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International Covenant on Civil and Political Rights

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Consideration of reports submitted by States parties under article 40 of the Covenant

List of issues in relation to the sixth periodic report of Canada

Addendum

Replies of Canada to the list of issues*

[Date received: 8 June 2015]

Question 1

1. The Covenant is implemented through a range of constitutional and statutory protections as well as legislative, administrative and other measures at the federal, provincial and territorial (FPT) levels, including the Canadian Charter of Rights and Freedoms (the Charter), section 35 of the Constitution Act, 1982, the Canadian Bill of Rights and FPT human rights legislation. Additional information on how international human rights instruments are implemented and received in domestic law can be found in paragraphs 136 to 148 of Canada's core document.

2. International treaties that Canada has ratified are not directly applicable in Canada, but can inform the interpretation of domestic law. Human rights treaties are relevant in determining the ambit of rights protected by the Charter. Canadian courts also refer to relevant provisions of treaties to which Canada has adhered to interpret ordinary (non-Constitutional) legislation and administrative action. For example, courts will interpret ordinary legislation as though the legislature intended to comply with Canada's treaty obligations, absent a clear intention to the contrary.

3. Canada's international human rights treaty obligations are regularly invoked before and by domestic courts at all levels. Recent cases in which the Supreme Court of Canada, relied on the Covenant to interpret the Charter include: *Divito v. Canada* (Public Safety and

* The present document is being issued without formal editing.

Emergency Preparedness), 2013 SCC 47 (mobility rights); *Saskatchewan Federation of Labour v. Saskatchewan*, 2015 SCC 4, *Ontario (Attorney General) v. Fraser*, 2011 SCC 20, and *Health Services and Support-Facilities Subsector Bargaining Assn. v. British Columbia*, 2007 SCC 27 (freedom of association).

Question 2

4. Applications for permanent residence on the basis of humanitarian and compassionate grounds (H&C applications) are not automatically re-opened when Canada receives views from the Committee. Generally, an H&C application may be reopened when the applicant has requested correction of a clerical or other error, or if the decision-maker failed to comply with procedural fairness. In addition, when new evidence is submitted by the applicant, the decision-maker may decide to re-open the H&C application depending on factors such as the passage of time, and the relevance and reliability of the evidence.

5. Although the Committee's views are not legally binding in international or domestic law, Canada supports the important work of the Committee and works to respect its views. The Committee's views on the circumstances faced by an individual upon removal from Canada can, and have been, considered in an H&C assessment. The factors considered in an H&C assessment include the hardship that the individual might face upon removal, such as discrimination which does not rise to the level of persecution, political instability, wide-spread violence, and other adverse country conditions that would have a direct, negative impact on the individual as those individuals should apply for refugee status. An H&C assessment will also consider the best interests of any children affected by the removal, and more generally the level of establishment in Canada and the nature of any family ties.

Question 3

Law enforcement agencies

6. The Canadian judicial system provides an overarching external and independent mechanism for reviewing complaints about the conduct of law enforcement personnel, where the complaints allege violations of the Charter or other legal protections. In addition, in all jurisdictions there are external, independent oversight mechanisms or bodies with the specific mandate to receive and investigate complaints regarding the conduct of law enforcement personnel. Canada's response to Question 10 will describe specific measures at the provincial and territorial level to ensure effective law enforcement accountability.

7. At the federal level, in November 2014 the Royal Canadian Mounted Police Act and its regulations were amended to significantly reform the accountability structures for the Royal Canadian Mounted Police (RCMP). The new external and independent Civilian Review and Complaints Commission for the RCMP (CRCC), which replaces the Commission for Public Complaints Against the RCMP, has been given broad access to information in the RCMP's control or possession. The CRCC can undertake joint complaint investigations with other police complaints bodies and policy reviews, including those related to national security operations. It must report annually on its activities and its recommendations to Parliament.

8. The legislative amendments also established a statutory framework for investigations of serious incidents involving RCMP members, to improve the transparency and accountability of these investigations. Further, the amendments modernized the RCMP's discipline, grievance and human resource management processes, to prevent, address and correct performance and conduct issues in a timely and fair manner.

National security organizations

9. Canadian national security organizations conduct their activities according to their legal mandates, with ministerial direction and judicial oversight as appropriate. Each is subject to the scrutiny of independent Officers of Parliament, including the Privacy Commissioner, the Information Commissioner, and the Auditor General. This is in addition to the mechanisms that exist to review the activities of Canada's national security agencies. For example, the Canadian Security Intelligence Service (CSIS) is subject to review by the Security Intelligence Review Committee, an independent, external review body that reports to Parliament to ensure that the powers given to CSIS are used legally and appropriately.

10. With respect to the O'Connor Commission reports,[1] Canada has recently taken a number of initiatives to follow up on their recommendations. Steps have been taken to improve inter-departmental cooperation on national security files, enhance safeguards on the sharing of information with other countries, implement more robust training activities for national security agencies, and enhance training for consular officials. For example:

- The RCMP has strengthened central control of the National Security Program, resulting in more diligent oversight of all national security criminal investigations, including monitoring of each investigation to ensure that the RCMP stays within its law enforcement mandate. It has also updated its policies on information-sharing, caveats, border lookouts, and bias-free policing.
- CSIS has amended its operational policy governing information-sharing and cooperation to restate the need to take the human rights record of a country into account.
- The Department of Foreign Affairs, Trade and Development (DFATD) has introduced torture awareness training for consular personnel. Since 2005, this training has been made available to more than 400 staff.

Question 4

11. The Government of Canada's enhanced Corporate Social Responsibility (CSR) Strategy, "Doing Business the Canadian Way: A Strategy to Advance Corporate Social Responsibility in Canada's Extractive Sector Abroad," announced in November 2014, makes clear the expectation that Canadian companies demonstrate Canadian values in their operations abroad. All Canadian companies working internationally are expected to respect all applicable laws and international standards, including human rights, and to align with widely-recognized CSR guidance, including the United Nations Guiding Principles on Business and Human Rights and the Voluntary Principles on Security and Human Rights.

12. With respect to access to remedies, Canada provides two voluntary mechanisms that facilitate dialogue and can lead to mutually agreed upon outcomes in relatively short time frames compared to judicial mechanisms. These are the Canadian National Contact Point (NCP), established under the OECD Guidelines for Multinational Enterprises, and the Office of the Extractive Sector CSR Counsellor. The NCP and the Counsellor's Office have both helped bring disputing parties together for ongoing dialogue. Both mechanisms are based upon international best practice, and bolster alignment of company activities with international guidance. Canada strongly encourages participation by companies and project-affected stakeholders in the most relevant mechanism as the situation merits. A key addition to the updated Strategy is a penalty for companies that do not integrate CSR into

[1] The full name of the O'Connor Commission is the "Commission of Inquiry into the Actions of Canadian Officials in relation to Maher Arar." Its final reports are available online: http://goo.gl/nRYPZa.

their practices and refuse to participate in the CSR Counsellor's Office or NCP dispute resolution processes. These will affect that company's eligibility for Government of Canada trade advocacy support in foreign markets. A decision not to participate in the review processes will be made public.

13. As for remedial mechanisms of a legal nature, Canadian courts will generally have jurisdiction in civil matters against a defendant corporation where that corporation is incorporated in Canada, or where the corporation has submitted to the jurisdiction of a Canadian court. However, a party (including the defendant) may object to the court exercising its jurisdiction in such matters on the basis that the dispute should be heard in another forum; for example, because of the location of evidence and witnesses. The court will then decide whether to proceed or to decline to exercise its jurisdiction.

14. Canada wishes to emphasize the clear territorial and jurisdictional limits to its obligations under the Covenant. As per Article 2(1), Canada's obligations are to ensure the Covenant rights with respect to individuals who are within Canada's territory and subject to its jurisdiction. It must be noted that the individuals who can be affected by the activities of Canadian companies operating abroad are not, generally speaking, within Canada's territory and subject to its jurisdiction.

Question 5

15. All governments in Canada have multiple laws, policies and programs aimed at ensuring non-discrimination and equality between men and women. Detailed information on these measures can be found in Canada's reports under the Convention on the Elimination of All Forms of Discrimination against Women. The following highlights key recent examples.

Gender-Based Analysis

16. Canada promotes effective implementation of legislation and policies on gender equality through mainstreaming gender considerations in policy and program development. Gender-based Analysis (GBA) is a key analytical tool for doing so. GBA is used to assess the potential impacts of policies, programs, or initiatives on diverse groups of women and men, girls and boys, taking into account gender and other identity factors, such as socioeconomic status, race, class, national and ethnic origin, sexual orientation, mental and physical disability, region, language and religion. GBA training is made available to federal public servants.

17. Most provincial and territorial governments have also implemented GBA tools. For example, the Government of Alberta is collaborating with the Government of Canada and the Centre for Intercultural Learning to deliver training on gender-based analysis plus (GBA+) to senior officials and key staff across ministries, and to develop a three-year strategic implementation plan for GBA+. In 2014, the Government of Prince Edward Island created a Gender and Diversity Analysis Policy and offers training to government employees through the Inter-ministerial Women's Secretariat. The Government of Quebec has developed various tools to promote the implementation of GBA (*analyse différenciée selon les sexes* is the term used in Quebec), including the 2011–2015 gender-based analysis action plan launched in June 2011. The plan has 35 measures that fall under 18 departments and agencies.

Women's participation and employment

18. Women in Canada have made gains in both leadership and democratic participation, and work continues to increase women's political participation in Canada across all levels

of government. For more information see pages 29 and 30 of Canada's National Review of implementation of the Beijing Declaration and Platform for Action.[2]

19. In the area of employment, Canadian governments are working to increase the employment and economic empowerment of women, through such measures as skills development and employment programming, and funding for child care to help Canadian families balance work and child care. For detailed information, see pages 5 to 14 of Canada's National Review of implementation of the Beijing Declaration and Platform for Action.

20. The Public Sector Equitable Compensation Act (PSECA), enacted in 2009, re-affirms the Government of Canada's commitment to the principle of equal pay for work of equal value. The Act applies to federal public sector employers, their employees, and bargaining agents. The PSECA seeks to ensure that public sector employers and bargaining agents address potential gender discrimination in compensation-setting in a proactive and timely manner. The PSECA will be brought into force after supporting regulations have been developed. Until then, the equal pay for work of equal value provisions of the Canadian Human Rights Act (CHRA) will continue to apply. All other federally regulated employers will continue to be governed by the CHRA provisions.

Sex discrimination complaints

21. FPT human rights legislation, which prohibits discrimination in the public and private sectors in regards to employment, housing and the provision of goods, services and facilities, provides the main avenue of recourse for complaints of discrimination against women. The applicable tribunal or court within each jurisdiction is authorized to order remedies including financial compensation, non-financial measures that benefit the claimant and measures to address the broader public interest.

22. The Canadian Human Rights Commission received the following number of complaints under the CHRA on the basis of sex discrimination from 2010–2013: 196 in 2010, 408 in 2011, 343 in 2012, and approximately 210 in 2013. While men can and do file complaints of sex discrimination, the majority of such complaints are filed by women. Note that this data does not represent the total number of sex discrimination complaints received under the CHRA, as complaints in the federal public service are administered by the Public Service Labour Relations and Employment Board (PSLREB).[3]

23. The approach to data collection varies by provincial and territorial jurisdiction. The definition of sex discrimination may vary, as may the period of reporting and whether the statistics are based on complaints received or accepted. The provincial and territorial human rights commissions or tribunals have the data available in their annual reports, most of which are available online. For example, in 2013–2014 Quebec opened 46 files based on sexual discrimination, while Prince Edward Island received three complaints based on sex (including pregnancy) and New Brunswick received 18 complaints involving sexual discrimination and nine involving sexual harassment.

[2] Canada's National Review of implementation of the Beijing Declaration and Platform for Action, June 2014: www.unece.org/fileadmin/DAM/Gender/publication/Canada_National_Review_Beijing_20.pdf.

[3] The PSLREB is an independent quasi-judicial statutory tribunal established by the *Public Service Labour Relations and Employment Board Act* (PSLREA): http://pslreb-crtefp.gc.ca/index_e.asp.

Question 6

Access to justice

24. Access to justice for all Canadians, including Aboriginal peoples, is a priority of the Government of Canada. Canada supports several access to justice programs that help to ensure that the justice system is fair, relevant and accessible.

25. Responsibility for legal aid is shared between FPT governments. Canada provides stable funding to the provinces for criminal legal aid and to the territories for criminal and civil legal aid. The federal Government's Canada Social Transfer (CST) includes funding for civil legal aid. The CST provides flexibility to provincial and territorial governments to invest these funds according to the needs and priorities of their residents, including by determining the design and delivery of civil legal aid programming.

26. Several provinces and territories have implemented legal aid programs targeted directly at Aboriginal offenders:

- The Mi'kmaq Legal Support Network is a justice support system for Aboriginal people who are involved in the criminal justice system in Nova Scotia. For years, it has provided core services through the Mi'kmaq Court Worker and Mi'kmaq Customary Law Programs.
- In the Northwest Territories, the Legal Aid Commission provides legal assistance to individuals of limited means through Legal Aid Outreach clinics offered weekly in Yellowknife and offered on a periodic "circuit" basis in other communities. The Legal Aid Commission's seven court workers also provide services in all regions of the Northwest Territories.
- Legal Aid Alberta at Siksika Nation is a joint program of the Siksika Justice Department and Legal Aid Alberta that provides Siksika Nation members with a wide range of legal services, in a manner that gives meaningful consideration to Siksika and Aboriginal culture and values.
- In British Columbia, publicly funded legal aid services aimed specifically at Aboriginal persons include Aboriginal Community Legal Workers who provide free legal information and limited advice, as well as extensive public legal education materials on topics specifically relevant to Aboriginal people. Examples include how laws apply both on and off reserve, residential school settlements, traditional Aboriginal rights (hunting, fishing, etc.), and the right to have specific information considered if being sentenced for a criminal offence.

27. For detailed information on Canada's legal aid programming, including programs aimed specifically at Aboriginal persons, see paragraphs 244 to 262 of Canada's 2014 Interim Report on the International Convention on the Elimination of All Forms of Racial Discrimination.

28. The Aboriginal Justice Strategy (AJS) is a federally led cost-shared program that helps to address rates of crime, victimization and incarceration among Aboriginal people in the criminal justice system. Source: www.actionplan.gc.ca/en/initiative/aboriginal-justice-strategy. The AJS supports innovative culturally relevant justice programs that divert accused persons from criminal trials where appropriate. Working in collaboration with provincial and territorial governments and in partnership with Aboriginal communities across Canada, the AJS helps Aboriginal people assume greater responsibility for the administration of justice in their communities in an effort to reduce rates of crime, victimization and incarceration. The AJS funds approximately 275 programs that reach over 800 urban, rural, and Northern communities, both on and off-reserve. The AJS has

been shown to significantly decrease the rates of recidivism in the communities in which it operates.

29. The Aboriginal Courtwork Program provides direct services to Aboriginal people (adult and youth) involved in the criminal justice system whether as accused persons, victims, witnesses or family members. With their knowledge of Aboriginal language and traditions, Aboriginal Courtworkers provide culturally sensitive guidance and support so that their clients fully understand their responsibilities and rights before, during, and after court processes, as well as any directions given by the Court. As "friends of the Court", Aboriginal Courtworkers also provide courts with information needed for proceedings such as sentencing and bail. The Aboriginal Courtworker's role extends beyond the criminal justice system, as they also facilitate a client's access to legal, housing, health, training/employment and other services. As a result, Aboriginal Courtworkers have a positive impact on communities both by reducing the likelihood of recidivism and by supporting other programs and services. There are over 170 Aboriginal Courtworkers providing these services to approximately 59,000 Aboriginal people in over 435 communities.

30. To meet the distinct service delivery challenges that exist in Canada's three territories, all of which have significant Aboriginal populations, Canada provides targeted funding to support Aboriginal Courtwork services, legal aid and public legal education and information through the Access to Justice Services Agreements.

Litigation related to Aboriginal rights

31. Canada recognizes that court cases dealing with Aboriginal rights can take time. Canada notes that this is due to the complexity of Aboriginal law and the interests at stake. The recognition of Aboriginal rights is an evolving area of Canadian jurisprudence, with impacts on Aboriginal communities and non-Aboriginal communities alike. It is in the interest of all parties to resolve these claims in accordance with principles of procedural fairness and the rule of law. The Government of Canada remains committed to meeting its obligations to Aboriginal peoples. When grievances arise, it is Canada's view that the best way to address outstanding issues is through collaboration and dialogue.

32. The Supreme Court of Canada has stated that the fundamental objective of Aboriginal rights in Canada is the reconciliation of Aboriginal peoples and non-Aboriginal peoples and their respective claims, interests and ambitions. The Court has also recognized that negotiation is the best approach to achieve reconciliation. The Specific Claims Tribunal, discussed in the response to Question 20, provides First Nations with a further alternative to the courts in certain cases.

Question 7

33. The Government of Canada takes its non-refoulement obligations under Articles 6 and 7 of the Covenant very seriously. These obligations are implemented in domestic law, including for the purposes of determining who is a "person in need of protection" under the Immigration and Refugee Protection Act (IRPA) (see sections 97 and 115). Non-Canadian citizens who are identified as facing a risk of torture, a risk to life or a risk of cruel or unusual treatment or punishment can be recognized as persons in need of protection and, generally, can apply to remain in Canada permanently.

34. Subsection 115(2) of IRPA establishes two narrow exceptions to the principle of non-refoulement. These exceptions are intended to reflect Article 33 of the Refugee Convention. However, these discretionary exceptions need to be applied in accordance with the human rights protections guaranteed by the Charter. The Supreme Court of Canada has found that section 7 of the Charter, interpreted in light of the Covenant and other

international human rights instruments, generally prohibits deportation to death, torture, or other similarly serious violations of human rights. However, the Court has left open the narrow possibility that in "exceptional circumstances," the Minister may remove a person if the serious threat the person poses to the security of Canada outweighs the risk that person would face if removed.

35. While Canadian law leaves open the possibility of removal to certain serious risks in exceptional circumstances, the ambit of any such exceptional circumstances remains undefined in Canadian law. Canada has not removed anyone in a case where domestic processes had concluded that the individual faced a substantial risk of death or torture upon removal.

Question 8

36. The intent of the Ministerial Directions (MDs) was to establish a coherent and consistent policy on decision-making processes regarding information sharing where there may be a risk of mistreatment. As the MDs clearly state, Canada neither promotes nor condones the use of torture or other unlawful methods of investigation, and opposes in the strongest possible terms the mistreatment of any individual by any foreign entity for any purpose. In addition, Canadian law prohibits the use of any statements that are shown to have been made as a result of torture as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made. For more information, see paragraphs 25 to 34 of Canada's interim report to the Committee against Torture in follow-up to the review of Canada's sixth report.

Question 9

37. Canada has recently made a number of changes to guidelines and policies regarding information sharing among different agencies, and it has enhanced training for consular officials. These changes respond to many of the concerns raised in the Iacobucci Inquiry report and they are described in more detail in the response to Question 3. With respect to Messrs. Almalki, Elmaati and Nureddin, these matters are currently the subject of litigation before Canadian courts. As such, Canada is unable at this time to provide further information on its response to Commissioner Iacobucci's findings in relation to them.

Question 10

38. Canada's response to Question 3 includes information on legislative measures taken at the federal level to strengthen the RCMP review and complaints body, and implement a framework to handle investigations of serious incidents involving members.

39. At the provincial and territorial level, all jurisdictions have external, independent oversight mechanisms and bodies with the specific mandate to receive and investigate complaints regarding the conduct of law enforcement personnel. Police are generally subject to three distinct accountability processes: (1) review by a civilian public complaints body responsible for overseeing public complaints; (2) professional standards investigations internal to the police service; and/or (3) criminal investigations of serious incidents, such as serious injury or death. Criminal investigations will be conducted by a provincial special investigations unit, if such a unit exists, or by a separate police service where possible.

40. There have been notable developments during the reporting period. The Independent Investigations Office (IIO) of British Columbia is an independent, civilian-led body. It is empowered to conduct investigations into incidents of death or serious harm involving police officers and has jurisdiction over all officers in the province, while on and off duty. The IIO became operational in September 2012. Nova Scotia's Serious Incident Response Team, which was established in September 2011, investigates death, serious injury, sexual

assault or other public-interest concerns involving police. It can independently launch an investigation or begin an investigation after a referral from a chief of police, the head of the RCMP in Nova Scotia or the province's Minister of Justice.

41. Similarly, Alberta's Serious Incident Response Team (ASIRT) has been operational since 2008. The ASIRT has jurisdiction over all sworn police officers in the province. It has a mandate to investigate incidents or complaints involving serious injury or death of any person, and matters of a serious or sensitive nature, that may have resulted from the actions of a police officer. The Alberta Police Act establishes other mandatory processes for the receipt and investigation of public complaints. For more information on oversight of provincial and territorial law enforcement agencies, see paragraphs 287 to 312 of Canada's 2012 written response to a list of issues from the Committee against Torture.

Quebec Student Protests

42. Provision is made in the Quebec Police Act for a process that any citizen can use to file a complaint against a police officer whose conduct may have contravened the Code of ethics for Quebec police officers. The system consists of two independent, civil authorities: the Police Ethics Commissioner, who receives and reviews complaints, and the Police Ethics Committee, a specialized independent administrative tribunal, which examines, when a citation is filed by the Commissioner, whether the police officer's conduct has violated the Code of ethics and renders a public decision.

43. The Ethics Commissioner has received 228 complaints to date concerning police interventions during or relating to the student demonstrations in 2012. In 88 cases, investigations were ordered. Conciliation was ordered in 78 cases and settlements were reached in 54 of these. The conciliation process is used for less serious offences, and enables the parties involved, citizens and police officers, to settle the dispute in a non-judicial manner.

44. In 62 cases, the Commissioner refused to proceed with the police ethics process for various reasons. Citations (complaints) were filed in 21 cases against 25 police officers for various reasons: excessive use of force, abuse of authority, illegal arrest, and illegal search.

Question 11

45. Canada's national Guidelines for the Use of Conduct Energy Weapons (CEWs) were first issued in October 2010, and they are subject to regular review, most recently in November 2014. These Guidelines were developed based on national consultations and are intended to assist provinces and territories as well as police services and other agencies in Canada in the development of their individual policies and procedures for CEWs. The Guidelines are online: http://goo.gl/2pZz4S.

46. The Guidelines include basic principles on CEW use. For example, they state that officers should, in all instances, use an appropriate and reasonable level of force, given the totality of circumstances. They also recognize that the use of a CEW should be consistent with a federally or provincially recognized use-of-force framework, particularly with respect to having considered or applied de-escalation techniques or other use-of-force options, as appropriate.

47. The Guidelines do not set a specific threshold for the use of CEWs. In Canada, it is the responsibility of federal, provincial, territorial, and / or municipal governments and police services to each develop detailed operational policies related to the use of CEWs. The Guidelines therefore recognize that provinces are responsible for the administration of justice in their jurisdiction, including providing direction on the use of all types of force by police.

48. Specific thresholds for the use of CEWs have been included in various operational policies for different police forces. For example, the RCMP Operational Manual provides that CEWs must only be used when a subject is causing bodily harm, or the member believes on reasonable grounds that the subject will imminently cause bodily harm as determined by the member's assessment of the totality of the circumstances.

49. At the provincial level, for example, the Government of Nova Scotia issued Guidelines on CEWs in June 2011: see http://goo.gl/WTxMbb. They stipulate that the use of the CEW must be objectively reasonable in light of the totality of circumstances, and require that CEWs will only be deployed if the officer believes that the subject's behaviour subject is consistent with aggressive or violent resistance or presents an active threat that may cause bodily harm or serious injury to the peace officer involved, to the subject or member of the public. Although the number of times that CEWs have been drawn and displayed in Nova Scotia has increased over the last four years, there has been a substantial decrease in the number of times that CEWs have been used for a contact stun or a probe.

50. The Government of Ontario guides police services on the use of CEWs through a publicly available Use of Force Guideline: see http://goo.gl/Fmpv9R. According to the Guideline, a Chief of Police may permit an officer to use a CEW if: (1) the officer believes a subject is threatening or displaying assaultive behaviour or, taking into account the totality of the circumstances, the officer believes there is an imminent need for control of a subject, and (2) the officer believes it is reasonably necessary to use a CEW.

51. For comprehensive information, see Canada's written response to the Committee against Torture in May 2012, paragraphs 362 to 391.

Question 12

52. Canada addresses violence against women and children through legal, program and policy responses designed to prevent and reduce its prevalence, to provide health and social assistance to those affected by it, and to hold the perpetrators accountable.

53. Canada's Criminal Code provides a comprehensive response to all forms of violence against women, including domestic violence. Offences of general application including uttering threats, assault, sexual assault and criminal harassment can be used to respond to acts of domestic violence and recognize the seriousness of such conduct. In addition, courts must consider, as aggravating factors for sentencing, whether, in committing the offence, the offender abused their spouse or common law partner or a person under the age of 18 years. Criminal law responses to domestic violence are implemented in a variety of different ways across the country including through pro-charging and prosecution policies, specialized courts, and interagency protocols.

54. Further, Canada has continued its efforts to protect the rights of victims generally. In April 2014, the Government of Canada introduced Bill C-32, the Victims Bill of Rights Act, which will enshrine clear statutory rights at the federal level for victims of crime. These include rights to information, protection, participation and restitution, and ensure a complaint process is in place for breaches of these rights. Under the proposed reforms, a court would be required to consider ordering restitution in every case and victims would have a right to it.

55. Provincial and territorial domestic violence legislation ensures access to protection and redress for victims by providing for emergency protection orders and other civil restraining orders. In addition, specialized domestic violence courts have been established in a majority of jurisdictions to facilitate early intervention in abusive situations and to provide increased support to victims. A variety of victims' services and programs also address domestic violence, including police-based and compensation programs. Some

provinces and territories have specialized programs that provide culturally appropriate responses in cases of domestic violence involving Aboriginal victims and offenders.

56. In 2014, Nova Scotia began developing a Sexual Violence Strategy. This Strategy is a three-year commitment with a broad mandate to improve the provincial coordination of supports and services to victims and survivors, and build a comprehensive prevention framework. The Domestic Violence Action Plan Update 2012 highlights successes such as the Domestic Violence Court Program and the Neighbours, Friends and Family Program to help promote community support and awareness of domestic violence.

57. For comprehensive information on measures taken by federal, provincial and territorial governments to combat violence against women, see Canada's reports under the Convention on the Elimination of All Forms of Discrimination against Women.

Question 13

58. The Government of Canada is taking action to address the disappearances and murders of Aboriginal women and girls in Canada, and the impact of these crimes on families and communities across the country. Canada recognizes that there is significant international interest in this issue and has participated in and provided documentation for all special mechanisms looking into violence against Aboriginal women, including the visit of the Committee on the Elimination of Discrimination against Women in September 2013.

59. The Government of Canada released its Action Plan to Address Family Violence and Violent Crimes Against Aboriginal Women and Girls in September 2014.[4] Building on lessons learned through the Government of Canada's Seven Step Strategy between 2010 and 2015, and recognizing the complex factors that contribute to these violent crimes, the five-year Action Plan brings together actions under three main pillars: (i) preventing violence by supporting community level solutions; (ii) supporting Aboriginal victims with appropriate services; and (iii) protecting Aboriginal women and girls by investing in shelters and continuing to improve Canada's law enforcement and justice systems. Overall, the actions reflected in the Action Plan will result in an investment by the Government of Canada of nearly $200 million over five years.

60. Provincial and territorial governments also took steps to address this pressing issue. Since the release of the Missing Women Commission of Inquiry (MWCI) Report, in November 2013, the Government of British Columbia has continued to work on the implementation of its recommendations. Key actions taken in spring 2014 include the establishment, by the province, the Government of Canada and the City of Vancouver, of a Compensation Fund to offer $50,000 in compensation to each of the living, biological children of the 67 women identified in the MWCI Report. Further, British Columbia and Manitoba both adopted legislation related to missing persons.

61. In February 2015, the Government of Canada took part in a National Roundtable on Missing and Murdered Indigenous Women and Girls, organized by Canadian Aboriginal organizations as well as provinces and territories. Participants committed to continuing to collaborate to address this important issue, and to meet in 2016 to discuss progress.

62. Detailed information on measures taken across Canada to address these issues can be found in Canada's eighth and ninth periodic reports under the Convention on the Elimination of All Forms of Discrimination against Women.

[4] Full text available at: www.swc-cfc.gc.ca/violence/efforts/action-eng.pdf.

National Operational Overview on Missing and Murdered Aboriginal Women

63. In 2014, the Royal Canadian Mounted Police (RCMP) released a National Operational Overview on Missing and Murdered Aboriginal Women.[5] This comprehensive data analysis involved a manual, file-by-file review of all Aboriginal females missing for more than 30 days as of November 4, 2013, as well as all female Aboriginal homicide victims from 1980 to 2012. Compiling this report involved the assistance of Statistics Canada and close to 300 policing agencies across Canada.

64. The National Overview revealed the following:

- Police-recorded incidents of Aboriginal female homicides and unresolved missing Aboriginal females total 1,181 – 164 missing and 1,017 homicide victims.
- As of November 4, 2013 there were 105 unsolved cases of Aboriginal females missing for more than 30 days, whose cause of disappearance was categorized at the time as "unknown" or "foul play suspected".
- There were 120 unsolved Aboriginal female homicides between 1980 and 2012.
- Aboriginal women are over-represented among Canada's murdered and missing women.
- There are similarities across all female homicides. Most homicides were committed by men and most of the perpetrators knew their victims, whether as an acquaintance or a spouse.

65. The RCMP has provided updated data on the Aboriginal identity of all female victims of homicide between 1980 and 2012 to Statistics Canada. Moving forward, the RCMP will be providing Statistics Canada with data on the Aboriginal identity of all homicide victims and persons accused of homicide. Statistics Canada is also working with all other police services to improve the quality of their data.

Question 14

Designated Foreign Nationals

66. Bill C-31, the Protecting Canada's Immigration System Act (PCISA), was enacted in 2012. The PCISA does not significantly change the immigration detention regime that applies in the vast majority of cases. An explanation of the regular regime is available online: http://goo.gl/AIamQn.

67. The PCISA provisions on immigration detention affect only a small and exceptional subset of foreign nationals: "designated foreign nationals." If the Minister of Public Safety designates an arrival as irregular, those foreign nationals who entered Canada as part of the group become "designated foreign nationals." Designated foreign nationals who are 16 years or older at the time of arrival are subject to mandatory initial arrest and detention, in order to give border authorities sufficient time to conduct investigations into the identity and admissibility of those who have arrived. There are a number of safeguards to ensure that detention continues no longer than is necessary. These include regular detention reviews before an independent administrative tribunal, the availability of judicial review in the Federal Court, and the release of designated foreign nationals from detention at the Minister's own initiative in clearly defined, exceptional circumstances.

[5] Full text available at: www.rcmp-grc.gc.ca/pubs/mmaw-faapd-eng.htm.

68. There are no current plans to amend the designated foreign nationals scheme. While there have been some designated foreign nationals subject to this detention scheme, most were released by the Minister on conditions. For a small subset, where there were concerns about criminality, the Minister sought continued detention, and this was authorized by the domestic tribunal at a detention review. For more information, see paragraphs 12 to 16 of Canada's 2013 interim report to the Committee against Torture.

Non-discriminatory measures

69. Under the new asylum system, Canada continues to offer eligible asylum claimants, regardless of their country of origin, a full fact-based, independent review of their application before the Immigration and Refugee Board of Canada (IRB), where each claim is assessed based on its own merits. As established by section 101 of IRPA, the ineligible claimants include those who have already been recognized as a Convention Refugee by Canada or another country, those whose previous refugee claim has been rejected by the IRB, or those whose claim has been withdrawn or abandoned. Under the new system all claimants continue to have access to the Federal Court for judicial review of a negative decision on their claim. As described in the response to Question 7, the principle of non-refoulement is a cornerstone of Canada's refugee protection system.

Refugee Appeal Division

70. The PCISA established a Refugee Appeal Division (RAD) within the IRB. The RAD provides an opportunity for most failed claimants to appeal a negative decision of the Refugee Protection Division (RPD). Proceedings before the RAD occur primarily through written submissions with decisions typically made by a single member panel. Claimants with a right of appeal are able to ask the Federal Court to review a RAD decision.

71. There is no access to the RAD for some specified groups: claimants from a designated country of origin, those who fall under an exception of the Safe Third Country Agreement, claimants whose claim has been determined to be manifestly unfounded or with no credible basis, claimants who arrive as part of a designated irregular arrival, and claimants whose claims were referred to the IRB prior to the coming into force of the new system. Barring access to an appeal, combined with faster processing, fast-tracks certain claimants through the system. Streamlining the process limits the amount of time spent in Canada during the processing of a refugee claim and reduces the draw factor for making an unfounded claim. Canada emphasizes that despite these limited restrictions on access to the RAD, refugee claimants in Canada have access to effective remedial review processes. These processes ensure that Canada fulfils its international obligations to provide effective remedial processes for preventing refoulement. For more information, including on the available remedial processes for those without access to the RAD, see paragraphs 17 to 21 of Canada's 2013 interim report to the Committee against Torture.

Health services for certain foreign nationals

72. In June 2012, Canada implemented changes to the Interim Federal Health Program (IFHP) to ensure that refugee claimants and rejected refugee claimants do not receive taxpayer funded benefits that are more generous than those provided to Canadian taxpayers. The 2012 changes to the IFHP were made in conjunction with comprehensive reforms to Canada's refugee determination system, as described above. In July 2014, the Federal Court found that certain changes to the IFHP were contrary to the Charter. The court's decision is currently being appealed. Canada's view is that the 2012 IFHP reforms are consistent with the Charter and with Canada's obligations under the Covenant. Because this matter is subject to ongoing litigation, Canada cannot provide further comments at this time.

73. While the matter is being appealed, Canada has implemented temporary health-care measures as of November 5, 2014, consistent with the Federal Court's ruling. Under the temporary measures, the vast majority of beneficiaries are eligible to receive coverage for hospital, medical and laboratory services, including pre- and post-natal care as well as laboratory and diagnostic services. This coverage is similar to what Canadians receive under provincial and territorial health-care plans.

Question 15

74. Canada uses security certificates in exceptional circumstances when a permanent resident or foreign national is inadmissible to Canada under the IRPA on grounds of security, violating human or international rights, serious criminality or organized criminality, and when classified information is required to establish the individual's inadmissibility. This information cannot be disclosed, as it would be injurious to national security or endanger the safety of a person. The security certificate scheme establishes a constitutionally fair procedure to balance the protection of classified information with the rights of the individual.

Status of individuals currently subject to security certificates

75. Currently there are only three individuals who are subject to a security certificate. First, in Mr. Harkat's case, the Supreme Court of Canada found his certificate to be reasonable. In the second case, Mr. Mahjoub's certificate was found reasonable by the Federal Court. He has appealed this decision to the Federal Court of Appeal. The third case, Mr. Jaballah, is currently before the Federal Court. None of the three individuals subject to a certificate is in detention; they have all been released on conditions, which were imposed and are regularly reviewed by the Federal Court.

76. Canada's sixth periodic report described significant amendments to the IRPA security certificate provisions following a 2007 Supreme Court decision.[6] In May 2014, in *Canada (Citizenship and Immigration) v. Harkat*, the Supreme Court held that the security certificate regime complies with the Charter.[7] The Court held that the provisions do not violate the affected individual's right to a fair process – in other words, to know and meet the case against him, and to have a decision made on the facts and the law. The Court held that the security certificate regime allows for sufficient disclosure to the affected individual. The Court also stated that the "judge is vested with broad discretion and must ensure not only that the record supports the reasonableness of the ministers' finding of inadmissibility, but also that the overall process is fair."[8]

Removal from Canada

77. The objective of the security certificate scheme is the removal from Canada of inadmissible non-Canadians. If a security certificate is found reasonable, it becomes a removal order that is in force. In such circumstances, the removal of the foreign national would be conducted in accordance with the applicable law, including the IRPA provisions governing non-refoulement (see Canada's response to Question 7). Removals that are conducted in accordance with the IRPA and the Charter, and on the basis of a certificate found to be reasonable, would thus be lawful and in keeping with Canada's obligations

[6] *Charkaoui v. Canada* (Minister of Citizenship and Immigration), [2007] 1 S.C.R. 350, online: http://canlii.ca/t/1qljj.

[7] *Canada (Citizenship and Immigration) v. Harkat*, 2014 SCC 37, online: http://canlii.ca/t/g6v7s.

[8] Ibid., at para. 46.

under the Covenant. Foreign nationals subject to removal have access to effective judicial remedies in the Federal Court.

Special advocates

78. The special advocate's role is to protect interests of the individual subject to a certificate when information or other evidence is heard in the absence of the public, the individual or their counsel. In the closed hearing, special advocates challenge the Ministers' claims of confidentiality and the relevance, reliability and sufficiency of the classified information and evidence. They cross-examine witnesses and, with judicial authorization, exercise any other power necessary to protect the named person's interests.

79. The Supreme Court in *Harkat* found that judges have broad discretion to ensure that special advocates function "as closely as possible to ordinary counsel in a public hearing."[9] As such, while special advocates must obtain judicial authorization to communicate with the individual after they have seen the classified information, judges have broad discretion to grant these requests. Moreover, the Supreme Court has provided clear guidance that judges "should take a liberal approach in authorizing communications and only refuse authorization where the Minister has demonstrated, on a balance of probabilities, a real — as opposed to a speculative — risk of injurious disclosure."[10]

Question 16

Conditions of detention

80. Overall, with few exceptions, the practices of the Correctional Service of Canada (CSC) meet or exceed the UN Standard Minimum Rules for the Treatment of Prisoners. A core principle is that inmates retain the rights of all members of society except those rights that are, as a consequence of the sentence, lawfully and necessarily removed or restricted. CSC takes all reasonable steps to ensure the health, safety, and personal dignity of every inmate. For example, CSC ensures that every inmate is adequately clothed and fed; provided with adequate bedding, toilet articles, and other articles necessary for personal health and cleanliness; and given the opportunity to exercise for at least one hour every day. The human rights of offenders in federal penitentiaries are monitored by the Correctional Investigator of Canada, a legislated and independent ombudsman.

81. As of January 2014, there were 15,231 federal inmates in custody. The number of inmates in federal custody has been increasing since March 2010, so that between 2010 and 2014, approximately 20 per cent of Canada's federal inmates have been required to double bunk. Double-bunking remains a temporary accommodation measure that is only used when single occupancy accommodation is not possible. The CSC has been expanding its inmate capacity to address this issue, and by spring 2015 there will be a net increase of more than 1,700 accommodation spaces to federal prisons (compared to 2012). With the new units, the percentage of inmates double-bunked is expected to return to the 8–9% range that it was in previous years.

82. At the provincial and territorial level, the province of Alberta opened the new Edmonton Remand Centre in April 2013. With a bed capacity of 1,952, it has alleviated increasing custody pressures across the province. The facility was designed using the direct supervision model of offender management, a recognized correctional best practice that increases inmates' access to services and programs and enhances facility security. In

[9] Ibid., at para. 70.
[10] Ibid.

Ontario, two new detention centres will have a combined capacity of 2,000 beds when construction is finished. Taking into account corresponding closings of older facilities, the new detention centres will lead to a net increase of 380 beds. Another new facility, which is meant to house 120 male intermittent inmates (who generally serve their time on weekends), should open by the end of 2015.

Prisoners with mental health issues

83. The Mental Health Strategy for Corrections in Canada, which was the product of an FPT working group, was publicly released in June 2012. FPT governments are now implementing it. See online: http://goo.gl/pR9W6m. On May 1, 2014, the Government of Canada launched its Mental Health Action Plan for Federal Offenders, which focuses on five areas: Assessment, Management, Intervention, Training and Development, and Governance and Oversight. See online: http://goo.gl/BwYx1K.

84. Improving capacity to address the mental health needs of offenders is a CSC priority. CSC is implementing a Mental Health Strategy that outlines the continuum of mental health care provided to federal offenders, including: mental health screenings at the time of intake, provision of mental health care during incarceration, and transitional care for release into the community. Since 2007, over 10,800 of CSC's security and health staff have received training on the Fundamentals of Mental Health. As part of the Strategy, CSC is implementing a plan to have mental health service delivery capacity at all levels of the continuum of care, so that male and female offenders receive mental health services at the level most appropriate to their needs. For offenders with highly complex mental health needs, CSC is solidifying partnerships with provincial forensic psychiatric hospitals.

85. Measures to address prisoners' mental health needs are also being pursued at the provincial and territorial level. Since 2010, Alberta has been increasing the number of dedicated units for addiction and mental health within correctional facilities, and to increase the staffing in this area. Included in the in-facility enhancements was the establishment of mental health units at the two large remand centres in the province, so that patients with significant mental health problems or individuals in crisis have the level of care required. In Ontario, all inmates have access to a variety of supports including psychiatrists, psychologists, and social workers. The government of Ontario has invested over $50 million since 2004 to expand services, build new specialized treatment centres, improve training, and add more mental health nurses.

Administrative and disciplinary segregation of prisoners

86. Segregation of prisoners, whether for administrative or disciplinary reasons, is a measure of last resort. Administrative segregation (AS) is a preventive measure, not a punitive one. In accordance with criteria set out in law, an inmate can be placed in AS because the inmate's safety is at risk, because allowing the inmate to associate with other inmates would jeopardize the security of the institution or the safety of other persons, or because the inmate would interfere with an investigation that could lead to a criminal charge or a serious disciplinary offence. In all cases, there must be no reasonable alternative.

87. The legislation and policies governing CSC establish fair safeguards. For example, upon placement in AS, inmates are informed without delay of their rights to legal counsel and to lodge complaints and grievances. Within one working day, inmates receive a written explanation. A Segregation Review Board must conduct regular review hearings: within five working days after initial placement, and at least every 30 days after that. Inmates have a reasonable opportunity to present their case to the Board and are advised in writing of the Board's conclusions. The placement and continued detention of an inmate in AS may be

challenged by way of the inmate grievance process, by judicial review and by *habeas corpus*.

88. Disciplinary segregation is available under the law where an inmate is found guilty of committing a serious disciplinary offence. It can only be imposed by an independent decision-maker, after an oral hearing. At the hearing, the inmate can make submissions and be represented by legal counsel. A sanction of disciplinary segregation is time-limited by law: it may not exceed 30 days for one offence, or 45 days for multiple offences.

89. Before placing an inmate in AS, health care professionals are consulted. Procedural safeguards require that all oversight and review of AS decisions take into account the inmate's mental health needs. In December 2014, it was announced that the CSC is pursuing reforms to the AS of offenders with mental health disorders. These include the addition of a mental health professional to the body that reviews segregation placements, and a new requirement that offenders with mental health disorders who have been designated as acute or high need intermediate care cases can engage an advocate to assist them in the review process.

90. Inmate segregation in the provinces and territories follows similar principles. For example, if an offender is segregated in Manitoba, he or she is personally observed every 30 minutes. The segregation is reviewed no later than seven days after the initial placement and at least every fourteen days thereafter. If the segregated offender has mental health issues, an assigned case manager will have contact with him or her at least every seven days. In Ontario, inmates can be placed in segregation for a number of reasons: need of protection; to protect the security of the institution or the safety of staff or other inmates; the inmate is alleged to have committed a misconduct of a serious nature; or the inmate requests to be placed in segregation. Each inmate in segregation has their circumstances reviewed every five days to determine if segregation is warranted.

91. All cases of segregation in the Northwest Territories are reviewed on a weekly basis, and inmates are returned to the general population at the earliest opportunity when it does not pose any safety or security threats to do so. Pursuant to a new Performance Assurance and Accountability Framework, the use of segregation is monitored and tracked on a daily basis by the Northwest Territories Corrections Headquarters. This enables the tracking of the name of every inmate who is being held in segregation, the type of segregation employed, when the inmate was admitted, and the length of time they have been held. Inmates are only kept in disciplinary segregation for up to fifteen days per disciplinary adjudication.

Question 17

92. Canada recognizes that Aboriginal persons are overrepresented at all stages of the criminal justice system, as victims as well as offenders. According to the 2011 National Household Survey, 4.3% of the Canadian population identified themselves as Aboriginal. As of October, 2014, Aboriginal offenders represent 22% of the total federal offender population.

93. The reasons for these high rates of contact with the justice system are multi-faceted and complex. Contributing factors include poor socio-economic conditions such as poverty, substance abuse and a lack of education and employment opportunities for Aboriginal people, attributed in part to the intergenerational impact of the Indian Residential Schools system. Aboriginal communities are also experiencing population growth at a much higher rate than non-Aboriginal communities. This has resulted in a demographic bulge in the youth segment of the Aboriginal population. Because youth, Aboriginal or not, commit more offences on average than do people in other demographic ranges, this bulge will likely

exacerbate the problem of Aboriginal over-representation in the justice system for the foreseeable future.

94. Due to this complexity, Canada recognizes that inter-disciplinary and cross-jurisdictional measures are needed to address the problem of over-representation. These measures include justice programs that consider the unique cultural traditions of Aboriginal communities, efforts to ensure bias-free policing, and continuing efforts to address socio-economic disadvantage.

95. A number of culturally appropriate interventions are available to federally sentenced offenders as part of an Aboriginal continuum of care of services. At all federal institutions, Aboriginal Elders, or spiritual advisors, provide counselling and support through traditional ceremonies. Aboriginal staff deliver culturally designed programs, offer liaison and case management support as well as Aboriginal correctional programs, and offer community reintegration planning and support.

96. Canadian legislation allows for the provision of correctional services to offenders by an Aboriginal community. This involves custodial or service delivery arrangements in urban or rural centres designed for Aboriginal offenders. For example, Healing Lodges are CSC or Aboriginal community facilities that offer culturally appropriate services and programs to offenders in an environment that incorporates Aboriginal values, traditions and beliefs. Aboriginal communities can also be involved both in planning for the offender's release and the supervision of offenders on day parole, full parole, or statutory release.

97. The Government of Canada is committed to ensuring that Aboriginal offenders receive fair sentences that take into account their unique circumstances. The Criminal Code provides courts with a spectrum of sanctions that can be imposed in furtherance of the fundamental purpose and principles of sentencing. Other than imprisonment, courts may impose: conditional or absolute discharges; probation orders; intermittent sentences, fines, or restitution; or conditional sentences of imprisonment. Conditional sentences of imprisonment (section 742.1) are sentences of imprisonment of less than 2 years that may be served in the community.

98. In determining a proportionate sentence, courts must take into account sentencing principles described in the Criminal Code, including the principle of restraint in the use of imprisonment which directs courts to consider for all offenders all available sanctions other than imprisonment that are reasonable in the circumstances, with particular attention to the circumstances of Aboriginal offenders. The Supreme Court of Canada recently re-considered the principle of restraint with respect to Aboriginal offenders in *R. v. Ipeelee* (2012). It held that section 718.2(e) of the Criminal Code must be applied to the sentencing of all Aboriginal offenders, including those convicted of serious offences. The Court held that, absent a waiver by the Aboriginal offender, failure to apply section 718.2(e) would be a legal error that "would also result in a sentence that was not fit and was not consistent with the fundamental principle of proportionality."[11] The Court held that the information revealed pursuant to section 718.2(e) is essential to contextualize the crimes committed by Aboriginal offenders. It is anticipated that the Ipeelee decision will reduce the number of incarcerated Aboriginal persons.

Question 18

99. Non-governmental organizations (NGOs) play an important role in the protection and promotion of human rights in Canada. They monitor governmental activities, help individuals obtain redress in cases of violations of human rights and carry out educational

[11] *R. v. Ipeelee*, 2012 SCC 13 at para. 87, online: http://canlii.ca/t/fqq00.

programs. NGOs operate freely in Canada and sometimes receive governmental financial support. As elaborated in the response to Question 24, they are also consulted by governments on various international human rights issues.

100. Governments in Canada have a variety of programs through which NGOs can receive financial support. For example, the federal Women's Program funds projects to achieve the full participation of women in the economic, social and democratic life of Canada.

101. Another measure of financial support is through tax advantages for organizations that choose to register as charities. To access these tax advantages, organizations must devote their resources to charitable activities and comply with the administrative guidelines that state that a charity should generally not use more than 10% of its resources for political activities. These rules are longstanding and apply to all registered charities.

102. Canada is an open society founded on the rule of law, and attaches great importance to freedom of expression and the right of individuals and organizations to assemble and demonstrate peacefully. These rights are constitutionally protected in Canada. At the same time, both domestic and international law recognizes that the exercise of these rights may be subject to reasonable and proportionate limits, taking into account the circumstances and the overall public interest.

103. Police have a duty and responsibility to protect and uphold the right of Canadians who voice opinions on issues. The overall objective for police is to work with all parties in order to preserve peace, protect life and property and enforce the law. Police across Canada strive at all times to balance the need to maintain the peace with the democratic right to hold peaceful demonstrations.

G20 Summit

104. The G20 Summit in 2010 was an unprecedented event for all levels of government, and posed a number of novel security and policing issues. The Government of Ontario acknowledges that it could have done a better job communicating with the public about the Public Works Protection Act (PWPA) which dated from 1939 and was in effect during the G20 Summit. After reports and recommendations by the Ontario Ombudsman and an independent, detailed review, Ontario passed the Security for Courts, Electricity Generating Facilities and Nuclear Facilities Act in December 2014, which repealed the PWPA. The new legislation will protect specific types of public infrastructure and its users while safeguarding human rights.

Quebec student protests

105. In May 2012, the Act to enable students to receive instruction from the post-secondary institutions they attend 2012, Ch. 12, was passed and contained provisions for maintaining the peace, order and public security and various administrative, civil and penal provisions for the enforcement of the Act. Certain provisions of the Act governed the right to protest. The provisions of the Act were repealed through an order-in-council in fall 2012. The Quebec Commission des droits de la personne et des droits de la jeunesse found that articles 12 to 31 of the Act violated the Charter of Human Rights and Freedoms (CQLR, Ch. C-12) by infringing one or more fundamental freedoms, such as freedom of conscience, opinion, expression, peaceful assembly and association (art. 3). The Commission also found that these provisions could not be justified under article 9.1 of the Quebec Charter, and should be deemed unenforceable by law under article 52 of the latter. Articles 12 to 31 ceased to have effect on September 21, 2012. The same day that the National Assembly adopted the Act, the City of Montreal amended its by-law concerning the prevention of

breaches of the peace, public order and safety and the use of public property, R.B.C.M. Ch. P-6.

Demonstrations by Aboriginal communities

106. Police in Canada are committed to responding to demonstrations by Aboriginal communities in a way that seeks to understand and respect cultural elements. The RCMP's response in such cases is guided by its Operational Manual for Aboriginal Demonstrations and Protests. This manual highlights the fundamental rights to peaceful protest, peaceful assembly and freedom of expression guaranteed in the Charter, and the rights of Aboriginal peoples recognized in the Canadian Constitution. The manual further notes that a measured response to Aboriginal demonstrations or protests should be taken: one that is based on accurate and timely intelligence, that uses incremental and non-confrontational enforcement action as much as possible, and that attempts to negotiate the conflict before taking enforcement action.

Question 19

107. The Government of Canada works closely with First Nation, Métis, and Inuit groups in Canada; specifically with separate Aboriginal representative organizations and other stakeholders, to address the different challenges and opportunities facing their communities.

108. Canada is working hard to ensure constructive engagement with willing Aboriginal partners in support of ongoing efforts to improve the lives of Aboriginal peoples. Canada has numerous laws, policies and programs aimed at addressing Aboriginal peoples' concerns, to allow for collaboration on shared priorities and to build a renewed relationship based on reconciliation and trust. Canada was one of the first countries in the modern era to extend constitutional protection to the rights of Aboriginal peoples, including treaty rights. Canada's unique constitutional framework will continue to be the cornerstone of efforts to promote and protect the rights of Aboriginal people in Canada.

109. The Government of Canada's efforts to renew and strengthen the relationship between Aboriginal peoples and other Canadians are fundamental to reconciliation and to paving the way for the full participation of Aboriginal people in the social, economic and cultural prosperity of Canada. In this spirit of reconciliation, Canada continues to make progress on all aspects of the Indian Residential Schools Settlement Agreement. This includes financial compensation and the establishment of a Truth and Reconciliation Commission. These efforts build upon the Prime Minister's historic apology in June 2008, on behalf of the Government of Canada, to former students, their families, and communities for the abuse experienced by many who attended Indian Residential Schools and the impact this system had on Aboriginal languages and culture.

110. In November 2010, Canada endorsed the United Nations Declaration on the Rights of Indigenous Peoples. Another key development was the Crown-First Nations Gathering held between the Prime Minister and the Assembly of First Nations, in January 2012. For more information on this important moment in the Crown-First Nations relationship, including the Joint Outcome Statement and annual progress reports, see online: http://goo.gl/xHbVuP.

111. Many Aboriginal Canadians face barriers to social and economic participation. To address these barriers, the Government's agenda focuses on achieving concrete results together with willing partners in five priority areas: education; reconciliation, governance and self-government; economic development; empowering citizens and protecting the vulnerable; and resolving land issues. The Government is committed to working together with willing partners to create the conditions for healthier, more self-sufficient Aboriginal

communities. Aboriginal peoples off-reserve are eligible for programs and services available to all Canadians, as well as specific targeted programs for the Aboriginal population. The federal government delivers province-like programs and services on-reserve.

112. The following are examples of Canada's many efforts in this area. First, Canada is investing $241 million from 2013–2017 to help First Nation youth on-reserve between the ages of 18 and 24 to get personalized job and skills training. These investments are targeted to youth receiving income assistance, providing them with access to a wider, more tailored range of training, education and career counselling programs that will help them get jobs. Investing in jobs and skills training for First Nation youth will lead to their greater participation in the economy, and more prosperous First Nation communities.

113. Canada also makes significant investments in on-reserve housing. Annual funding to First Nations for housing supports the construction of new homes and renovations to existing units. Canada provided $2.3 billion in on-reserve housing support to First Nations between 2006–2007 and 2013–2014. Since 2006, overall Government investments have contributed to the construction of 11,799 new units and over 21,680 renovations. Canada also provides funding for northern housing. For instance, in 2013, Canada announced $100 million to address unique challenges in providing affordable housing in Nunavut.

114. Another key area is water and wastewater infrastructure on-reserve. Between 2006 and 2014, the Government of Canada invested approximately $3 billion in infrastructure and related public health activities to support First Nation communities in managing their water and wastewater systems. For example, between 2006–2007 and 2012–2013, 198 major capital (over $1.5 million) water and wastewater projects were completed in 173 First Nations, for a total investment of $947.8 million. These expenditures are part of a comprehensive long-term plan to improve drinking water and wastewater systems on First Nation lands, which is founded on four pillars: enhanced capacity building and operator training, enforceable standards and protocols, infrastructure investments, and protection of public health.

115. For further measures, please see the responses to Questions 6, 22 and 23. For more information on Canada's ongoing efforts with respect to First Nations education and health care, see Canada's second report under the universal periodic review (January 2013), at paragraphs 21–25 and 42–44. To update one aspect of that report, as of October 2013, the First Nations Health Authority has assumed responsibility for the design and delivery of health programs and services previously provided by Health Canada in British Columbia. First Nations in British Columbia may now incorporate their cultural knowledge, beliefs and values into the design and planning of their health programs and services. This will result in better health outcomes and a more responsive and integrated model of health service delivery.

Question 20

116. Through dialogue with partners, the Government of Canada is developing a new framework for addressing the Aboriginal and treaty rights that are recognized and affirmed in its Constitution. To this end, in September 2014 the Government released a document called "Renewing the Comprehensive Land Claims Policy: Towards a Framework for Addressing Section 35 Aboriginal Rights." This interim policy outlines the Government's current approach and contains important new principles of recognition and reconciliation. See online: http://goo.gl/lGr31p.

Aboriginal land claims negotiation and settlement processes

117. Canada negotiates treaties with Aboriginal groups to clarify and protect the Aboriginal groups' rights. These rights are recognized and affirmed in the Constitution, but they are not specifically articulated or defined there. The treaties that have been negotiated to date include a "certainty technique" to ensure that all parties can rely on the terms of the treaty. The certainty technique required by the federal government has evolved from the approach of requiring "cede, release and surrender" of pre-existing rights to lands and resources, which last appeared in agreements signed in the early 1990s. Current certainty techniques allow for the continuation of any pre-existing Aboriginal rights to lands and resources, subject to agreement by the Aboriginal party to only assert rights that are set out in the treaty. Treaties can also include a process for bringing specific types of non-land and resource rights into the treaty that were not contemplated at the time the treaty was made, based on future developments in the law. In current treaty negotiations and in other processes addressing Aboriginal rights, Canada continues to explore ways to better meet Aboriginal groups' interests for the recognition, continuation and protection of Aboriginal rights.

Discussion with the Innu of Quebec and Labrador and with Alberta's Lubicon Lake Band

118. Based on an agreement in principle, Quebec, the Government of Canada, and the Mashteuiatsh, Essipit and Nutashkuan First Nations are negotiating a comprehensive land claim with a view to reaching a final agreement in 2015. The Government of Canada, Newfoundland and Labrador, and the Innu of Labrador are also negotiating a final agreement. Significant advances have been made by both negotiations tables.

119. In 2010, Canada appointed a Minister's Special Representative to promote and encourage dialogue among Innu Groups in Quebec and Labrador whose traditional use and assertions of Aboriginal rights overlap geographically. The Innu groups have met on multiple occasions but have not yet come to consensus on how they might address their overlapping interests.

120. The Lubicon Lake Band elected a new Chief in Council in February of 2013. Canada has subsequently engaged with the First Nation on improving a number of programs and community service delivery. In December 2014, Canada signed a Negotiation Framework with the Lubicon Lake Band to establish the path forward to resolving the claim. Canada is committed to the goal of a lasting land claim settlement with the First Nation.

Specific claims

121. Specific claims are grievances of First Nations related to Canada's obligations under historic treaties or the way it has managed First Nation lands and finances. Canada is taking action to speed up the resolution of specific claims to provide justice to First Nation claimants, and certainty for all Canadians. Since 2008, when the Specific Claims Tribunal Act (SCTA) came into force, the Government of Canada has cleared up the entire backlog of claims that were bottlenecked at the assessment stage. Claims are now being processed within legislated time frames. The SCTA established an independent tribunal that can render binding decisions on specific claims. A First Nation may bring a claim to the tribunal if the claim has been rejected by the Minister, or has been in negotiations for three years without resolution. Since 2008, 121 specific claims have been resolved through negotiated settlements for a total value of almost $2.2 billion. There are 317 claims in progress.

Consultation with Aboriginal peoples

122. In Canada, the Crown has a constitutional duty to consult and, where appropriate, accommodate when the Crown contemplates conduct that might adversely impact potential or established Aboriginal or treaty rights. Canada takes these obligations very seriously and is committed to an approach that is fair, efficient, accessible, transparent and meaningful. Through consultation, the Crown seeks to strengthen relationships and partnerships with Aboriginal peoples.

123. The Government of Canada undertakes a wide variety of efforts to ensure that consultation occurs when appropriate. In 2011, Canada released the "Updated Guidelines for Federal Officials to Fulfil the Duty to Consult," which include Guiding Principles and Consultation Directives and provide strategic and practical guidance for federal officials. Tools and training sessions are also offered to federal officials on the duty to consult in order to assist them to consult meaningfully and, where appropriate, accommodate Aboriginal groups.

124. The Government of Canada negotiates memoranda of understanding with provinces and territories to ensure FPT consultation processes are aligned and procedural aspects of consultation are streamlined. The Government also negotiates consultation protocols with Aboriginal groups and governments, to create a process for parties to follow when addressing the duty to consult. Finally, for major resource projects, the Government integrates Aboriginal consultation into a project's environmental assessment and regulatory process. Departments and agencies coordinate their consultations throughout the process, and where appropriate, funding may be provided for Aboriginal groups to participate in the review process.

Question 21

125. Canada believes that the Indian registration provisions in the current Indian Act do not discriminate against women. Descendants of persons registered in accordance with the amendments to the Indian Act in 1985 have not been treated differently with respect to the transmission of Indian status on the basis of sex. In addition, the 1985 amendments reinstated eligibility for Indian registration to all women who previously lost status upon marrying a non-Indian man, and ensured that at least the children of those women would also be eligible for registration. The Gender Equity in Indian Registration Act, which came into force in 2011, went one step further by ensuring that eligible grandchildren of women who lost Indian status under the Indian Act as a result of marrying non-Indian men are now entitled to Indian registration. It is estimated that some 45,000 individuals are now newly entitled to Indian Act registration through this legislation, and would be eligible for the programs and services available to all registered Indians. As of January 31, 2015, 33,306 individuals have been registered as Indians as a result of this legislation.

126. In 2011, the Government of Canada also launched the "Exploratory Process on Indian Registration, Band Membership and Citizenship." Twenty national and regional First Nations and other Aboriginal organizations received funding to identify, examine and discuss with their members the broader issues associated with registration (status), membership, and citizenship. The Exploratory Process ended in December 2011 and participating organizations submitted over 100 reports of their findings. Canada recognizes the importance of these issues to First Nations and other Aboriginal groups, while also recognizing that issues surrounding Indian registration, Band membership and citizenship are complex and that First Nations and other Aboriginal groups hold diverse views on these matters. Given the complexities of the issues and the volume of information submitted, the Government will continue to analyze the findings of the Exploratory Process to inform possible next steps.

127. Another important reform to address discrimination is the 2011 repeal of section 67 of the CHRA. Section 67 had prevented persons, often Aboriginal women and persons living or working on reserves, from making complaints of discrimination arising from actions taken or decisions made pursuant to the Indian Act.

128. In December 2013, the Family Homes on Reserves and Matrimonial Interests or Rights Act came into effect, closing a legislative gap regarding matrimonial real property protections and rights on reserves. Residents on reserve now have basic rights and protections (during a relationship, in the event of a relationship breakdown, and on the death of a spouse or common-law partner) similar to other Canadians regarding the family home and other matrimonial interests or rights. The Act was developed in collaboration with First Nations people, communities and groups through an extensive consultation process.

129. Two recent legislative initiatives are aimed at supporting First Nations governments. In April 2014, the First Nations Elections Act became law. The legislation was developed in partnership with two First Nations regional organizations and was drafted based on the recommendations these groups formulated following a national engagement process. For those First Nations interested in entering the new electoral framework, the Act offers a robust election system that will support the political stability necessary for them to make solid business investments and carry out long term planning. Bill C-428, An Act to Amend the Indian Act (Publication of By-laws), was supported by the Government and became law in December 2014. The resulting amendments give First Nations greater responsibility over the development and enactment of their by-laws and ensure that these by-laws are accessible to all community members.

130. On the issue of consultation more generally, Canada is engaged with First Nations communities and organizations on a variety of issues where their interests may be affected. The nature of each engagement will vary depending upon the context in which it arises. For example, the Canadian government may be required to consult with First Nations by virtue of legislation or pursuant to contractual provisions contained in land claim and self-government agreements. In addition, Canadian courts have developed a robust body of law on consultation which helps to set out the requirements with respect to the level of involvement of Aboriginal groups in specific decision-making processes affecting Aboriginal interests. Please see the response to Question 20.

131. With respect to the participation of Aboriginal peoples in the design of legislation that affects them, it is important to note that in Canada, legislation is debated and enacted by Parliament and provincial and territorial legislatures, which are the forums for all Canadians to participate in the design of their laws. Aboriginal groups have the opportunity to make their views known during the law-making process, either through specific Members of Parliament or, when invited, as witnesses before parliamentary committees. Further, the Government of Canada has a practice, grounded in sound policy-making, of engaging with stakeholders as part of the development of legislation that is of interest to them, including with Aboriginal groups when their rights or interests may be affected. Whether a legally enforceable duty to consult as part of the development of legislation is owed to Aboriginal groups is a question currently subject to litigation in domestic courts.

Question 22

132. The Aboriginal Languages Initiative (ALI) provides up to $5 million annually to Aboriginal communities across Canada and leverages existing or new community efforts aimed at reclaiming and revitalizing traditional Aboriginal languages which lie at the heart of Aboriginal identity. These languages began their decline over 100 years ago as a result of past policies and practices such as Indian Residential Schools, but continue to face

challenges arising from urban Aboriginal migration and ongoing popular media produced in English, French and other languages.

133. A unique element of the Aboriginal Peoples' Program (APP), ALI annually supports 75–90 community language projects across Canada. ALI provides flexible, targeted funding that supports a wide range of community language projects while also leveraging extensive community in-kind contributions and partnerships. ALI creates language champions, develops local language expertise, and supports the creation of unique learning opportunities and resources for children, youth and adult second-language learners. ALI projects support Aboriginal language learning activities undertaken by thousands of children, youth, parents, teachers and elders throughout every province and territory. In 2011, 52,000 people reported being able to converse in an Aboriginal language different from their non-Aboriginal mother tongue, suggesting second language acquisition, one of ALI's objectives.

134. UNESCO's Interactive Atlas of the World's Languages in Danger identifies 87 Aboriginal languages still spoken in Canada. However, more recent research has revised this total upwards to 90, and UNESCO is still seeking resources to provide for its website to be updated with the results of this research. Of the 87 languages identified, 64 languages (74%) are identified by UNESCO as being: (1) definitely endangered; (2) severely endangered; or (3) critically endangered.

135. In April 2014, following extensive consultations with First Nations parents, schools, teachers, and leaders across the country, the Government of Canada introduced the First Nations Control of First Nations Education Act in the House of Commons. This legislation sought to establish minimum legislated education standards on-reserve, similar to those found in provincial education systems. It also included a provision for First Nations schools to provide education programming to support the study of First Nations language and culture, and would have provided funding to support this. Unfortunately, following subsequent decisions by Chiefs, the legislation has been placed on hold and will not move forward without First Nations' support.

Question 23

Truth and Reconciliation Commission

136. The Government of Canada is committed to a fair and lasting resolution to the legacy of Indian Residential Schools (IRS). In 2013, the Ontario Superior Court approved, on consent of the parties to the Indian Residential Schools Settlement Agreement, a one-year extension to the operating period of the Truth and Reconciliation Commission (TRC), to June 30, 2015. In support of the TRC's mandate to identify sources and create as complete an historical record as possible of the IRS system and its legacy, the Government of Canada has disclosed close to 4.2 million documents to the TRC and is working with the TRC to locate and disclose any remaining relevant documents held at Library and Archives Canada.

137. The TRC has completed its mandated seven national events, which provided opportunities for those affected by the Indian residential school system to share their experiences. The national events also promoted education and awareness about the history and legacy of the schools to all Canadians. The TRC is now completing its final report, including recommendations to the Government on the way forward toward reconciliation, and is planning a closing event in Ottawa in the spring of 2015. The important work of the TRC will live on after the end of its mandate. The National Centre for Truth and Reconciliation has been established at the University of Manitoba to be the permanent home for all statements, documents, and other materials gathered by the TRC. This material will be accessible to the public for future study and use.

138. Provinces and territories are also committed to reconciliation. For example, at a March 2014 national event of the TRC, the Government of Alberta released an Expression of Reconciliation, in which it committed itself to the spirit of reconciliation with Aboriginal Albertans, starting with the implementation of a component on IRS in the Alberta Education curriculum.

First Nations Child and Family Services

139. The First Nations Child and Family Services (FNCFS) Program provides funding for the delivery of child welfare prevention and protection services for status Indian children and families on reserve. The Program's goal is to support culturally appropriate services in accordance with the legislation and standards of the respective province or territory of residence. The anticipated result is a more secure and stable family environment.

140. The Government of Canada, along with First Nations, provinces and the Yukon Territory, has taken concrete steps to improve the outcomes of children and families on reserve with the reform of the FNCFS Program. In 2007 the Government of Canada began transitioning the FNCFS Program to a more prevention-based model, namely the Enhanced Prevention Focused Approach (EPFA). Its goal is to support enhanced prevention services that reduce the need to remove children from the parental home by providing tools, such as parenting skills programs that allow individuals to better care for their children before a situation becomes a matter of protection. This transition is taking place on a jurisdiction-by-jurisdiction basis with First Nations, provincial and Yukon partners. Funding models that are developed under the EPFA reflect information provided during discussions among First Nations, the province or territory and the federal government about provincial funding of child welfare. Each model is particular to each jurisdiction and takes into account the respective provincial legislative standards including program salaries and caseload ratios to align with provincial funding.

141. From 2007 to 2010, tripartite accountability frameworks on enhanced prevention were reached, with new investments in six jurisdictions: Alberta (2007), Nova Scotia (2008), Saskatchewan (2008), Quebec (2009), Prince Edward Island (2009), and Manitoba (2010). The EPFA now covers 68% of First Nations children living on reserve in Canada. The Government of Canada is working with remaining jurisdictions to prepare for transition to the EPFA.

142. Since the implementation of the EPFA, several evaluations have been conducted and results are encouraging. For example, there has been an increase in culturally appropriate kinship care placements, some promising culture-based activities, a better awareness of the child welfare system in communities and improved relationships between governments and service providers.

143. Some provincial and territorial governments are also implementing innovative new projects to address issues in the child protection system. In 2010, the Saskatchewan Aboriginal Courtworker Program began a pilot project to provide Courtworker services in child protection cases. The pilot project, which now covers three major cities, supports parents who are parties to child protection proceedings. Additionally, in 2014, Saskatchewan began implementing a Counsel for Children program, which provides for the appointment of lawyers for children and youth who are in the care of the Minister of Social Services or First Nations Child and Family Services agencies, pursuant to the Child and Family Services Act. The Counsel for Children program will help ensure Aboriginal children's and youths' voices are heard in child protection proceedings.

Over-representation of Aboriginal children in the justice system

144. Canadian governments recognize that inter-disciplinary and cross-jurisdictional measures are needed to address the complex reasons for the over-representation of Aboriginal children in the justice system.

145. The Youth Criminal Justice Act (YCJA) applies to youth between 12 and 18 years old who are alleged to have committed criminal offences. The YCJA aims to ensure that alternatives to criminal charges and custodial sentences are used whenever appropriate. The Act contains provisions to increase the use of alternatives to charging for less serious offences. Custodial sentences are reserved primarily for violent offenders and serious repeat offenders. Moreover, the YCJA states that all available sanctions other than custody that are reasonable in the circumstances should be considered for all young persons, with particular attention to the circumstances of Aboriginal young persons. The YCJA's Declaration of Principle states that measures taken against young persons should respect gender, ethnic, cultural and linguistic differences and respond to the needs of Aboriginal young persons.

146. The Government of Canada has taken action in addition to these criminal law measures to address Aboriginal over-representation. Through the Youth Justice Fund, the Government provides grants and contributions to projects that encourage a more effective youth justice system, respond to emerging youth justice issues and enable greater citizen and community participation in the youth justice system. Since the Fund was established, numerous projects for Aboriginal youth have been funded.

147. The Government of Canada also provides support to at-risk populations, including Aboriginal youth, to prevent them from becoming involved in the criminal justice system in the first place. Through the National Crime Prevention Strategy, funding is provided to communities and organizations to implement evidence-based crime prevention interventions. The dedicated Northern and Aboriginal Crime Prevention Fund also assists communities experiencing multiple risk factors and challenges that affect their ability to respond to crime issues, such as remote geographical location and limited capacity.

148. A number of funding programs are specifically focused on Aboriginal people in the criminal justice system. These include the Aboriginal Justice Strategy and the Aboriginal Courtwork Program, described in the response to Question 6, and the Access to Justice for Aboriginal Women Fund, which supports the development of school- and community-based pilot projects to help heal, move forward and provide alternatives to high-risk behaviour for young Aboriginal women, including young offenders.

149. Police across the country engage in outreach efforts with Aboriginal communities. For example, in Nova Scotia, the RCMP's Community, Aboriginal and Diversity Policing Services work with First Nations communities to provide programming that incorporates both traditional and modern activities and aims to increase Aboriginal youth's self-identity and independence.

Question 24

150. Governments have been focusing significant efforts on deepening knowledge of Canada's international human rights commitments among public servants and strengthening their capacity to consider these issues in their work. The Government of Canada has developed general training for federal public servants on these issues, as well as training tailored to specific departments. These new training modules have been shared with provincial and territorial governments. Training on domestic and international human rights law is offered regularly to lawyers in the federal public service as part of their continuing legal education.

151. Lawyers and academics have access to human rights training offered by university law faculties, law societies and associations, civil society organizations and the private sector. Respecting the principle of judicial independence, Canadian judges have access to training, including on human rights law, primarily through independent judicial education institutions, such as the National Judicial Institute.

152. Law enforcement personnel across Canada receive training on the legal framework that governs their operations and on human rights protections related to their work, including the Charter and relevant safeguards applicable on arrest or detention. For example, RCMP cadet training on Canada's Criminal Code includes the sections addressing what the Code terms "excessive force" and "use of force." RCMP training also continues to reinforce the application of the Charter as it pertains to interviews, detention, arrests, and imprisonment.

153. In Newfoundland and Labrador, the Royal Newfoundland Constabulary provides training on harassment and discrimination through a respectful workplace program and actively promotes respectful behaviours and diversity. In Ontario, since 2009, the Ontario Police College has offered a session at the Basic Constable Training Level focusing on human rights principles and their application to policing; diversity, equity, anti-oppression and professional practice in the framework of policing careers; application of the Police Services Act in relation to human rights challenges, as well as legal measures and strategies available to officers in combating workplace discrimination and harassment.

154. With respect to reporting, the views of a broad range of civil society and Aboriginal organizations are sought on a draft outline of Canada's reports to UN treaty bodies and those submitted under the universal periodic review process and their views inform the drafting of the respective reports. Their views are also sought on treaty body and universal periodic review recommendations and widely shared within FPT governments, in order to inform their consideration of the recommendations. Organizations also have an opportunity to present their views directly to FPT officials during meetings with the Continuing Committee of Officials on Human Rights. These opportunities for dialogue are in addition to the many public consultations undertaken by governments in the course of policy development. Further, the Government of Canada posts the Human Rights Committee's recommendations on its website in order to inform Canadians.