



**International Covenant on  
Civil and Political Rights**

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**Human Rights Committee**

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

**Sixth periodic reports of States parties due in October 2010**

**Canada\***

[9 April 2013]

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document has not been edited before being sent to the United Nations translation services.

## Contents

	<i>Page</i>
Introduction	
Part I Measures adopted by the Government of Canada** .....	5
Part II Measures adopted by the governments of the provinces** .....	15
Newfoundland and Labrador .....	15
Prince Edward Island .....	17
Nova Scotia .....	19
New Brunswick .....	20
Quebec .....	22
Ontario .....	23
Manitoba .....	25
Saskatchewan .....	27
Alberta .....	29
British Columbia .....	31
Part III Measures adopted by the governments of the territories** .....	33
Nunavut .....	33
Northwest Territories .....	33
Yukon .....	35

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\*\* In geographical order, from east to west

## Introduction

1. Over the coverage period of January 2005 to December 2009, the Government of Canada and the governments of the provinces and territories have endeavoured to give effect to Canada's commitments under the International Covenant on Civil and Political Rights. While the present report contains some of the measures undertaken and the significant developments that have occurred in this respect, the focus is on the issues raised by the Human Rights Committee in its concluding observations adopted in October 2005 (CCPR/C/CAN/CO/5), after the review of Canada's fifth periodic report under the Covenant (CCPR/C/CAN/2004/5).

2. The condensed format of the present report, which marks a departure from previous reports, is in compliance with the Office of the High Commissioner for Human Rights reporting guidelines of September 2010. Information provided to other United Nations treaty bodies is generally not repeated in this report and may be found in the following reports:

<i>Concluding observations (CCPR/C/CAN/CO/5)</i>	<i>Reports in which the issue is addressed</i>
The definition of terrorism in the Anti-Terrorism Act (para. 12)	Canada's Interim Report in follow-up to the review of Canada's fifth periodic report under the Covenant ( <a href="http://www.pch.gc.ca/eng/1357153536660/1357153674096">http://www.pch.gc.ca/eng/1357153536660/1357153674096</a> )  Information provided by the Government Canada on the implementation of the concluding observations of the Committee on the Elimination of All Forms of Racial Discrimination (CERD/C/CAN/CO/18/Add.1)  Canada's nineteenth and twentieth periodic reports under the International Convention on the Elimination of All Forms of Racial Discrimination (CERD/C/CAN/19-20)
The provisions on the non-disclosure of information during proceedings under the Anti-Terrorism Act (para. 13)	Canada's Interim Report in follow-up to the review of Canada's fifth periodic report under the Covenant  Canada's sixth periodic report under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT/C/CAN/6)
The conditions of administrative detention for persons suspected of terrorism (para. 14)	Canada's Interim Report in follow-up to the review of Canada's fifth periodic report under the Covenant
The detention of persons with mental disabilities or illnesses in relation to supportive housing (para. 17)	Canada's sixth periodic report under the International Covenant on Economic, Social and Cultural Rights (E/C.12/CAN/6) (on housing generally)
The employment of male front-line staff in penitentiaries for women (para. 18)	Canada's Interim Report in follow-up to the review of Canada's fifth periodic report under the Covenant  Canada's sixth periodic report under the Convention against Torture (CAT/C/CAN/6)

<i>Concluding observations (CCPR/C/CAN/CO/5)</i>	<i>Reports in which the issue is addressed</i>
Repeal of Section 67 of the Canadian Human Rights Act and the situation of Aboriginal women under the Indian Act in matters of matrimonial real property (para. 22)	Response by Canada to the recommendations contained in the concluding observations of the Committee on the Elimination of All Forms of Discrimination against Women following the examination of the combined sixth and seventh periodic report (CEDAW/C/CAN/CO/7/Add.1)  Canada's nineteenth and twentieth periodic reports under the International Convention on the Elimination of All Forms of Racial Discrimination (CERD/C/CAN/19-20)  Canada's sixth periodic report under the International Covenant on Economic, Social and Cultural Rights (E/C.12/CAN/6)
Violence against Aboriginal women, their participation in economic and social life, and effective access to the justice system (para. 23)	Response by Canada to the recommendations contained in the concluding observations of the Committee following the examination of the combined sixth and seventh periodic report (CEDAW/C/CAN/CO/7/Add.1 and Corr.1)  Supplemental information provided in follow-up to the review of Canada's sixth and seventh periodic reports under the Convention on the Elimination of All Forms of Discrimination against Women ( <a href="http://www.pch.gc.ca/eng/1356104927950/1356105320849">http://www.pch.gc.ca/eng/1356104927950/1356105320849</a> )  Canada's nineteenth and twentieth periodic reports under the International Convention on the Elimination of All Forms of Racial Discrimination (CERD/C/CAN/19-20)
The impact on vulnerable groups of changes in social programs (para. 24)	Canada's sixth periodic report under the International Covenant on Economic, Social and Cultural Rights (E/C.12/CAN/6)

3. The above-mentioned reports are available to the public on the website of the Department of Canadian Heritage at: [www.pch.gc.ca/pgm/pdp-hrp/docs/index-eng.cfm](http://www.pch.gc.ca/pgm/pdp-hrp/docs/index-eng.cfm).

4. Generally, Canada reports more fully on its implementation of some articles of the Covenant in other treaty reports. For example, matters relating to article 3 of the Covenant on the equal rights of women and men are more fully discussed in Canada's reports under the Convention on the Elimination of All Forms of Discrimination against Women. Likewise, Canada's reports under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment address issues that could also be reported under, inter alia, article 7 of the Covenant on protection against torture, cruel, inhuman or degrading treatment or punishment. The same applies to article 24 provisions related to children's rights, which are more fully examined in reports on the Convention on the Rights of the Child.

5. The concluding observations of the Human Rights Committee and Canada's previous reports under the Covenant were provided to all federal departments and provincial and territorial governments and are posted on the website of the Department of Canadian Heritage.

## Consultations with Non-Governmental Organizations

6. More than 200 non-governmental organizations were invited by the Government of Canada to give their views on the issues to be covered in the federal portion of the report. No responses were received.

## Part I

### Measures adopted by the Government of Canada

#### Article 2: Equal rights and effective remedies

7. Further to the recommendations in paragraph 6 of the Committee's concluding observations on the establishment of procedures related to implementation of the Covenant, it should be noted that, under the universal periodic review, Canada committed to considering options for enhancing existing mechanisms and procedures related to the implementation of international human rights obligations (A/HRC/24/11/Add.1).

8. The Government of Canada is reviewing relevant mechanisms and procedures, including opportunities for consultation with civil society and Aboriginal organizations, and will report on implementation of this commitment in Canada's next UPR. In addition to Canadian statutes, policies and practices that implement the Covenant and for which there are judicial and administrative remedies, many of the rights contained in the Covenant are constitutionally protected by the Canadian Charter of Rights and Freedoms, which applies to all levels of government. The Constitution gives Canadian courts powerful remedial tools for the protection of Charter rights.

9. Further to the recommendations in paragraph 7 of the Committee's concluding observations, Canada takes seriously its legal obligations under the Covenant as well as the communications process under the Optional Protocol. As Canada noted in its comments on the Committee's draft of general comment No. 33 (2009), neither the Committee's interim measures requests nor its Views are legally binding on States parties. Canada consistently gives every request for interim measures serious consideration. Procedures are in place so that officials who effect removals are informed in the shortest possible time about requests not to remove someone from Canada, pending the Committee's consideration of their communication. It is difficult for Canada to continue to respect an interim measures request where a person, who is found to represent a danger to the public, has been determined by domestic processes not to face a substantial risk upon removal. While a person who is considered a danger can be held in detention pending removal, an interim measures request of long duration means that the person could spend a long time in detention or may be released, potentially putting others at risk. Canada also gives serious consideration to the Views of the Committee. Canada notes that it does not always agree with the Committee's Views on whether Canada has violated its Covenant obligations.

10. In paragraph 11 of its concluding observations, the Committee expressed concern about access to effective remedies for victims of discrimination and about the power of human rights commissions to refuse to refer a complaint to adjudication. The Government of Canada wishes to emphasize that the Canadian Human Rights Commission (CHRC) and the Canadian Human Rights Tribunal (CHRT) have a broad mandate with respect to discrimination complaints. The CHRC's mandate, in line with the principles relating to the status of national institutions (Paris Principles), is to prevent discrimination; accept, investigate and deal with complaints of discrimination in the workplace and the marketplace; provide dispute resolution services; and expand human rights knowledge in all

areas of federal jurisdiction. In addition, the CHRC is responsible for enforcing the Employment Equity Act, which ensures that federally regulated employers provide equal opportunities for employment to four designated groups, namely women, Aboriginal peoples, persons with disabilities, and members of visible minorities, so that the federal workforce reflects the population at large.

11. The CHRC's discretion not to deal with a complaint is circumscribed by sections 40, 41 and 44 of the Canadian Human Rights Act. For example, the CHRC has the discretion not to deal with a complaint if the complaint is not within the CHRC's jurisdiction, if alternative procedures are available to deal with the complaint, if the complaint is made in bad faith, or if the complaint is filed more than one year after the most recent allegedly discriminatory act. When the CHRC decides not to deal with a complaint, it must notify the complainant in writing with reasons for the decision. CHRC decisions are subject to judicial review. This process is not unlike decisions by the Human Rights Committee on the admissibility of communications.

12. Once a complaint is admissible, the CHRC offers a number of alternative dispute resolution processes. These include a voluntary mediation process and a compulsory conciliation process. Only if these processes fail to achieve a resolution will a complaint be referred to the CHRT. The alternative dispute resolution processes help to decrease the stress and expenses incurred by all parties to the complaint and help to manage the CHRT's caseload. Where the CHRT, an independent administrative tribunal exercising quasi-judicial powers, finds that a discrimination complaint is substantiated, it has a broad authority to order an effective remedy.

13. Below is a table of the number of complaints dismissed by the CHRC in 2007, 2008 and 2009:

	2007	2008	2009
Complaints dismissed	203	199	182
Total Complaints	638	577	644

14. For information on the caseloads of the CHRC and CHRT and the disposition times for complaints, please see their Annual Reports at:

<http://www.chrc-ccdp.ca/eng/content/publications> and  
[www.chrt-tcdp.gc.ca/NS/reports-rapports/ar-ra-eng.asp](http://www.chrt-tcdp.gc.ca/NS/reports-rapports/ar-ra-eng.asp), respectively.

#### **Article 7: Protection against torture**

15. Further to the recommendations in paragraph 15 of the Committee's concluding observations concerning the absolute nature of the prohibition against torture, Canada's sixth periodic report under the Convention against Torture (CAT/C/CAN/6, paras. 34–37), describes how, in the case of *Suresh v. Canada (Minister of Citizenship and Immigration)* ([2002] 1 S.C.R. 3), the Supreme Court of Canada found that section 7 of the Canadian Charter of Rights and Freedoms (the Charter) generally prohibits deportation to States that may engage in torture. However, the Court left open the narrow possibility that in exceptional circumstances, the Minister may remove a person if the danger that the person poses to Canada outweighs the risk that person would face if removed. While the *Suresh* decision leaves open the theoretical possibility of removal to a risk of torture in exceptional circumstances, the ambit of any such "exceptional circumstances" remains undefined in Canadian law. Although the Government of Canada has reserved the right to rely on the *Suresh* exception in appropriate circumstances, it is important to note that it has not removed anyone in a case where domestic processes had concluded that the individual faced a substantial risk of torture upon removal.

16. Further to the recommendations in paragraph 16 of the Committee's concluding observations concerning the detention and treatment abroad of Canadian citizens suspected of having information about or being involved in terrorism, Canada emphasizes that it opposes the use of torture by any State or agency for any purpose, including the collection of intelligence.

17. As the Committee has noted, in 2004 the Government of Canada created the "Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar", a telecommunications engineer with dual Syrian and Canadian citizenship who was arrested and deported by the United States to Syria where he was subjected to torture. Led by Ontario Court of Appeal Justice Dennis O'Connor, the Commission's mandate was to investigate and report on the actions of Canadian officials in relation to Mr. Arar, and to make any recommendations on an independent review mechanism for the activities of the Royal Canadian Mounted Police with respect to national security. Justice O'Connor's Report of the Events Relating to Maher Arar (Part I, Factual Inquiry)<sup>1</sup> was released in September 2006 and contained 23 recommendations. The Government of Canada accepted and has implemented all 23 recommendations in Part I of the report. This included a formal apology to Mr. Arar and his family, and a settlement in the amount of \$10.5 million, plus legal costs, for the ordeal they suffered. Part II of Justice O'Connor's report (Policy Review) was released in December 2006 and contained 13 recommendations.<sup>2</sup> The Government of Canada remains committed to addressing the recommendations made therein.

18. In response to one of Justice O'Connor's recommendations, in December 2006, the Government of Canada created the "Internal Inquiry into the Actions of Canadian Officials in Relation to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin", who were detained in Syria or Egypt. This Inquiry was led by former Supreme Court of Canada Justice Frank Iacobucci, whose report was released in October 2008.<sup>3</sup> Canada is unable to provide further information on its response to Justice Iacobucci's findings at this time, as these matters are currently the subject of domestic litigation before Canadian courts.

19. The House of Commons Standing Committee on Public Safety and National Security reviewed the findings of both inquiries.<sup>4</sup> The Government of Canada responded to the Parliamentary committee report in October 2009.<sup>5</sup>

#### **Article 9: Right to liberty and security of the person**

20. Further to the recommendations in paragraph 14 of the Committee's concluding observations regarding administrative detention under security certificates, Canada notes that security certificates have existed as a special deportation process under Canadian immigration law since 1978.<sup>6</sup> The process permits the Government of Canada to rely on confidential information not disclosed to the person named in the certificate, or their lawyer, if a court is satisfied that disclosure of the information would be injurious to

<sup>1</sup> [www.sirc-csars.gc.ca/pdfs/cm\\_arar\\_bgv1-eng.pdf](http://www.sirc-csars.gc.ca/pdfs/cm_arar_bgv1-eng.pdf).

<sup>2</sup> [www.sirc-csars.gc.ca/pdfs/cm\\_arar\\_rcmpgrc-eng.pdf](http://www.sirc-csars.gc.ca/pdfs/cm_arar_rcmpgrc-eng.pdf).

<sup>3</sup> [http://epe.lac-bac.gc.ca/100/206/301/pco-bcp/commissions/internal\\_inquiry/2010-03-09/www.iacobucciinquiry.ca/pdfs/documents/final-report-copy-en.pdf](http://epe.lac-bac.gc.ca/100/206/301/pco-bcp/commissions/internal_inquiry/2010-03-09/www.iacobucciinquiry.ca/pdfs/documents/final-report-copy-en.pdf).

<sup>4</sup>

[www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&Parl=40&Ses=2&DocId=4004074&File=0](http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&Parl=40&Ses=2&DocId=4004074&File=0)

<sup>5</sup>

[www2.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&Parl=40&Ses=2&DocId=4144670&File=0](http://www2.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&Parl=40&Ses=2&DocId=4144670&File=0).

<sup>6</sup> Immigration Act, 1976, S.C. 1976-77, c. 52, ss. 39-43.

national security or the safety of any person. The certificate provisions also authorize detention or release on strict conditions incidental to the deportation proceedings. Certificates are used in relatively rare and exceptional cases: only 33 certificates have been issued since 1991, and no new cases have been initiated since 2006.

21. The Immigration and Refugee Protection Act (IRPA) authorizes the Minister of Citizenship and Immigration and the Minister of Public Safety (the Ministers) to issue a certificate if they have reasonable grounds to believe a non-citizen is inadmissible to Canada on the grounds of security, violating human or international rights, serious criminality or organized criminality.<sup>7</sup> This power rests with the Ministers personally, and cannot be delegated.<sup>8</sup> Once issued by the Ministers, a certificate is referred to the Federal Court together with the confidential security information on which it is based. The Federal Court is responsible for determining whether the certificate is reasonable, and issues public summaries of the security information to ensure that the subject of the certificate is reasonably informed of the case to meet. If, after providing the subject of the certificate an opportunity to be heard, the Court determines the certificate to be reasonable, it becomes a final removal order.<sup>9</sup>

22. The IRPA security certificate provisions have been amended significantly as a result of the 2007 decision of the Supreme Court of Canada (SCC) in *Charkaoui v. Canada (Minister of Citizenship and Immigration)* (“Charkaoui I”).<sup>10</sup> In that case, the SCC endorsed the general objectives of the IRPA certificate scheme and accepted that Parliament may use immigration law to detain and deport non-citizens who pose a threat to national security. However, the SCC ruled that two aspects of the certificate regime violated the Charter. First, the SCC held that using confidential security information that is not disclosed to the subject of the certificate violated the right to a fair hearing, which requires either giving the named person all the information required to know the case to meet, or a “substantial substitute” for that information. Second, the SCC held that mandatory detention of foreign nationals, without review of the reasons for decision until 120 days after the certificate is found reasonable, violated the protection against arbitrary detention and the right to a timely review of the reasons for detention.

23. In addition, the SCC held that detention or release on strict conditions pending deportation pursuant to the certificate provisions does not violate the principles of fundamental justice or the Charter protection against cruel and unusual treatment or punishment, even where that detention or release on conditions might continue for extended or indeterminate periods of time. The SCC explained that detention under immigration law is not unconstitutional as long as it is reasonably necessary for deportation purposes and accompanied by a meaningful detention review process that offers relief against the possibility of indefinite detention. The SCC was satisfied that, properly interpreted, the IRPA contained a robust process for periodic judicial review of detention or release on strict conditions, which permitted the courts to assess the relevant context and circumstances of the individual case, including: the reasons for detention; the length of detention; the reasons for delay in deportation; the anticipated future length of detention; and the availability of alternatives to detention.

24. In response to the SCC’s decision, Parliament amended the IRPA in February 2008 (Bill C-3) to require the appointment of special advocates to protect the interests of the subject of the certificate during hearings where confidential security information or

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<sup>7</sup> Immigration and Refugee Protection Act, S.C. 2001, c. 27, s. 77 (1) (IRPA).

<sup>8</sup> IRPA, s. 6 (3).

<sup>9</sup> IRPA, ss. 77–80 and s. 83 (1).

<sup>10</sup> [2007] 1 S.C.R. 350. Available at: [scc.lexum.org/en/2007/2007scc9/2007scc9.html](http://scc.lexum.org/en/2007/2007scc9/2007scc9.html).



evidence is presented in the absence of the public and of the subject of the proceedings and their counsel.<sup>11</sup> Special advocates are security-cleared lawyers who are independent from both government and the courts. They are granted access to the confidential security information on the condition they not disclose it to anybody else, including the person named in the certificate and their lawyer. The special advocates may challenge government claims that such information must remain confidential, as well as the relevance, reliability and sufficiency of any information that the court determines must remain confidential because disclosure would be injurious to national security or the safety of persons. In this way, special advocates act as a “substantial substitute” for full disclosure to the subject of the certificate.

25. The amendments also eliminated mandatory detention of foreign nationals named in security certificates. Instead, any non-citizen named in a security certificate may now be detained, pursuant to an arrest warrant, only if the Ministers are satisfied there are reasonable grounds to believe the person is a danger to national security or to the safety of any person or is unlikely to appear at a proceeding or for removal.<sup>12</sup> For all non-citizens named in a certificate who are detained, the Federal Court must commence a hearing to determine whether continued detention is justified within 48 hours of the initial arrest. The court must hold subsequent reviews every six months, until it is determined whether a certificate is reasonable.<sup>13</sup> A person who continues to be detained after a certificate is determined to be reasonable may apply to the Federal Court for another review of the reasons for their continued detention every six months.<sup>14</sup>

26. In addition, the amendments introduced a right to appeal the Federal Court's final decisions on detention reviews or reasonableness to the Federal Court of Appeal.<sup>15</sup> Like appeals from judicial reviews in other immigration matters, the right to appeal depends on the Federal Court stating a certified question of general importance for appeal. Further appeals to the SCC are possible if leave is granted.

27. Following passage of the amended IRPA in February 2008, the Government of Canada recommenced five former certificate cases under the new statutory regime. A second decision from the SCC dealing with the security certificate cases soon followed. In *Charkaoui v. Canada (Minister of Citizenship and Immigration)* (“Charkaoui II”), the SCC held that the Canadian Security Intelligence Service has a duty to retain all its operational notes and to disclose them to the Ministers for the issuance of a security certificate and subsequently to the judge for the review of the reasonableness of the certificate and the need to detain the named person.<sup>16</sup> The ultimate decision on what information or summaries may be publicly disclosed to the subject of the certificate is left to the court because the material may be injurious to national security or endanger the safety of any person.

28. The new disclosure obligations imposed under Charkaoui II delayed the Federal Court hearings into the reasonableness of the five certificates that the Government had re-issued in February 2008. However, two of those cases have now concluded. In the first, the Federal Court dismissed the case when the Ministers exercised their statutory right to withdraw confidential security information from the case rather than disclose it publicly.<sup>17</sup>

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<sup>11</sup> IRPA, ss. 85–85.5.

<sup>12</sup> IRPA, s. 81.

<sup>13</sup> IRPA, ss. 82– 82.1.

<sup>14</sup> IRPA, ss. 82– 82.1.

<sup>15</sup> IRPA, ss. 79 and 82.3.

<sup>16</sup> [2008] 2 S.C.R. 326. Available at: [scc.lexum.org/en/2008/2008scc38/2008scc38.html](http://scc.lexum.org/en/2008/2008scc38/2008scc38.html).

<sup>17</sup> *Charkaoui (Re)*, 2009 FC 1030. Available at: [decisions.fct-cf.gc.ca/en/2009/2009fc1030/2009fc1030.html](http://decisions.fct-cf.gc.ca/en/2009/2009fc1030/2009fc1030.html).

In the second case, the Federal Court concluded, after a lengthy hearing, that the certificate should be quashed because it was not reasonable.<sup>18</sup>

29. There are currently three active cases of individuals in Canada who are subject to a certificate pursuant to section 77 of the IRPA. All three individuals are alleged or have been found to be inadmissible to Canada for reasons of security pursuant to subsection 34(1) of the IRPA. In two of the three active cases, Federal Court proceedings to determine the reasonableness of the certificate have not yet been completed. In the third case, on December 9, 2010, the Federal Court found that the certificate issued against Mohamed Harkat was reasonable.<sup>19</sup> Mr. Harkat has appealed the decision. A certificate that is determined to be reasonable is conclusive proof that the person named in it is inadmissible.

30. None of the three individuals currently subject to a certificate are detained. All three have been released from detention and are subject to court-ordered conditions of release, which are monitored by the Canada Border Services Agency. Any peace officer may arrest and detain a person subject to conditions of release if the officer has reasonable grounds to believe that the person has contravened or is about to contravene any condition applicable to their release. The peace officer is required to bring the person before a judge within 48 hours after the detention begins.

#### **Article 10: Treatment of persons deprived of liberty**

31. Further to the recommendations in paragraph 19 of the Committee's concluding observations, the Government of Canada notes that with the enactment of the Youth Criminal Justice Act in 2003, all provisions for transfer of youth to adult court have been removed. As a result, all trials of youth take place in youth court, with age-appropriate protections. In exceptional circumstances, a youth court can impose an adult sentence. Further information on Canada's youth justice system can be found in the provincial and territorial sections of this report, and in Canada's reports under the Convention on the Rights of the Child.

#### **Article 21: Right of peaceful assembly, and article 22: Freedom of association**

32. In paragraph 20 of its concluding observations, the Committee recommended that Canada ensure respect for the right of persons to participate in peaceful social protest, and that only those committing criminal offences during demonstrations be arrested. The Committee also requested further information about the practical implementation of section 63 of the Criminal Code relating to unlawful assembly.

33. The Government of Canada supports the work of defenders of human rights worldwide and at home. The rights to freedom of expression (including freedom of the press and other communication media), freedom of peaceful assembly and freedom of association are constitutionally entrenched in the Charter. This means that non-violent social and political protest receives the highest level of legal protection in Canada. The press, civil society organizations and individual Canadians engage in lively public debate on pressing issues of the day, and there is no indication that Canadians feel restrained from doing so. That being said, the constitutional protection afforded to freedoms of expression, assembly and association does not extend to threats or acts of violence. Moreover, these rights and freedoms can be limited where such limits are reasonable and justifiable, as is explicitly recognized in articles 19, paragraph 3, 21 and 22, paragraph 2, of the Covenant.

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<sup>18</sup> *Almrei (Re)*, 2009 FC 3. Available at: [decisions.fct-cf.gc.ca/en/2009/2009fc3/2009fc3.html](http://decisions.fct-cf.gc.ca/en/2009/2009fc3/2009fc3.html).

<sup>19</sup> *Harkat (Re)*, 2010 FC 1241. Available at: [www.canlii.org/en/ca/fct/doc/2010/2010fc1241/2010fc1241.html](http://www.canlii.org/en/ca/fct/doc/2010/2010fc1241/2010fc1241.html).

34. Section 63 of the Criminal Code, which defines an “unlawful assembly”, and section 66, which makes it an offence, must be considered together. The relevant portions of these provisions state:

“63. (1) An unlawful assembly is an assembly of three or more persons who, with intent to carry out any common purpose, assemble in such a manner or so conduct themselves when they are assembled as to cause persons in the neighbourhood of the assembly to fear, on reasonable grounds, that they:

“(a) will disturb the peace tumultuously; or

“(b) will by that assembly needlessly and without reasonable cause provoke other persons to disturb the peace tumultuously.

“(2) Persons who are lawfully assembled may become an unlawful assembly if they conduct themselves with a common purpose in a manner that would have made the assembly unlawful if they had assembled in that manner for that purpose”.

“66. Every one who is a member of an unlawful assembly is guilty of an offence punishable on summary conviction”.

35. The general penalty provision associated with summary conviction offences, section 787 of the Criminal Code, provides for a maximum term of imprisonment of six months or a maximum fine of \$5,000, or both.

36. The purpose of the offence of “unlawful assembly” is to secure orderly and peaceable conduct upon the streets, and to avoid tumultuous conduct of assembled crowds, which might cause actual rioting, or which, in the opinion of persons of reasonable firmness and courage, might result in public disturbance.<sup>20</sup>

37. Canadian courts have interpreted the requisite physical (*actus reus*) and mental (*mens rea*) elements of the offence of unlawful assembly in the following way. To establish the *actus reus*, it is sufficient to prove beyond a reasonable doubt that the person was present as part of an unlawful assembly.<sup>21</sup> To establish the *mens rea*, it is sufficient to prove beyond a reasonable doubt that the accused was aware that certain individuals around them conducted themselves in the manner described in section 63 and nonetheless continued to be part of the assembly.<sup>22</sup>

38. Also relevant are section 64 of the Criminal Code, which defines a riot as “an unlawful assembly that has begun to disturb the peace tumultuously”, and section 65, which makes participating in a riot an offence, providing that: “Every one who takes part in a riot is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.”

39. The offence of being a member of an unlawful assembly is “included” in the offence of rioting.<sup>23</sup> The two offences can be viewed as different stages of the same criminal activity.<sup>24</sup> A riot entails an actual, tumultuous disturbance of the peace, whereas an unlawful assembly merely requires the reasonable fear that such a disturbance will erupt.<sup>25</sup>

<sup>20</sup> *R. v. Patterson* (1930), 55 C.C.C. 281 (Ontario Court of Appeal).

<sup>21</sup> *Regina v. Paulger and Les* (1985), 18 C.C.C. (3d) 78 (British Columbia County Court).

<sup>22</sup> *R. c. Lecompte* (2000), 149 C.C.C. (3d) 185 (Quebec Court of Appeal), leave to appeal to the Supreme Court of Canada refused [2000] S.C.C.A. No. 498.

<sup>23</sup> *R. c. Van Vliet* (2005) QCCA 1121 (Quebec Court of Appeal).

<sup>24</sup> B. Hill, Draft Working Paper (Law Reform Commission) – *Offences against the peace (public order offences)* (1984), Ottawa, p. 16; *R. v. Jones and Sheinin*, *R. v. Thernes*, (1931) 57 C.C.C. 81 (Alberta Supreme Court (Appellate Division)). Unlawful assembly can be qualified as a “preventive” offence

40. These offences do not arise exclusively in the context of public protests. A person can be charged and prosecuted for “unlawful assembly” and “rioting” in contexts that do not involve social protest at all.

41. The use of these Criminal Code provisions by Canadian authorities is infrequent. Between 2005–2006 and 2008–2009, the number of individuals across Canada charged per year with rioting never exceeded 34 individuals, and the number of individuals charged with unlawful assembly never exceeded 54 individuals.<sup>26</sup> By comparison, there were more than 390,000 individuals charged with a Criminal Code offence in Canada in each of the 2007–2008 and 2008–2009 periods. During these same periods, over one million Criminal Code charges were laid in Canada.

42. Canadian courts have confirmed that the provisions regarding “unlawful assemblies”<sup>27</sup> and “riots”<sup>28</sup> are consistent with the Charter.

43. Canadian governments at all levels work to ensure that peaceful protest can occur. Canada’s police services receive training on human rights and work to ensure that lawful and peaceful protest can occur safely and securely. For example, when significant protests are expected, including those that give rise to a high risk of violent behaviour or rioting, Canadian police services engage in active community outreach and dialogue with potential demonstrators and other stakeholders prior to the event, in part to work to assure everyone’s safety during the protest. In carrying out their duties, police officers must, at all times, conduct themselves within their powers and consistent with the law. Canada recognizes that sometimes, due to the circumstances of a particular protest, opinions may differ as to whether the appropriate equilibrium between the freedom to protest peacefully and ensuring public safety and security was indeed reached. Where this is the case, various domestic mechanisms are in place to ensure accountability of government and police services. These include judicial remedies under the Charter, as well as various non-judicial mechanisms, such as Parliamentary oversight committees, statutory bodies created to administer particular legislation, police review mechanisms at all levels (federal, provincial and municipal), ombudsmen, civil liberties organizations, inquiries and a free press.

#### **Article 25: Civic responsibility and political participation**

44. The Government of Canada is committed to strengthening accountability in government through democratic reform. With the goal of enhancing Canada’s democratic institutions as well as public confidence and participation in those institutions, the Government of Canada enacted the following new laws during the review period:

- Political Financing – The Canada Elections Act was amended by the Federal Accountability Act in December 2006, to strengthen the standards of transparency

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when compared to the offence of rioting, which occurs once the participants have gone one step further from creating the fear of tumultuous disturbance and have started troubling the peace tumultuously: *La Reine c. Locke* (26 April 2002), Quebec 200-01-062387-018 (Court of Quebec); *R. c. Lecompte*, (2000), 149 C.C.C. (3d) 185 (Quebec Court of Appeal), leave to appeal to the Supreme Court of Canada refused [2000] S.C.C.A. No. 498.

<sup>25</sup> *R. v. Drury*, 2004 BCPC 188, at para. 43 (British Columbia Provincial Court).

<sup>26</sup> Statistics Canada, Canadian Centre for Justice Statistics, Adult Criminal Court Survey.

<sup>27</sup> Found to comply with sections 2(b), 2(c), 2(d) and 7 of the Charter in *R. c. Lecompte* (2000), 149 C.C.C. (3d) 185 (Quebec Court of Appeal), leave to appeal to the Supreme Court of Canada refused [2000] S.C.C.A. No. 498.

<sup>28</sup> Found to comply with section 7 of the Charter in *R. v. Brien* (1993), 86 C.C.C. (3d) 550 (Supreme Court of Northwest Territories), and *R. v. Bernitt* (1997), 120 C.C.C. (3d) 344 (British Columbia Court of Appeal).

and accountability in political financing. As such, the legislation reduced the maximum annual contribution by individuals to political entities to \$1,100 in 2011, prohibited unions and corporations from making political donations, and prohibited anonymous cash contributions of more than \$20.

- Voter identification – The Canada Elections Act was amended in June 2007 to improve the integrity of the electoral process and to reduce the opportunity for electoral fraud or error. The Act now requires that voters show identification, including proof of address where applicable, before receiving a ballot.
- Fixed-date elections – The Canada Elections Act was amended in May 2007 to provide for fixed election dates every four years. Once the general election is held, the following election would be set for the third Monday in October, four calendar years in the future. Fixed election dates are intended to improve transparency, predictability and fairness of Canada's electoral system during periods of majority government by eliminating the ability of the governing party to affect the timing of elections for partisan advantage. This change does not affect the prerogative of the Prime Minister to request the Governor General to dissolve the House of Commons at any time prior to the stipulated date, as provided by the Constitution.

45. In *Conacher v. Canada (Prime Minister)*,<sup>29</sup> the Prime Minister of Canada's decision to advise the Governor General of Canada to dissolve the 39<sup>th</sup> Parliament and set an election date of October 14, 2008, which was not the date set out in the fixed-election date law, was challenged as violating the Canada Elections Act as well as the right to vote in section 3 of the Charter. The Federal Court dismissed the claim, as there was no evidence that the claimant was prevented from participating meaningfully in the election, that the election was unfair or that the dissolution of the House of Commons did not conform with the laws of Canada.

#### **Article 27: Religious, cultural and linguistic rights**

46. The Committee will find additional information in Canada's periodic reports submitted pursuant to the International Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant on Economic, Social and Cultural Rights.

47. Further to paragraph 8 of the Committee's concluding observations where the Committee raised the issue of the extinguishment of inherent Aboriginal rights, Canada refers the Committee to the description of the land claims negotiation and settlement processes contained in Canada's fifth periodic report under the Covenant (CCPR/C/CAN/2004/5, paras. 183–191). Canada also refers the Committee to the information it provided on the implementation of the concluding observations of the Committee on the Elimination of All Forms of Racial Discrimination (CERD/C/CAN/CO/18/Add.1, paras. 39–46 and 50–66).

48. Since adoption of the 1986 Comprehensive Land Claims Policy, Canada has explored new approaches to achieving certainty with regards to lands and resources as an alternative to the traditional approach based on exchange and surrender of Aboriginal land rights. The Nisga'a Final Agreement provided for the Aboriginal rights of the Nisga'a

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<sup>29</sup> *Conacher v. Canada (Prime Minister)* 2009 FC 920. Available at: [www.canlii.org/en/ca/fct/doc/2009/2009fc920/2009fc920.html](http://www.canlii.org/en/ca/fct/doc/2009/2009fc920/2009fc920.html).

people to continue as modified by the agreement.<sup>30</sup> The Tsawwassen and Maa-nulth Final Agreements are also examples where the modification technique was used.<sup>31</sup>

#### **Tlicho Land Claims and Self-Government Agreement**

49. Other approaches to address certainty continue to be developed for consideration by the parties. For example, the Tlicho Land Claims and Self-Government Agreement draws a distinction between land rights and non-land rights. Finality is achieved for land rights while clarity and predictability is achieved for non-land rights. The Tlicho Agreement applies a non-assertion technique, through which the Tlicho agree not to exercise or assert any rights other than those set out in the Agreement.<sup>32</sup>

#### **The Innu people of Quebec and Labrador**

50. Further to the Committee's request for more information on the land claims agreement under negotiation with the Innu people of Quebec and Labrador, in March 2010, the Government of Canada announced the creation of a new forum for talks between the Innu residing in both Quebec and Labrador regarding their overlapping claims. A special Ministerial representative has been appointed to facilitate discussions among the Innu communities and the provinces, where appropriate. The special representative has met with all the parties: the Innu of Quebec, the Innu of Labrador and the Governments of Quebec and of Newfoundland and Labrador. There are also discussions between the Innu of Quebec and the Government of Newfoundland and Labrador in regard to caribou hunting as well as agreements between the Innu of Quebec and mining corporations carrying out activities in Labrador.

#### **Lubicon Lake First Nation**

51. Further to paragraph 9 of the Committee's concluding observations, concerning the Lubicon Lake First Nation, Canada refers the Committee to the information provided in the information it provided on the implementation of the concluding observations of the Committee on the Elimination of All Forms of Racial Discrimination (CERD/C/CAN/CO/18/Add.1, paras. 68–75). Canada recalls the Committee's Views in the 1990 Lubicon communication,<sup>33</sup> that the offer of settlement made by Canada in 1989, and which the Lubicon rejected, was an appropriate way to rectify the threat to their article 27 rights posed by proposed resource development in and around their traditional hunting and fishing areas.

52. In 2009 and 2010, the United Nations Special Rapporteur on the rights of indigenous peoples, Mr. James Anaya, explored the Lubicon issue with Canadian government representatives. For details, please see the Report of the Special Rapporteur James Anaya (A/HRC/15/37/Add.1, September 15, 2010, paras. 104–135).

53. Canada remains committed to the ultimate goal of reaching a lasting settlement with the Lubicon Lake First Nation. Both the federal and provincial governments remain ready to return to the negotiation table.

54. Canada has many Aboriginal groups. Governments in Canada are faced with parameters that govern the negotiation of all land claims and which ensure that settlements

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<sup>30</sup> The Nisga'a Agreement can be found at: [www.aadnc-aandc.gc.ca/eng/1100100031292](http://www.aadnc-aandc.gc.ca/eng/1100100031292).

<sup>31</sup> The Tsawwassen and Maa-nulth Agreements can be found at: [www.bctreaty.net](http://www.bctreaty.net).

<sup>32</sup> The Tlicho Agreement can be found at: [www.aadnc-aandc.gc.ca/eng/1292948193972](http://www.aadnc-aandc.gc.ca/eng/1292948193972).

<sup>33</sup> Communication No. 167/1984, *Chief Ominayak and the Lubicon Lake Band v. Canada*, Views adopted on 26 March 1990.

are fair to all parties, including other Aboriginal groups and the larger Canadian public. This means that any interaction with the Lubicon Lake First Nation must take place in a context of good faith, with a willingness on all sides (federal, provincial and Lubicon) to move forward with flexible and responsive solutions, and with clearly identifiable and representative leaders.

55. At the present time, the Lubicon Lake First Nation does not have a clearly identifiable and representative leader; the community is currently engaged in a leadership dispute. Two different groups emerged from separate custom election procedures to claim the leadership of the community. In the meantime, the Government of Canada continues to provide programs and services to the Lubicon community, to offer its leaders mediation assistance and to suggest options for resuming negotiations.

### **Protection and promotion of Aboriginal languages and cultures**

56. Further to the recommendations in paragraph 10 of the Committee's concluding observations concerning the protection and promotion of Aboriginal languages and cultures, the Government of Canada contributes, through its Aboriginal Peoples' Program, nearly \$60 million to support urban Aboriginal peoples and their communities to preserve and strengthen Aboriginal languages, cultures and identity and to participate more fully in Canadian society.

57. Only one in five Aboriginal people now speak their mother tongue (2006 Census of Canada). Increasingly, Aboriginal youth are now learning their language as a second language. The Program provides annual funding of \$16 million for the 86 Aboriginal languages spoken in Canada (UNESCO 2009) through the Aboriginal Languages Initiative; Northern Aboriginal Broadcasting; and the Territorial Language Accords.

58. The Government of Canada did not proceed with the recommendations of the Task Force on Aboriginal Languages and Cultures (2005) addressing Aboriginal languages since Aboriginal stakeholders could not agree on implementation. It did renew the Aboriginal Languages Initiative in 2010, funding over 200 language projects annually. Cultural Connections for Aboriginal Youth was renewed in 2009, targeting urban First Nations, Inuit and Métis youth aged 10–24 years. It reconnects them with their cultural heritage and languages and strengthens their sense of identity. Annually, over 200 projects in 150 communities reach 60,000 Aboriginal youth.

## **Part II**

### **Measures adopted by the governments of the provinces**

#### **Newfoundland and Labrador**

##### **Article 2: Equal rights and effective remedies**

59. On June 24, 2010, Royal assent was given to the Province of Newfoundland and Labrador's Human Rights Act, 2010 (SNL2010 c.H-13.1), which replaces the previous Human Rights Code. The Act adds new protected grounds upon which human rights complaints may be taken and increases the efficiency of the complaints process and the operations of the Human Rights Commission. Adoption of the Act was preceded by an extensive public consultation process that included submissions from individuals, non-governmental organizations, the legal community, municipalities and labour groups. The Act modernizes provincial human rights legislation and includes the following amendments, among others:

- amends the definition of “disability”, to ensure consistency with other jurisdictions;
- reinserts a preamble to assert the fundamental principles of the legislation;
- establishes disfigurement as a prohibited ground in its own right;
- prohibits discrimination in the making of a contract upon any of the prohibited grounds;
- removes the lower age limit of 19 years for employees who wish to file a complaint of discrimination in employment on the basis of a prohibited ground. The upper age limit of 65 years was removed in 2006;
- clarifies that discrimination on the basis of pregnancy is prohibited;
- prohibits discrimination in employment on the basis of a criminal conviction where the conviction was for a matter unrelated to employment;
- broadens the definition of marital status to include a variety of living arrangements;
- confirms the authority of the Supreme Court, Trial Division, to review dismissals of complaints by the Executive Director of the Human Rights Commission; and
- improves the appointment process for human rights commissioners and adjudicators.

60. In addition to legislative amendments, the budget for the operations of the Human Rights Commission has been enhanced and the hiring of human rights professionals has increased. Over the 2008–2009 and 2009–2010 fiscal years, the Commission’s budget has approximately tripled, from over \$400,000 to nearly \$1.3 million. The staff complement has increased in 2006 from 4 to 11 individuals, 5 of whom are legal practitioners with human rights backgrounds. The enhanced budget and staffing have resulted in improvements to the investigation and resolution of human rights complaints.

#### **Article 6: Right to life**

61. The province’s Suicide and Detrimental Lifestyles Grant Program provides up to a maximum of \$20,000 per project to assist Aboriginal youth in combating drug and alcohol abuse, delinquency and other detrimental lifestyle issues. The grants may cover expenses such as salaries, administration costs, capital materials, printing and supplies. The province is reviewing the projects funded to date, particularly their impact on remediating the issues noted, but is not yet in a position to assess improvements.

#### **Article 9: Right to liberty and security of the person**

62. In August 2009, the provincial government released the document *Secure Foundations*,<sup>34</sup> which sets out a long-term vision for social housing intended to improve the living circumstances of low-income households and create healthier communities. In Budget 2010, the provincial government invested \$27 million for housing infrastructure projects, affordable housing units and maintenance funding. The Newfoundland and Labrador Housing Corporation is a Crown agency which serves as the province’s largest landlord, with approximately 5,511 non-profit social housing dwellings throughout the province. Among the projects undertaken in fiscal year 2010–2011 are the following:

- \$197,000 for exterior painting of 102 social housing homes in three St. John’s neighbourhoods;

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<sup>34</sup> <http://www.nlhc.nf.ca/SocialHsingPlan/report.pdf>.



- \$240,000 in renovation and retrofit funding for eight social housing units, including repairs totalling \$112,000 for four units in Happy Valley–Goose Bay and \$128,000 for four units in Port Hope Simpson;
- In May 2010, \$1.7 million was announced for renovation and retrofit work on 125 Newfoundland and Labrador Housing Corporation units for the Labrador communities of Cartwright, Happy Valley–Goose Bay and Labrador City;
- In cooperation with the Government of Canada, a further \$3 million was dedicated to the renovation and retrofit of 381 Newfoundland and Labrador Housing Corporation units based in a number of communities in the central area of the island portion of the province, particularly in the communities of Gander, Bishop's Falls and Grand Falls–Windsor.

63. Since 2009, the provincial and federal governments have contributed equally to an investment of approximately \$58 million to create new and maintain existing social housing under the Canada–Newfoundland and Labrador Affordable Housing Program Agreement.

## Prince Edward Island

### Article 2: Equal rights and effective remedies

64. The following table provides caseload statistics of the Prince Edward Island (PEI) Human Rights Commission and Internet links to its last four annual reports:

<i>Fiscal Year</i>	<i>Active Complaints</i>	<i>Unresolved or carried over from previous years</i>	<i>New Complaints</i>	<i>Panel Hearing</i>	<i>Withdrawn</i>	<i>Dismissed or discontinued</i>	<i>Settled</i>	<i>Not within Commission's jurisdiction</i>	<i>Unresolved – carried into next year</i>
05–06	112	60	52	3	10	39	18	7	35
06–07	99	38	61	6	7	34	14	3	35
07–08	107	35	60	5	11	12	12	4	67
08–09	107	67	40	7	7	32	9	2	50

1. ([www.gov.pe.ca/photos/original/hrc\\_annual05-06.pdf](http://www.gov.pe.ca/photos/original/hrc_annual05-06.pdf))
2. ([www.gov.pe.ca/photos/original/hrc\\_06-07annual.pdf](http://www.gov.pe.ca/photos/original/hrc_06-07annual.pdf))
3. ([www.gov.pe.ca/photos/original/hrc\\_ann\\_07-08.pdf](http://www.gov.pe.ca/photos/original/hrc_ann_07-08.pdf))
4. ([www.gov.pe.ca/photos/original/hrc\\_ann\\_08-09.pdf](http://www.gov.pe.ca/photos/original/hrc_ann_08-09.pdf))

65. A complaint is decided in approximately nine months from the time it has been filed to the point of resolution. Complaints which require a public hearing usually take longer. The complaint process is found online at:  
[www.gov.pe.ca/humanrights/index.php3?number=1005903&lang=E](http://www.gov.pe.ca/humanrights/index.php3?number=1005903&lang=E).

### New Office of the Police Commissioner

66. The new Police Act, which came into effect in March 2010, provides that complaints of misconduct by municipal police officers are initially dealt with by their police chief, whose decision on a complaint may be reviewed by the new Office of the Police

Commissioner. Complaints against police chiefs proceed directly to the Office of the Police Commissioner. The following online sites may be consulted: [www.gov.pe.ca/law/statutes/pdf/p-11\\_1.pdf](http://www.gov.pe.ca/law/statutes/pdf/p-11_1.pdf) and [policecommissioner.pe.ca](http://policecommissioner.pe.ca).

#### **Article 10: Treatment of persons deprived of liberty**

67. Occasionally, a youth is held in the adult Provincial Correctional Centre in overnight lockup, for up to 24 hours, typically due to charges of being drunk and disorderly in public. The total number of days per year that young persons were held in an adult facility in PEI is as follows:

April 2006 to March 2007: Males – 53 days      Females – 18 days

April 2007 to March 2008: Males – 44 days      Females – 25 days

April 2008 to March 2009: Males – 81 days      Females – 31 days.

#### **Article 19: Freedom of opinion and expression**

68. Under the Freedom of Information and Protection of Privacy Act, the head of a public body must respond to an access to information request within 30 days after receiving it. The time limit may be extended up to 30 days if not enough detail is given to identify the requested record; if a large number of records is requested or must be searched; if consultation with another public body or a third party is required; or if a third party asks for a review. Statistics on the time taken to respond to access to information requests are not available. The Act is found online at: [www.gov.pe.ca/law/statutes/pdf/f-15\\_01.pdf](http://www.gov.pe.ca/law/statutes/pdf/f-15_01.pdf).

69. The Act provides that an employee of a public body may disclose information to the Information and Privacy Commissioner that the employee is required to keep confidential and that the employee, acting in good faith, believes relates to a risk or significant harm to the environment or to the health or safety of the public, or information which is clearly in the public interest. In such instances, an employee is not liable to prosecution and is protected against reprisals from the employer.

70. Persons are also protected from reprisals for reporting suspected child abuse under the Child Protection Act or for refusing to perform work that is likely to endanger a worker's health or safety or the health or safety of another worker, under the Occupational Health and Safety Act. The acts are available online at: [www.gov.pe.ca/law/statutes/pdf/c-05\\_1.pdf](http://www.gov.pe.ca/law/statutes/pdf/c-05_1.pdf) and [www.gov.pe.ca/law/statutes/pdf/o-01\\_01.pdf](http://www.gov.pe.ca/law/statutes/pdf/o-01_01.pdf).

#### **Article 23: Equality of spouses as to marriage**

71. The Domestic Relations Act legalizing same-sex marriage was assented to in May 2008. It amended 29 bills including: the Adoption Act, the Employment Standards Act, the Family Law Act, the Marriage Act and the Victims of Family Violence Act by, for example, substituting "parent" for "mother or father", "spouse" for "wife or husband" "surviving spouse" for "widow or widower" and "two persons" for "a man and a woman". The Act is available at: [www.assembly.pe.ca/bills/pdf\\_chapter/63/2/chapter-8.pdf](http://www.assembly.pe.ca/bills/pdf_chapter/63/2/chapter-8.pdf).

#### **Article 25: Civic responsibility and political participation**

72. In 2005, the Commission on PEI's Electoral Future recommended using a Mixed Member Proportional Representation (MMPR) system to replace to the First Past the Post system of political representation. MMPR proposed a two-ballot system of voting: a first ballot vote for a preferred candidate in the province's 17 electoral districts and a second ballot vote for party of preference in 10 at-large, provincial seats. Any party that gained five percent or more of the popular vote on the second ballot would be eligible to elect party list members. The MMPR proposal was defeated in the November 2005 plebiscite by a two to

one majority. For more information, please consult the following websites:  
[www.electionspei.ca/electoralfuture/finalreport.pdf](http://www.electionspei.ca/electoralfuture/finalreport.pdf) and  
[www2.parl.gc.ca/Sites/LOP/Infoparl/english/issue.asp?param=173&art=1176](http://www2.parl.gc.ca/Sites/LOP/Infoparl/english/issue.asp?param=173&art=1176).

## Nova Scotia

### Article 2: Equal rights and effective remedies

73. The data on the average disposition time of complaints to the Human Rights Commission in 2008 and 2009 are more reliable than in previous years due to changes in the Commission's ability to capture case management data electronically. The increase in average disposition time for 2009 was due to staff turnover and absences as well as the resolution of older cases.

Nova Scotia Human Rights Commission Caseloads and Time to Close Complaints<sup>35</sup>

<i>Time Period</i>	<i>Intake Questionnaire Received</i>	<i>Average Disposition Time</i>
May 2005 – April 2006	321	155 days
May 2006 – April 2007	315	210 days
May 2007 – April 2008	309	396 days
May 2008 – April 2009	293	375 days
May 2009 – Dec. 2009	172	508 days

74. The Commission promotes mediation and early resolution of complaints as the most effective means of resolving matters. Its case management process has four stages: inquiry, intake, mediation and investigation, with a decision made at each stage as to whether or not to close a file. Decisions are made in accordance with the law and procedural fairness and may be judicially reviewed by the Supreme Court of Nova Scotia.

75. After assisting a complainant in completing the complaint form, a human rights officer investigates the allegations and gathers all relevant evidence. The investigation report, including the officer's recommendations as to whether the complaint should be referred to a Board of Inquiry, is sent to all parties for their comments. The Commissioners consider the investigation report as well as any comments by the parties and decide, based on case law from the Supreme Court of Canada and on the public interest, whether to refer the matter to a Board of Inquiry. The decision is communicated to the parties in writing and is subject to judicial review if a party is dissatisfied with the ruling.

76. In June 2008, the province's Human Rights Act was amended to allow the Commission or its Director to dismiss a complaint if:

- (a) the best interests of the complainant are not be served by pursuing the complaint;
- (b) the complaint is without merit;

<sup>35</sup> For the purposes of this data, the average disposition time is calculated from the time when the Commission receives an intake questionnaire. Although this questionnaire is not the complaint as defined by the Human Rights Act, it is the document that engages the analysis of the human rights issues. The date it is received is therefore the most appropriate start time for determining average disposition time.

- (c) the complaint raises no significant issues of discrimination;
- (d) the substance of the complaint has been appropriately dealt with pursuant to another Act or proceeding;
- (e) the complaint is made in bad faith or for improper motives or is frivolous or vexatious;
- (f) there is no reasonable likelihood that an investigation will reveal evidence of a contravention of the Act; or
- (g) the complaint arises out of circumstances for which an exemption order has been made pursuant to Section 9.

77. Decisions made by the Commission or the Director are final, and no internal appeal mechanism is provided. Judicial review can be sought if a party disagrees with a decision.

#### **Article 9: Right to liberty and security of the person**

78. In November 2006, the province's Support for Persons with Disabilities Program ([www.gov.ns.ca/coms/disabilities/index.html](http://www.gov.ns.ca/coms/disabilities/index.html)) reviewed the services and supports it provides to 4,800 Nova Scotians with disabilities, with 400 more on a waiting list. The June 2008 Report of Residential Services, with recommendations, is available online ([www.gov.ns.ca/coms/disabilities/documents/Residential\\_Review\\_Report-June2008.pdf](http://www.gov.ns.ca/coms/disabilities/documents/Residential_Review_Report-June2008.pdf)).

#### **Article 17: Right to privacy**

79. Launched in October 2005, the Primary Health Care Information Management system has received \$4 million to implement the first province-wide Electronic Medical Record system, which seeks to improve the quality of care and access to treatment that Nova Scotians receive. There are 88 clinics and 801 users registered, representing 32 percent of the province's primary health care physicians that have enrolled in the program. Thirty-two of the 88 clinics already receive delivery of lab and diagnostic imaging results. Concerns over the privacy of the records were examined, in part, in the February 2008 Department of Health eResults Review, which is available at: [www.gov.ns.ca/health/eResults/Nova\\_Scotia\\_Department\\_Health\\_eResults\\_Findings.pdf](http://www.gov.ns.ca/health/eResults/Nova_Scotia_Department_Health_eResults_Findings.pdf)

#### **Article 25: Civic responsibility and political participation**

80. The Civil Service Disclosure of Wrongdoing Regulations were developed under the Civil Service Act and are applicable to all civil servants. The Disclosure of Wrongdoing Policy expands the application of the Regulations to include adult correction workers, highway workers and other direct employees of government including casual and contract workers. Both the Policy and the Regulations became effective in September 2004. The 2008–2009 Annual Report on the policy and regulations is available at: [www.gov.ns.ca/psc/v2/pdf/about/policies/disclosureWrongdoing/annualReport2008-09.pdf](http://www.gov.ns.ca/psc/v2/pdf/about/policies/disclosureWrongdoing/annualReport2008-09.pdf).

### **New Brunswick**

#### **Article 2: Equal rights and effective remedies**

81. In January 2005, the New Brunswick Human Rights Act was amended to add two new protected grounds: Political Belief or Activity, and Social Condition. The New Brunswick Human Rights Commission (NBHRC) has developed guidelines to inform citizens on these rights. They are available online at: [www.gnb.ca/hrc-cdp/e/g/Guideline-Political-Belief-Activity-Discrimination-New-Brunswick.pdf](http://www.gnb.ca/hrc-cdp/e/g/Guideline-Political-Belief-Activity-Discrimination-New-Brunswick.pdf) and [www.gnb.ca/hrc-cdp/e/g/Guideline-Social-Condition-Discrimination-New-Brunswick.pdf](http://www.gnb.ca/hrc-cdp/e/g/Guideline-Social-Condition-Discrimination-New-Brunswick.pdf).

82. In 2005, the NBHRC commenced modifying its complaint compliance process, resulting in improvements in disposition times from 36 months to 11 months for either closure of a complaint or referral to a Board of Inquiry. Some notable changes include: a centralized intake process; a formal pre-complaint mediation process; an electronic tracking system; a formal triage process; utilization of the delegation authority (director dismissal); a formal mediation process with guidelines and deadlines; a formal investigation process with imposed deadlines and manager of investigations; and staff investigation reports with recommendations to Commission members regarding the disposition of a complaint based on an analysis of the information gathered (increased transparency).

83. Caseloads for the New Brunswick Human Rights Commission are as follows:

<i>Fiscal year</i>	<i>New complaints</i>	<i>Complaints closed (settled)</i>	<i>Complaints referred *</i>	<i>Complaints still open</i>
2005–2006	205	248 (95)	28	218
2006–2007	174	198 (98)	9	194
2007–2008	197	167 (79)	5	224
2008–2009	196	204 (81)	2	361

\* Under the Human Rights Act, if the Commission is unable to effect a settlement, it may recommend that the matter be adjudicated by a public Board of Inquiry appointed by the Minister responsible for the Commission.

#### **Article 17: Right to privacy**

84. The Personal Health Information Privacy and Access Act, which came into force in September 2010, protects the privacy and the confidentiality of personal health information and ensures that information is available to provide health care services and to monitor, evaluate and improve health care in New Brunswick.

#### **Article 23: Equality of spouses as to marriage**

85. Prior to the legalization of same-sex marriages in 2005, the NBHRC had received several complaints alleging discrimination on the basis of sexual orientation against both employers and service providers with respect to spousal rights, including being named as one's next of kin for hospital services. These complaints were resolved and resulted in policy changes. One complaint addressing the issue of same-sex adoption was heard by a Board of Inquiry, whose decision led to changes to the relevant legislation permitting same-sex adoptions without biological parents having to relinquish their parental rights.

86. Subsequent to the legalization of same-sex marriages, the NBHRC received one complaint in which a married male-to-female transgendered individual alleged discrimination based on marital status when she was advised that she had to divorce her spouse of 25 years prior to her being able to change her sex status on her birth certificate from male to female. The relevant legislation was amended to remove this restriction.

#### **Article 24: Rights of the child**

87. In January 2009, the Government of New Brunswick established the Family Group Conference Services, a family-centered decision-making process, which brings together family members, a social worker, and other service providers to develop a plan to ensure the safety of a child in need of protection. After a conference, a copy of the plan for the care of the child is given to all participants, who put the plan into action and share responsibility for monitoring its effectiveness and identifying challenges that may arise.

88. Family Enhancement Services (FES) also came into effect in January 2009. Its services are provided to any family with a child under the age of 16 (or a disabled child aged 19 and under) whose security and development are in danger at home (in accordance with the Family Services Act). FES are intended to enhance family functioning, maintain the child's security or development, and support the family during development and implementation of a plan for the care of the child.

89. Child Protection Mediation Services, launched in December 2008, is a voluntary and confidential process of resolving disputes in which child protection social workers and the family work together with the assistance of a trained impartial third party (a Child Protection Mediator), to reach a mutually acceptable agreement. Available to all New Brunswick families with ongoing child protection involvement, the service is provided if at least one of the issues in dispute between the participants is amenable to mediation.

## Quebec

### Article 21: Right of peaceful assembly

90. In July 2008, the Quebec government reviewed its Manual of Police Practices, including the practice of "Crowd Control", which sets out guiding principles and practices for interventions during demonstrations. The practice clearly states that "All individuals have the right to express themselves and to demonstrate peacefully." It outlines the role of police during demonstrations and riots based on the level of service a police force is to provide under the Police Act. The intervention phases are set out in accordance with the Quebec police intervention model for crowd control depending on the crowd's attitude and behaviour.

91. The Service de police de la Ville de Montréal (SPVM) follows the Quebec police intervention model for crowd control, which sets out, depending on the situation, various phases of intervention. The SPVM has been reviewing its practices during demonstrations since 2005. Statistics indicate that nearly all 100 demonstrations that the SPVM has managed every year, between 2006 and 2010, were without incident.

92. In August 2007, the Superior Court authorized a class action suit against the City of Montréal for the arrest of demonstrators during a demonstration in 2002. The applicants then withdrew their suit and the class action ended.

### Article 22: Rights of the child

93. In April 2007, an investigation report from the *Commission des droits de la personne et des droits de la jeunesse* (CDPDJ) identified deficiencies in the application of the Youth Protection Act in Nunavik, the northern third of the province. The report is available at: [www.cdpdj.qc.ca/en/publications/rapport\\_Nunavik\\_anglais.pdf](http://www.cdpdj.qc.ca/en/publications/rapport_Nunavik_anglais.pdf).

94. At the Katimajjiit Forum in August 2007, the Quebec government committed to implementing the following measures:

- With regard to youth protection, increasing recurring budgets to hire 25 caseworkers for troubled youth, enhancing front-line social services, and creating a regional office for rehabilitating youth and training caseworkers. An employee assistance program for youth protection staff was developed;
- A special program for involving 14 Nunavik communities in proposing solutions to youth violence by providing support to each community's healthcare committee;
- A program for treating young drug addicts;
- A budget increase for the three shelters for abused women and children in Nunavik;

- The start of regional consultations regarding traditional adoption; and
- The construction of 54 houses in Nunavik for youth protection and front-line staff.

95. The 2009–2016 Health and Social Service Delivery Agreement provides for a budget increase of more than 60 percent for Nunavik, reaching \$167.5 million annually and capitalizable investments of \$280 million for the duration of the Agreement.

96. In a September 2010 follow-up report, the CDPDJ acknowledged Quebec's social services network, which was able to lend assistance to Nunavik, as it was faced with serious service interruptions. Recognizing the extent of the organizational changes that occurred in recent years, the report points out the weakness and uncertainty of the results. The follow-up report is available (in French only) at: [www.cdpcj.qc.ca/publications/Rapport\\_suivi\\_Nunavik\\_2010.pdf](http://www.cdpcj.qc.ca/publications/Rapport_suivi_Nunavik_2010.pdf).

#### **Article 25: Civic responsibility and political participation**

97. In April 2009, the Quebec National Assembly enacted parliamentary reform with four objectives: to bring the National Assembly closer to the people; to promote member autonomy and initiative; to increase member effectiveness; and to reaffirm the democratic balance in parliamentary proceedings. The actions taken include several improvements with regard to the right to petition; the use of video conferencing to promote the participation of citizens in remote regions during parliamentary committees; the election of the Speaker of the National Assembly by secret ballot; the adoption by members of a code of ethics and conduct and the appointment of an ethics commissioner; and the opportunity for the Committee on the National Assembly to hold public meetings for selecting individuals to be appointed by the National Assembly.

#### **Article 27: Religious, cultural and linguistic rights**

98. The Agreement in Principle of a General Nature between the Mamuitun and Nutashkuan Innu First Nations and the governments of Quebec and Canada, signed in March 2004, proposes an approach to achieve a certain level of self-government as well as a negotiated land claim settlement. The Agreement acknowledges and confirms the Aboriginal rights of the signatory nations while providing that the effects and application of these rights other than those set out in an intervening treaty will be suspended once this treaty comes into force. The government is prepared to begin negotiations with all other Aboriginal communities that express interest.

## **Ontario**

#### **Article 2: Equal rights and effective remedies**

99. Effective June 30, 2008, Ontario's human rights system was transformed. Complaints are no longer filed with the Ontario Human Rights Commission and are now filed directly with the Human Rights Tribunal of Ontario (HRT). As part of the HRT's complaint process, mediation assistance is provided by an adjudicator. Failing a settlement, a hearing is scheduled and parties are required to exchange relevant documents with each other. An adjudicator may produce a Case Assessment Direction to assist the parties in preparing for the hearing.

100. The Human Rights Code provides the HRT with broad powers to award remedies including special damages (compensation for money lost or expenses incurred due to discrimination) and general damages (compensation for the injury to the person's dignity, feelings and self-respect resulting from discrimination). The former \$10,000 monetary compensation limit was eliminated. The HRT may also order public interest remedies to

prevent similar discrimination in the future. Of 1,938 new cases closed between April 2009 and March 2010, up to 95 percent were resolved within one year of the acceptance date (average disposition time: 183 days; median: 171 days), a significant improvement over the previous system.

101. Ontario's Human Rights Legal Support Centre, which opened in June 2008, provides free legal information, advice and assistance to individuals who believe they have experienced discrimination. From April 2009 to March 2010, the Centre responded to 24,905 inquiries (telephone and in-person) from the public and provided summary legal assistance in respect of 10,700 possible claims. In 2009–2010, the Centre negotiated the settlement of 258 human rights claims, 30 percent of which were achieved prior to the filing of a complaint with the HRT.

102. The Office of the Independent Police Review Director (OIPRD), an independent oversight agency staffed by civilians, is responsible for addressing public complaints about police in Ontario. Its creation was recommended by former Ontario Superior Court Chief Justice Patrick LeSage in his 2005 report on the police complaints system in Ontario. The OIPRD has been operating since the Independent Police Review Act, 2007, which amended the Police Services Act, came into force in October 2009. The complaints process was designed after consultation with stakeholders and the community. If a complaint requires an investigation, the OIPRD determines whether it, the Chief of Police or another police service should conduct it. The subsequent investigation report is then sent to the Chief of Police for disposition.

#### **Article 9: Right to liberty and security of the person**

103. Ontario recognizes the importance of stable housing for persons with a serious mental illness, which reduces emergency room visits and hospitalization, as well as contact with the criminal justice system. The province administers a portfolio of about 8,400 mental health supportive housing units, including: 3,600 units for persons with a serious mental illness who are homeless or at risk of becoming homeless; 1,000 supportive housing units under the Service Enhancements to Keep Persons with Mental Illness out of the Criminal Justice Correctional Systems Initiative; and 1,250 units under the Mental Health Supportive Housing 1250 Initiative.

104. Supportive housing for persons with a serious mental illness includes a rent supplement, as well as a support-to-housing worker (at a ratio of approximately one worker to eight clients). Clients access all mental health treatment, support and services, including supportive housing, on a voluntary basis. Ontario does not keep people in detention because of a lack of supportive housing.

#### **Article 10: Treatment of persons deprived of liberty**

105. As of March 2009, youth are no longer held in adult correctional facilities. Young offenders were transferred to dedicated secure custody detention facilities that are designed to meet the unique needs of youth, as close to home as possible, as part of Ontario's Transformation of Youth Justice initiative. The initiative seeks to reposition youth justice from a custody-focused system to one that offers a broad range of evidence-based community and custodial programs and services.

106. To divert youth from the justice system and to reduce reliance on the use of custody, the Youth Mental Health Court Worker Program and the Intensive Support and Supervision Program provide clinical services that target specific needs or underlying mental health issues of young offenders. The latter program is designed for youth who would benefit from an extended period of intensive, highly structured and closely supervised programming in the community.



**Article 14: Fair trial rights**

107. In September 2009, the Ontario government announced an increase of \$150 million in funding for legal aid, over four years. The largest funding increase in the history of Legal Aid Ontario, it will enable clinics to better serve vulnerable people and provide greater resources to legal aid lawyers and their clients.

**Article 19: Freedom of opinion and expression**

108. Under the Freedom of Information and Protection of Privacy Act, the Municipal Freedom of Information and Protection of Privacy Act and the Personal Health Information Protection Act, 2004, individuals have a right to access and request information held by government organizations which are required to respond within 30 days. Under some circumstances, government organizations are permitted an extension of the 30-day standard.

Response Rate Compliance of Provincial and Municipal Institutions

	2005	2006	2007	2008	2009
<b>Provincial Institutions</b>					
30-day compliance rate	80.1%	73.5%	84.8%	85%	81%
Extended compliance rate	86.4%	86.5%	92%	91.6%	89.2%
<b>Municipal Institutions</b>					
30-day compliance rate	83.9%	86.4%	86.9%	85.6%	85.6%
Extended compliance rate	N/A	90.7%	91.1%	88.5%	90.4%

**Manitoba****Article 2: Equal rights and effective remedies**

109. From 2005 to 2009, the average length of time the Manitoba Human Rights Commission took to investigate a human rights complaint was 10.2 months. Annual averages ranged from 9.2 to 11.28 months. Complaints averaged 308 per year, with little annual variation.

110. The Commission's Board is required by statute to dismiss complaints that are either frivolous or vexatious; outside its jurisdiction; without sufficient evidence; or, in the case of referrals to adjudication, that would not advance the objectives of The Human Rights Code. The Board must also terminate proceedings if, after an investigation, the complainant rejects a settlement offer from the respondent that the Commission considers to be reasonable. From 2005 to 2009, 39 percent of complaints annually were dismissed, on average, on one of these grounds.

111. Manitoba's Law Enforcement Review Agency is an independent, non-police agency that processes complaints from the public about policing. In 2009, it received 11 complaints which contained allegations of differential treatment, without reasonable cause, on the basis of personal characteristics protected by The Human Rights Code. This constitutes a reduction of 21 percent from 2008 and of 42 percent from the five-year annual average.

**Article 10: Treatment of persons deprived of liberty**

112. Since the Manitoba Ombudsman's 2007 Annual Report, the Government of Manitoba has adopted the following measures:

- a Homeless Strategy focusing, in part, on mental health related needs (2009);
- a pilot protocol (made permanent in 2009) that helps correctional centres identify persons with developmental disabilities;
- a screening tool (for youth in 2009 and for adults in 2010) allowing the justice system to count admissions with significant mental health issues;
- a committee with a mandate to create mental health courts (2009); and
- tracking of the incarceration in provincial facilities of prior recipients of services for persons with developmental disabilities (2009).

**Incarceration of youth**

113. The following are the only two circumstances in which a person under 18 years of age may be incarcerated with adults: a) a young offender who turns 18 while in detention will remain in that youth facility for the remainder of the sentence; and b) a young offender who is tried and sentenced as an adult. The latter occurs only in extremely rare cases. The charge must be serious (for instance, murder) and a transfer appropriate in all the circumstances. No data is kept on the rate of these practices.

**Article 17: Right to privacy**

114. Significant amendments to The Personal Health Information Act were passed in 2008 and came into force on May 1, 2010 and January 1, 2011. They are intended to ensure that evolving policies and procedures related to the public health care system's Electronic Health Records initiative comply with the Act and are transparent to the public. The changes clarify who has the authority to disclose information to a computerized health information network; require trustees to give written notice of the right to examine and receive a copy of one's personal health information; set out the elements of consent for use and disclosure; and specify additional persons who can act on behalf of an incapacitated individual under the legislation. They further enable the Ombudsman to refer matters to a Privacy Adjudicator who has the authority to issue binding orders. The Act may be found online at: [web2.gov.mb.ca/laws/statutes/ccsm/p033-5e.php](http://web2.gov.mb.ca/laws/statutes/ccsm/p033-5e.php).

**Article 19: Freedom of opinion and expression**

115. In 2009, the Government of Manitoba responded to 70 percent of access-to-information requests within 30 days, 17 percent within 60 days and 13 percent in more than 60 days. These data represent an overall decrease in response times from the previous year and from the five-year average.

**Article 23: Equality of spouses as to marriage**

116. The Government of Manitoba registered 445 same-sex marriages between September 2004 (the date on which Manitoba courts began to recognize same-sex marriages) and August 2010.

**Article 24: Rights of the child**

117. Recognizing the right of First Nations and Métis peoples to child and family services that respect their unique status, culture and linguistic heritage, the Government of

Manitoba has transferred to them province-wide control over the delivery of these services for their respective community. Of 22 child and family services agencies in Manitoba, 17 are managed by First Nations and Métis peoples through Authorities under their control. In 2009–2010, the 22 agencies received \$323.5 million in provincial funding through their Authorities, a 12 percent increase from the previous year and 28 percent from 2007–2008.

#### **Article 25: Civic responsibility and political participation**

118. The Public Interest Disclosure (Whistleblower Protection) Act was proclaimed in April 2007. It facilitates disclosure and investigation of significant and serious wrongdoing in the public service and protects those who make disclosures under the Act from reprisals. It is available online at: [web2.gov.mb.ca/laws/statutes/ccsm/p217e.php](http://web2.gov.mb.ca/laws/statutes/ccsm/p217e.php).

### **Saskatchewan**

#### **Article 2: Equal rights and effective remedies**

119. Under the Saskatchewan Human Rights Code, the Chief Commissioner of the Saskatchewan Human Rights Commission may request the appointment of a human rights tribunal to conduct an inquiry, or may dismiss a complaint if one of seven provisions applies (e.g. the complaint is without merit, has been appropriately dealt with pursuant to another proceeding, is frivolous or vexatious). If the complaint is dismissed, the complainant may request a human rights tribunal inquiry. A tribunal panel member would then review the Chief Commissioner's decision and decide whether to order a hearing.

120. The following charts indicate the number of complaints processed by the Saskatchewan Human Rights Commission and the average time frame for processing them. The time frame begins with the filing of a complaint and ends with settlement through mediation, dismissal of the complaint or referral of the complaint to the Saskatchewan Human Rights Tribunal for a hearing.

Number of Human Rights Complaints Processed

<i>Fiscal Year</i>	<i>Complaints brought forward from previous year</i>	<i>New Complaints</i>	<i>Complaints Concluded</i>	<i>Complaints carried forward to next year</i>
2009–2010	240	173	198	214
2008–2009	251	191	202	240
2007–2008	220	208	177	251
2006–2007	242	175	193	220
2005–2006	288	195	255	242

Average Time Frame for Processing of Human Rights Complaints

<i>Fiscal Year</i>	<i>Average Time Frame (months)</i>
2009–2010	16.55*
2008–2009	18.46

<i>Fiscal Year</i>	<i>Average Time Frame (months)</i>
2007–2008	15.01
2006–2007	19.13
2005–2006	20.15

\* This figure represents a weighted average since, in this time period, the resolution of cases through mediation/settlement has surpassed that of investigation by a significant margin.

121. Saskatchewan has an independent Public Complaints Commission, for public complaints against municipal police officers (see Canada's seventeenth and eighteenth periodic reports under the International Convention on the Elimination of All Forms of Racial Discrimination (CERD/C/CAN/18, para. 257)). In addition, the Saskatchewan Police Commission establishes regulations for recruitment and reporting; basic recruit and in-service training; auditing police services; and disciplinary matters, for which it acts as the final appeal body.

#### **Article 19: Freedom of opinion and expression**

122. Under The Freedom of Information and Protection of Privacy Act, there is a 30-day period for responding to requests for access to information, which can be extended by an additional 30 days in limited circumstances. Response times are reported in annual reports available at: [www.justice.gov.sk.ca/annual-reports](http://www.justice.gov.sk.ca/annual-reports). From 2005–2006 to 2009–2010, provincial government institutions responded to access requests, on average, within 30 calendar days, 80 percent of the time. When combined with the 30-day allowable extension, this figure rose to 96 percent.

#### **Processing Times for Access to Information Requests**

<i>Fiscal Year</i>	<i>0 to 30 Days</i>	<i>31 to 60 Days</i>	<i>Over 60 Days</i>
2009–2010	78%	16%	6%
2008–2009	81%	14%	5%
2007–2008	85%	14%	1%
2006–2007	77%	18%	5%
2005–2006	80%	15%	5%

#### **Article 23: Equality of spouses as to marriage**

123. In 2004, the Court of Queen's Bench held that same-sex marriage is lawful in Saskatchewan. The Province directed civil marriage commissioners to provide civil marriage ceremonies to same-sex couples, without discrimination. A small number objected and challenged this direction in legal proceedings. The Government successfully defended its position before the Saskatchewan Human Rights Tribunal, although some legal proceedings are still ongoing. This direction does not apply to religious officials, who have the constitutionally-protected right to decide whether to perform religious marriage ceremonies for same-sex couples.

### **Article 24: Rights of the child**

124. The Government of Saskatchewan endorses Jordan’s Principle<sup>36</sup>, which holds that no First Nations child should be denied health services because of a jurisdictional dispute. This requires collaboration to develop effective practices. An interim agreement has been reached with the Government of Canada and First Nations partners to review cases to ensure that every child receives services regardless of residence.

125. The Saskatchewan Youth in Care and Custody Network is a non-profit organization that advocates for and supports youth, aged 14–24, in or from foster care or young offender systems. It is mandated to help set up local “networks” throughout Saskatchewan and develop strategies that empower youth.

## **Alberta**

### **Article 2: Equal rights and effective remedies**

126. In 2007–2008, the Alberta Human Rights Commission opened 680 complaints and closed 733 complaints. In 2008–2009, the Commission opened 799 complaints and closed 668 complaints. The average time taken to close files was 468 days and 436 days in each fiscal year, respectively. These figures include the time required for tribunal hearings, where a complaint has been referred to a tribunal.

127. The Alberta Human Rights Act provides the Director of the Commission with the discretion to refuse to send a matter to a tribunal. Under section 22 (1) of the Act, “...the director may at any time (a) dismiss a complaint if the director considers that the complaint is without merit, (b) discontinue the proceedings if the director is of the opinion that the complainant has refused to accept a proposed settlement that is fair and reasonable...” As of October 2009, where a complaint is one that could or should more appropriately be dealt with in another forum or under another act, or has already been dealt with or is scheduled to be heard in another forum or under another act, the Director may refuse to accept the complaint, or may accept the complaint pending the outcome of the matter in the other forum or under the other act.

The Alberta Human Rights Act is available online at:

[www.qp.alberta.ca/574.cfm?page=A25P5.cfm&leg\\_type=Acts&isbncIn=9780779744060](http://www.qp.alberta.ca/574.cfm?page=A25P5.cfm&leg_type=Acts&isbncIn=9780779744060).

### **Article 17: Right to privacy**

128. The Personal Information Protection Amendment Act (Bill 54) was proclaimed on November 26, 2009 and came into force on May 1, 2010. The amendments include:

- requiring significant security breaches to be reported to the Information and Privacy Commissioner as soon as possible;
- requiring that Albertans be notified if their personal information is processed outside of Canada;
- ensuring consistent standards for the handling of employees’ personal information; and
- streamlining the Information and Privacy Commissioner’s processes.

<sup>36</sup> See: <http://www.aadnc-aandc.gc.ca/eng/1334329827982/1334329861879>.

The Act is available online at:  
[www.assembly.ab.ca/ISYS/LADDAR\\_files/docs/bills/bill/legislature\\_27/session\\_2/20090210\\_bill-054.pdf](http://www.assembly.ab.ca/ISYS/LADDAR_files/docs/bills/bill/legislature_27/session_2/20090210_bill-054.pdf).

#### **Article 19: Freedom of opinion and expression**

129. Alberta collects data on response times to requests for information under the Freedom of Information and Protection of Privacy Act. The data distinguish between requests made to provincial government bodies (PGB), such as departments, agencies, boards and commissions, and requests made to local public bodies (LPB). In 2007–2008, 87.1 percent of requests made to PGBs were completed in 30 days or less, 7.8 percent were completed in 30 to 60 days and 5.1 percent of requests were completed in over 60 days. The completion times for requests made to LPBs within these timeframes are 86.1 percent, 10.2 percent and 3.6 percent, respectively.

130. In 2008–2009, 87.3 percent of requests made to PGBs were completed in 30 days or less, 8.6 percent were completed in 30 to 60 days and 4.1 percent of requests were completed in over 60 days. The completion times for requests made to LPBs within these timeframes are 88.3 percent, 7 percent and 4.7 percent, respectively.

131. In 2006, the Freedom of Information and Protection of Privacy Act was amended to:

- prevent unauthorized disclosure of personal information to courts outside of Canada;
- extend the 30-day time limit for processing a request when the public body has consulted the Information and Privacy Commissioner to determine whether it may disregard a request under the Act; and
- limit access to ministerial briefings and records of the Chief Internal Auditor.

The Act is available online at:  
[http://www.qp.alberta.ca/1266.cfm?page=f25.cfm&leg\\_type=Acts&isbncln=9780779773466](http://www.qp.alberta.ca/1266.cfm?page=f25.cfm&leg_type=Acts&isbncln=9780779773466).

#### **Article 24: Rights of the child**

132. Between April 2006 and March 2009, Alberta worked with Delegated First Nations Agencies in respect of their federal negotiations regarding the equitable delivery of services for on-reserve children and youth. The province also negotiated separate bipartite agreements with the Agencies to support child intervention; permanency planning services; and the implementation of new federal family enhancement funding on-reserve.

133. Between April 2007 and March 2009, Alberta invested in a recruitment campaign for additional foster parents and Aboriginal caregivers. The province also worked with the Government of Canada to enhance on-reserve social services, including an emergency shelter for women.

134. Between April 2007 and March 2008, Alberta entered into a funding agreement for Métis children and families with the Métis Nation of Alberta Association and worked with the Association to implement a provincial action plan on Métis participation in programs affecting Métis children.

135. In 2008–2009, Alberta's Métis and Non-Status Bursary fund allowed 21 students to access post-secondary education.

## British Columbia

### Article 2: Equal rights and effective remedies

136. As described in Canada's fifth periodic report under the Covenant (CCPR/C/CAN/2004/5), the province's human rights system provides complainants with direct access to the British Columbia Human Rights Tribunal. Since 2005, the number of complaints filed has consistently remained at about 1,100 per year. The Tribunal issued 477 decisions in 2008–2009, of which 399 were preliminary, 72 were final, and 6 were supplemental. In 2009–2010, it released 437 decisions: 380 preliminary and 57 final decisions. The Tribunal closed 1,188 cases in 2008–2009; and 1,181 cases in 2009–2010. A hearing date is generally scheduled within six months of a complaint being filed, if mediation efforts have not been successful.

137. In 2009, the Police Act was amended to make it easier for the public to file code of conduct complaints and for investigators to better process them. The legislation may be found [http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/00\\_96367\\_01](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_96367_01). The new legislation allows broader oversight by British Columbia's police complaint commissioner, an Officer of the Legislature who operates independently of police, government agencies and political parties ( see [www.opcc.bc.ca](http://www.opcc.bc.ca)).

138. In June 2010, the province announced that it would create a new Independent Investigation Office, a civilian-led unit with a mandate to conduct criminal investigations into police-related incidents involving death or serious harm, with discretion to undertake other investigations. The Office, whose powers will be entrenched in legislation, will be accountable to the Ministry of the Attorney General and be led by a civilian who has never served as a police officer in Canada.

### Article 10: Treatment of persons deprived of liberty

139. Provincial statistics indicate that, in fiscal years 2008–2009 and 2009–2010, no youth under the age of 18 were admitted to a provincial adult correctional centre.

### Article 17: Right to privacy

140. The E-Health (Personal Health Information Access and Protection of Privacy) Act of 2008 authorizes the creation of electronic Health Information Banks; limits the collection, use and disclosure of personal health information held in the banks; and gives individuals the ability to make or revoke a disclosure directive, allowing them to have some control over who can access their personal health information. The Disclosure Directive Regulation outlines who may make or revoke a disclosure directive and the documentation required to verify the individual's identity. The Act may be found at:

[www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/00\\_08038\\_01](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_08038_01).

### Article 19: Freedom of opinion and expression

141. For 2009–2010, the province's average response time for Freedom of Information requests was 24 business days, a decrease from 35 business days in calendar year 2008. In 2006, the Freedom of Information and Protection of Privacy Act was amended to:

- give the Information and Privacy Commissioner authority to permit a public body to extend, where fair and reasonable, the time period for responding to a request; and

- permit information to be withheld in response to an access request where the information is about negotiations carried on by, or for, a public body or the Province.

**Article 24: Rights of the child**

142. Significant measures have been adopted to address the disproportionately high number of Aboriginal children placed in foster care in British Columbia, including:

- Support for Aboriginal agencies in the delivery of child and family services;
- Increases in the percentage of Aboriginal children in care being served by delegated Aboriginal agencies and in funding provided to the agencies;
- Hiring of 135 additional social workers with annualized funding for culturally appropriate training provided by the Caring for First Nations Children Society;
- Development in 2008 of the tripartite Enhanced Prevention Focused Approach for BC First Nations, which describes preventative services to be offered by First Nation child and family service agencies, and applies a cost to enhanced services comparable those provided to off-reserve Aboriginal citizens; and
- Implementation of Jordan's Principle, to prevent jurisdictional funding disputes between provincial and federal governments from interfering with First Nations children's access to available health and social services.

**Article 25: Civic responsibility and political participation**

143. As announced in Canada's fifth periodic report under the Covenant (CCPR/C/CAN/2004/5), the report of British Columbia's Citizens' Assembly on Electoral Reform proposed changing the province's electoral system from Single Member Plurality (or "First Past the Post") to the Single Transferable Vote. Two referenda were held in May 2005 and May 2009, but the proposal did not receive sufficient support by voters to be adopted. More information is in Elections BC's 2009 report at: [www.elections.bc.ca/docs/rpt/2009Ref/2009-Ref-SOV.pdf](http://www.elections.bc.ca/docs/rpt/2009Ref/2009-Ref-SOV.pdf).

**Article 27: Religious, cultural and linguistic rights**

144. Following a failed prosecution of two alleged polygamist leaders of the fundamentalist Mormon community of Bountiful, the government launched a "reference" case in the Supreme Court of British Columbia to determine whether section 293 of the Criminal Code of Canada (prohibiting the practice of polygamy) violates religious freedom or otherwise offends the Canadian Charter of Rights and Freedoms. The Government of Canada is also a party to the Reference. An *amicus curiae* has been appointed to argue the challenge to the law, and twelve other persons and groups have been granted status at the hearing. The matter is proceeding before the Chief Justice of the Supreme Court.



## Part III

### Measures adopted by the governments of the territories

#### Nunavut

##### Article 2: Equal rights and effective remedies

145. For the period of May 2005 to December 2009, there were 44 complaints filed with the Nunavut Human Rights Tribunal. For 2008–2009, the average disposition time per case was one year and seven months. This is an increase from the 2007–2008 average time of one year and four months per case.

146. The Human Rights Committee has expressed its concerns over victims of discrimination not having “full and effective access to a competent tribunal and to an effective remedy” (CCPR/C/CAN/CO/5, para. 11). Nunavut provides complainants with direct access to a human rights tribunal—there is no human rights commission or other process that may restrict access to adjudication of a human rights complaint. The Nunavut Human Rights Act may be accessed at: [www.canlii.org/en/nu/laws/stat/snu-2003-c-12/latest/snu-2003-c-12.html](http://www.canlii.org/en/nu/laws/stat/snu-2003-c-12/latest/snu-2003-c-12.html).

##### Article 10: Treatment of persons deprived of liberty

147. In its concluding observations, the Human Rights Committee has said that no person under 18 years of age should be “held together with adults in correctional facilities” (CCPR/C/CAN/CO/5, par. 19). In Nunavut, youths are never detained with adults in correctional facilities; there is a separate youth detention facility for all detainees under the age of 18.

#### Northwest Territories

##### Article 2: Equal rights and effective remedies

148. In 2008–2009, the Northwest Territories (NWT) Human Rights Commission responded to 259 inquiries from members of the public who had concerns about their human rights. The Commission received 33 formalized complaints. The separate and independent NWT Human Rights Adjudication Panel processed 20 complaints, which resulted in: six complaints settling through mediation; six complaints being withdrawn; six hearings being held and decided, and two appeals being heard and decided.

149. In 2009–2010, the NWT Human Rights Commission responded to 280 inquiries from members of the public who had concerns about their human rights. The Commission also received 26 new complaints. The NWT Human Rights Adjudication Panel processed eight complaints, six of which were settled by way of mediation and two of which resulted in decisions being issued.

150. In the Northwest Territories, the Commission’s Director of Human Rights may, at any time before a complaint is referred to adjudication, dismiss all or part of the complaint if satisfied that: the Human Rights Act provides no jurisdiction to deal with the complaint; the acts or omissions alleged in the complaint are not the kinds of acts or omissions to which the Act applies; the complaint is trivial, frivolous, vexatious or made in bad faith; the substance of the complaint has been appropriately dealt with in another proceeding; or the complaint alleges a contravention of the Act that occurred more than two years before the

complaint is required to be filed (unless the Director extends the time limit for filing the complaint).

151. The Director shall cause the parties to the complaint to be served with a written notice of and the reasons for dismissal. Where a complaint or part of a complaint is dismissed, any party to the complaint may, within 30 days after receiving the written notices of the dismissal, appeal the dismissal by filing a notice of appeal with the adjudication panel and serving it on all the parties to the complaint and the Director.

### **Public complaints against law enforcement**

152. As is the case in some other provinces and territories, police services in the Northwest Territories are provided by the Royal Canadian Mounted Police (RCMP). Allegations of police misconduct are dealt with by the Commission for Public Complaints against the RCMP.

#### **Article 17: Right to privacy**

153. In late 2009, the Northwest Territories began a testing phase for the introduction of an inter-operable Electronic Health Records HealthNet Viewer. The initial planning phase for the introduction of the Viewer across the NWT began in 2006. Ensuring compliance with the NWT's Access to Information and Privacy Protection Act (1996) was a significant part of the planning process and testing phase.

#### **Article 19: Freedom of opinion and expression**

154. The Access to Information and Protection of Privacy Act requires that the head of a public body respond to an applicant no later than 30 days after a request is received. This timeline can be extended if certain criteria are met or if the request has been transferred to another public body. Since coming into force, there have been no amendments to the Act that affect these timelines. The Act is available at: [www.justice.gov.nt.ca/legislation/..%5CPDF%5CACTS%5CAccess%20to%20Information%20and%20Protection%20of%20Privacy.pdf](http://www.justice.gov.nt.ca/legislation/..%5CPDF%5CACTS%5CAccess%20to%20Information%20and%20Protection%20of%20Privacy.pdf).

#### **Article 24: Rights of the child**

155. In the Northwest Territories, child welfare services are delivered by Health and Social Service Authorities to children across the territory regardless of their cultural background. As there is only one small reserve on the territory, there is no "on-reserve" funding for child welfare services, nor are there child welfare programs, or associated funding, specifically for Aboriginal children. The principles of the 1998 Children and Family Services Act require that different cultural values and practices must be respected when decisions concerning the welfare of children are made.

#### **Article 27: Religious, cultural and linguistic rights**

156. Mindful of its duty to protect and promote Aboriginal languages and cultures, the territorial government's Department of Education, Culture and Employment is responsible for supporting culture, heritage and languages throughout the NWT. Its Official Languages Division delivers translation and program services for French, Cree, Inuktitut (Inuvialuktun and Inuinnaqtun), Chipewyan, Gwich'in, North and South Slavey and Dogrib speakers across the territory. In 2009, the government committed to creating the NWT Aboriginal Languages Plan to strengthen understanding and encourage use of Aboriginal languages, and establish practical approaches to the delivery of government services in Aboriginal languages. The Plan's founding principle is that revitalizing, preserving and maintaining

Aboriginal languages is a collective responsibility of all residents of the Northwest Territories.

## Yukon

### Article 2: Equal rights and effective remedies

157. The following table represents disposition times for complaints filed with the Yukon Human Rights Tribunal, for the period of May 2005 to December 2009:

<i>Time period</i>	<i># cases disposed</i>	<i>Average time open</i>
June 2007 to May 2008	32	17 months
June 2008 to May 2009	36	19 months
June 2009 to May 2010	47	18 months

158. December 2009 amendments to the Yukon Human Rights Act have already reduced disposition waiting times: from April 1, 2010 to November 30, 2010, six complaints were disposed of in an average of 11 months.

159. With respect to the Human Rights Committee’s observation concerning the need for “full and effective access” to the justice system for victims of discrimination, the Yukon Human Rights Act was amended in 2009 to require that:

- there be “reasonable grounds” in support of a complaint;
- a complainant must exhaust appropriate grievance or review procedures before a complaint to the Yukon Human Rights Commission may be filed;
- a complaint need not be investigated by the Commission if it is already being dealt with in another proceeding or if the complainant has declined a reasonable settlement offer; and
- the Commission be allowed to refer a complaint directly to the Tribunal without investigation.

160. Designed to ensure that only legitimate complaints proceed to the tribunal, the amendments also extended the time period for filing complaints, from six months to eighteen months. Overall, the Act ensures that all victims of discrimination have full and effective access to a competent tribunal and to an effective remedy.

### Public complaints against police forces

161. Yukon relies on the federal Commission for Public Complaints against the Royal Canadian Mounted Police (RCMP) to address citizen complaints related to the delivery of police services. Yukon does not have an independent complaints process or an independent civilian investigative agency to investigate serious complaints. It relies on the RCMP’s new National Policy, which requires that complaints which could result in criminal charges against a RCMP member be referred to an outside police agency.

162. In 2010, the Government of Yukon launched the Review of Yukon’s Police Force in part as a response to public concerns about the existing RCMP public complaints process. In support of the Review, the Commission for Public Complaints against the RCMP conducted public engagement sessions in Whitehorse and submitted a report to the Co-Chairs of the Review. The final report, entitled *Sharing Common Ground*, was submitted to

Minister of Justice on December 31, 2010. Its 33 recommendations aim to establish a new relationship between Yukoners and the RCMP. The Minister of Justice and the Council of Yukon First Nations Leadership have identified priorities for implementation, among which are:

- The establishment a Yukon Police Council; and
- The negotiation of a Memorandum of Understanding to ensure independent investigation of serious or sensitive incidents involving RCMP members.

163. In addition, in part as a result of the Review and the final report, the Commission for Public Complaints against the RCMP has increased its presence in the Yukon, thereby increasing Yukoners' access to and knowledge about the Commission.

#### **Article 9: Right to liberty and security of the person**

164. With respect to the Human Rights Committee's concerns over the provision of sufficient housing for persons with mental disabilities or illnesses, the Yukon Housing Corporation administered and maintained 577 social housing units in ten Yukon communities in 2008–2009. While the Corporation does not take mental illness or disability into consideration when allocating units and does not keep records of such occurrences, assistance is provided to social housing tenants in the form of case management, social work support, supported independent living workers and mental health support workers.

#### **Article 17: Right to privacy**

165. The Yukon Government is in the initial stages of developing personal health information legislation to protect the privacy of health information. It is also undertaking preliminary planning for Electronic Health Records projects.

#### **Article 23: Equality of spouses as to marriage**

166. The Yukon Supreme Court found that a refusal to issue marriage licences to same-sex couples was constitutionally invalid in a 2004 ruling, before the federal legislation came into effect. See *Dunbar & Edge v. Yukon (Government of) & Canada (A.G.)*, 2004 YKSC 54 (CanLII). The Yukon Human Rights Commission has not received any complaints about marriage commissioners refusing to solemnize same-sex marriages. While the Yukon Marriage Act still refers to "husband" and "wife", the federal Act legalizing same-sex marriage, which also applies in the Territory, provides that "a marriage is not void or voidable by reason only that the spouses are of the same sex".

167. Yukon has adopted a new secure birth certificate in 2010, which ensures that a person's same-sex parents may be identified on the document. More information is available online at: [www.hss.gov.yk.ca/birthcertificate.php](http://www.hss.gov.yk.ca/birthcertificate.php).

#### **Article 25: Civic responsibility and political participation**

168. Yukon's Legislative Assembly created a Select Committee on Whistle-blower Protection in 2007, which held public meetings and issued an interim report in December 2008. A final report is expected in 2011. The interim report is available online at: [www.legassembly.gov.yk.ca/pdf/whistleblower\\_legislation\\_interim\\_report\\_dec\\_2008.pdf](http://www.legassembly.gov.yk.ca/pdf/whistleblower_legislation_interim_report_dec_2008.pdf).

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