under the *Convention on the Elimination of all forms of Discrimination Against Women*.

**Application of the *Anti-terrorism Act* and religion of those against whom action has been taken:**

Regarding the question on the application of Canada's *Anti-terrorism Act*, to date, only one person has been charged with an offence under the terrorism provisions of the *Criminal Code of Canada* that were enacted as part of the *Anti-terrorism Act*. Mr. Khawaja, a 29 year-old Canadian born citizen has been charged pursuant to sections 83.18 and 83.19 of the *Criminal Code*. These provisions make it an offence to knowingly participate in or contribute to the activities of a terrorist group and to knowingly facilitate a terrorist activity.

Canada does not systematically track criminal cases according to the religion of the accused. As was mentioned on October 18 during Canada's appearance before the Human Rights Committee, the RCMP has a zero-tolerance policy towards racial profiling and racially-biased policing. The charges against Mr. Khawaja were directed at criminal activity with respect to national security.

***Measures in response to the Canadian Human Rights Commission's recommendations on women prisoners:***

On February 17, 2005, the Correctional Service of Canada (CSC) publicly released *CSC's Action Plan in Response to the Report of the Canadian Human Rights Commission (CHRC)*. The *Response* is available online at:

[http://www.csc-scc.gc.ca/text/prgrm/fsw/gender4/CHRC\\_response\\_e.pdf](http://www.csc-scc.gc.ca/text/prgrm/fsw/gender4/CHRC_response_e.pdf)

In preparing the *Response*, CSC carefully reviewed and consulted with stakeholders on all 19 of the CHRC's recommendations. Overall, the action plan will enable CSC to implement change and monitor the results. It should be noted that the CHRC commented publicly that they were pleased with the steps CSC has taken.



The following are highlights of CSC's *Response*:

- CSC has agreed to work with external experts to develop a gender-informed approach to the initial security classification of women offenders. This includes developing a new scale for the initial security classification. Added to this, CSC is now in the implementation phase of a "built from the ground-up" security reclassification scale specifically for women offenders. During the field-testing phase, the reclassification scale demonstrated good reliability and validity for both Aboriginal and Non-Aboriginal women offenders.
- CSC has put in place a number of initiatives to improve women offenders' employment skills and employability. To date, this has led to a 10% increase of employment opportunities in each of the women's facilities. CSC has also worked with the Conference Board of Canada to develop a gender-informed Employability Program designed to enhance the employability of women offenders through institutional work experience. A survey was recently completed to assess women offenders' work experience, training needs and skills in order to assist them in obtaining and maintaining meaningful work in the community. Results from this survey will lead to the development of a National Employment Strategy for Women Offenders, which is expected to be completed during fiscal year 2005-6.
- CSC will maintain its existing practices of employing male front-line staff in women's institutions. A number of measures are in place to ensure the privacy and dignity of women offenders. These include stringent selection standards for potential staff, clear operational policies and protocols for interactions between staff and women offenders and in-depth, specialized staff training for those working in women's institutions. CSC does not tolerate harassment or discriminatory behaviour. It will continue to monitor compliance with policies and standards.

Implementation of a few recommendations was not possible without legislative change. CSC must operate within the framework of the *Corrections and Conditional Release Act*. These recommendations include establishing an independent external redress body for offenders and independent adjudication for decisions related to involuntary segregation. CSC is exploring alternate models with the Policy Directorate of the Department of Public Safety and Emergency Preparedness Canada.

Finally, although it does not pertain exclusively to Women Offenders, CSC is examining the use of Tasers as an intervention tool to further reduce the risk to offenders and personnel intervening during incidents. During Canada's presentation to the Committee Against Torture (CAT) in May of this year, CSC advised it was considering a pilot of the technology in the institutional setting. Prior to implementation we are attempting to establish the relative safety of using this tool compared to others based on recent findings in studies by the National Research Council and Canadian Association of Chiefs of Police (NRC/CACP).

### **Aboriginal Languages and Culture Centre and funding for revitalization of Aboriginal languages:**

As noted during the presentation and in the written submission to the advance list of issues, in July 2005, the Minister of Canadian Heritage released the report of a government-appointed Task Force on Aboriginal Languages and Cultures. The report includes a recommendation on a languages and cultures council, with emphasis on community-based programming and education. As noted as well, the government is now engaged in analysing the Task Force report and in gathering feedback from a broad range of stakeholders who will be significantly affected by or engaged in the implementation of Canada's response to it. The response will be forthcoming later this year or early in 2006.

In 2002, the Government of Canada committed \$160 million over 10 years for the specific purpose of preserving, revitalizing and promoting Aboriginal languages and cultures. That money is anticipated to begin flowing in 2006. In addition to these pre-committed funds, the Government of Canada provides funds in support of Aboriginal languages through two other initiatives. In 1984, Canada entered into the first of a series of accords with its Territorial governments. Through these agreements, Canada contributes \$4.2 million annually towards community-based Aboriginal language projects in the territories. One other initiative, the Aboriginal Languages Initiative (ALI), was instituted in 1998 for the purpose of supporting in-home and in-community language projects. Since its inception, ALI has made \$5 million available annually for approved community-based languages projects.

### **Management of the National Child Benefit and its application to Aboriginal Children**

Information on the National Child Benefit (NCB) is also included in Canada's Fifth Report on the *International Covenant on Economic, Social and Cultural Rights*.

The National Child Benefit (NCB) is a partnership between federal, provincial and territorial governments. The NCB also includes a First Nations component. As described in the National Child Benefit Governance and Accountability Framework, the forum of Federal/Provincial/Territorial Ministers Responsible for Social Services constitutes the principal mechanism for the governance of the NCB, including the overall strategic policy direction for the NCB initiative. Federal/Provincial/Territorial Deputy Ministers Responsible for Social Services have delegated responsibility for general management, implementation and operation of the NCB initiative under the direction of Ministers. The Federal/Provincial/Territorial NCB Working Group of officials supports the mandate of Deputy Ministers and Ministers with respect to the NCB.

The Minister of Social Development represents the Government of Canada within the forum of Federal/Provincial/Territorial Ministers Responsible for Social Services. As the

Government of Canada's contribution to the NCB initiative is the NCB Supplement of the Canada Child Tax Benefit, the Minister of Social Development shares policy responsibility with the Minister of Finance. The Canada Child Tax Benefit, including the NCB Supplement, is administered by the Canada Revenue Agency.

The First Nations component of the NCB is administered through Indian and Northern Affairs Canada. Specifically, Indian and Northern Affairs Canada administers the reinvestment component of the National Child Benefit Initiative on reserve. In 2003-2004, a total of 194,430 Aboriginal children benefited from reinvestment projects which were implemented on reserve. Please note that this number includes duplicates where a child benefits from more than one service in the community. As a rule, reinvestment projects are provided to all low-income children in First Nation communities that have access to reinvestment dollars. As a general rule, Indian and Northern Affairs Canada, will adopt in its communities, the same treatment in place in the province in which the reserve is located. As both New Brunswick and Manitoba flow the NCB supplement directly to low-income families with children. There are no reinvestment funds available for these communities, either on or off reserve.

During the development and implementation of the NCB initiative, the Federal/Provincial/Territorial NCB Working Group of officials consulted with non-governmental organizations and experts on key aspects of the initiative. For example, in March 2000, leading experts in child poverty and evaluation were consulted in the preparation of an evaluation plan for the NCB initiative. Similarly, in the summer of 2001, experts in child poverty were consulted on the annual NCB progress reports to ensure these report met the commitments to public reporting set out in the Governance and Accountability Framework. In addition to this federal/provincial/territorial consultation, the Minister of Human Resources Development, who at the time was accountable for this program, consulted with a Reference Group of Stakeholders during the development and early implementation of the NCB initiative.

#### **Statistics on aboriginal child poverty:**

Information on measures to reduce poverty is included in Canada's Fifth Report on the *International Covenant on Economic, Social and Cultural Rights*. While Canada does not have an official poverty measure (several different measures of low income are used in Canada), the most widely used measure of low income is Statistics Canada's post-tax Low-Income Cut-Offs (LICOs) - however, as noted it is not an official poverty measure. Figures are available (latest is for 2003) on the percentage and number of children (under age 18) living below the post-tax LICO; however, these figures are not broken down by Aboriginal and non-Aboriginal children.

**Persons under 18 years in low income after tax (92 LICOs\* base), showing prevalence and estimated number – Canada**

	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
	<b>Prevalence of low income (%)</b>									
<b>All persons</b>	15.8	17.6	18.6	17.8	15.5	14.4	13.8	12.1	12.2	12.4
Males	15.4	17.3	19.1	18.0	16.0	14.7	13.4	12.0	12.7	12.6
Females	16.3	17.9	18.1	17.5	14.9	14.1	14.2	12.2	11.8	12.1
	<b>Estimated number ('000)</b>									
<b>All persons</b>	1,102	1,228	1,304	1,242	1,080	1,001	955	835	839	843
Males	552	617	681	646	575	522	469	418	448	441
Females	550	611	623	595	505	480	485	416	391	402

**Source:** *Income in Canada 2003*, Statistics Canada, Catalogue no. 75-202-XIE.

\* Low income cut-offs reflect an income level at which a family is likely to spend significantly more of its income on food, shelter and clothing than the average family.

**Access to financial assistance and legal aid to test Charter issues in the courts:**

In addition to information provided during the Canadian delegation's appearance, the following can be noted.

To date, most Charter litigation has been in the context of criminal prosecutions. Criminal legal aid is available in all jurisdictions across Canada and is available only to the most vulnerable for whom a conviction is likely to result in a period of incarceration.

Charter issues may also arise in the context of civil litigation involving government or *quasi-government* actors. For example, veterans in Canada who claim a disability pension arising from military service may obtain the free assistance of a Pension Advocate, a lawyer who provides legal assistance in preparing and presenting an appeal from a refusal of a pension right. There are publicly-funded advocacy agencies in all jurisdictions. Generally these are a part of the community or poverty law strategic service plan of legal aid organizations.

Legal services are available to individuals engaged in litigation with "government actors" over rights or access issues (e.g. mental health or treatment, social welfare and housing issues). These cases often involve Charter issues. Moreover in many jurisdictions public interest advocacy groups proceed with litigation on behalf of vulnerable groups with a view to establishing broadly based rights. Examples of public interest *Charter* litigation undertaken by Legal Aid Ontario Community Clinics includes the case against the Government of Ontario over the "spouse in the house" disqualification for welfare recipients based on equality rights. Similarly the "spanking case" challenging the *Criminal Code* defence available to adults when corporally punishing children was coordinated by a Legal Aid Ontario clinic, *Justice for Children and Youth*. Financial eligibility for many of these organizations is guided by legal aid qualification but the

nature of their respective mandates also tends to restrict their activities to the economically vulnerable. Private public interest organizations such as the Legal Education Advocacy Fund, a national non-profit organization working to promote equality for women and girls in Canada uses the equality provisions from section 15 of the *Canadian Charter of Rights and Freedoms* as a basis to advance women's rights. LEAF presents arguments, or intervenes, in cases where women's rights are at risk in Canadian courts.

The Department of Canadian Heritage also funds the Court Challenges Program (CCP), which provides financial assistance for test cases of national significance in order to clarify the rights of the official language minority communities and the equality rights of disadvantaged groups. The Court Challenges Program assists official language minorities and disadvantaged individuals and groups who would not otherwise be able to pursue their Constitutional and Charter rights in relation to language and equality rights. An evaluation of the CCP in 2003 found that it has been successful in supporting important court cases that have a direct impact on the implementation of rights and freedoms covered by the Program. The individuals and groups benefiting from the CCP are located in all regions of the country and generally come from official language minorities or disadvantaged groups, such as Aboriginal people, women, racial minorities, gays and lesbians, etc. The Program has also contributed to strengthening both language and equality-seeking groups' networks. The Program has been extended to March 31, 2009.

Some provinces offer legal aid only for cases in which the government is a litigant, such as criminal prosecutions, immigration matters and child protection issues. Others make it available for some private disputes, most commonly family law matters. Legal aid plans will cover Charter issues if necessary as part of a case, e.g. if necessary to defend a client in a criminal prosecution.

In Newfoundland and Labrador, Legal Aid is available to people who meet the eligibility requirements in criminal and family matters. In many of these cases, Charter issues may be raised. In New Brunswick, when legal aid is available, to whom, for what kinds of cases, and under what conditions, is determined by the province. The province of New Brunswick receives funding from the Government of Canada for criminal legal aid, and so there are agreements that create minimum national standards for criminal legal aid.

In Ontario, individuals and groups are eligible to apply for a test case certificate from Legal Aid Ontario to test Charter cases against the government and other entities subject to the Charter. Group Applications and Test Case Certificates are available in the areas of criminal, family, refugee, clinic, mental health, Aboriginal, prison law and Charter litigation. Applications are assessed based on the following criteria:

**Financial:** Is the applicant or group financially eligible under Legal Aid's financial criteria? Can the applicant or group contribute financially or in other ways? Can the applicant or group fund the case privately? Has the applicant or group attempted to raise funds privately or from other organizations? Will the applicant or group do so in the future?

**Significance:** What is the significance of this issue to low-income Ontarians? How does the case improve access to justice? Which communities or groups share an interest in the outcome of the issue? Is this application representative of a larger number of existing or potential actions that raise the same legal or factual issues?

**Novelty:** Has a court or tribunal considered this issue? What was the outcome? Is another person or group currently or likely to litigate this issue? Would the applicant be prejudiced if someone else chose to argue the issue? Is there someone in this position?

**Merit:** What are the specific legal grounds for the application? What remedy is being sought? Are other remedies available? What is the likelihood of succeeding? Have other remedies or strategies been pursued? If so, what were they?

**Cost-Benefit:** What is the estimated cost of the case, including research, preparation, drafting of legal documents and disbursements? In what way and to what extent will the benefit of a successful case flow to others beyond the immediate applicant(s)?

**Other Factors:** Are there other aspects of the case or the situation of the applicant(s) that the Committee should consider?

### **Additional Information on Aboriginal peoples and the justice system in Saskatchewan:**

We would like to refer the Human Rights Committee to the Saskatchewan section of Canada's Fourth and Fifth Reports under the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. As indicated in the Fifth report, the Commission on First Nations and Métis Peoples and Justice Reform, which was established in response to concerns of First Nations and Métis people about the justice system as it relates to Aboriginal people, released its final report in June 2004. In May 2005, Saskatchewan released an Action Plan in response: *Creating a Healthy, Just, Prosperous and Safe Saskatchewan: A Response to the Commission on First Nations and Métis Peoples and Justice Reform*. A copy of the Action Plan can be found at [www.saskjustice.gov.sk.ca](http://www.saskjustice.gov.sk.ca).

One initiative under the Action plan is a new model for public complaints against municipal police officers, that will come into effect on January 1, 2006. An independent Public Complaints Commission (PCC) will be formed, consisting of five persons, one of whom must be a First Nations person and one of whom must be of Métis heritage. There

will be similar representation at the investigator level. The new process will give the PCC direct control over the investigation into public complaints, regardless of whether the complaints allege criminal or disciplinary offences. The PCC will have the authority to direct that an investigation into any complaint be commenced by the PCC, by the police service that is the subject of the complaint, by the police service that is the subject of the complaint with an observer, or by an outside police service. Where the circumstances indicate the possibility of criminal activity, the file will be forwarded to Public Prosecutions for a recommendation as to whether criminal charges should be laid. If a death or serious injury has occurred while a person was in police custody, or as a result of police action, the police service or detachment concerned will be required to consult with the Deputy Minister of Justice so that an investigation observer can be appointed from another police service or RCMP detachment, to monitor the investigation and to provide a report back to the Deputy Minister.

Other initiatives under the Action Plan include the recruitment of 49 new police officers over three years, with a focus on recruiting Aboriginal police officers, and the development of five new Community Tripartite Agreements (CTAs) in three years, between First Nations and the Governments of Canada and Saskatchewan, for policing on reserves. CTAs represent a form of self-administered policing whereby communities have a say in the type and style of policing, by providing the RCMP with input about local issues, culture, traditional practices and appropriate strategies for policing the community.