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HUMAN RIGHTS COMMITTEE

Ninth session

SUMMARY RECORD OF THE 211th MEETING

held at the Palais des Nations, Geneva,
on Friday, 28 March 1980, at 10.30 a.m.

Chairman: Sir Vincent EVANS

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The meeting was called to order at 10.50 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Report submitted by Canada (CCPR/C/1/Add.43(Vol. I and II))

1. The CHAIRMAN invited Mr. McPhail, the Permanent Representative of Canada to the United Nations Office, to reply to the questions raised by members of the Committee concerning his country's report.

2. Mr. McPHAIL (Canada) said that the members of the Canadian delegation had been greatly impressed by the high standard of debate in the consideration of their country's report and that they would try to reply as precisely as possible to the excellent questions put to them. He, for his part, would like to make some general observations relating to the application of the International Covenant on Civil and Political Rights and to Canadian law. It should be noted, first of all, that when Canada had acceded to the Covenant the Canadian authorities had thought that it would be possible to ensure the application of the provisions of the Covenant through the existing constitutional structure and had therefore not contemplated any amendment of the Constitution to enable Canada to carry out the obligations to the international community that it had undertaken in acceding to the Covenant.

3. Under the Canadian Constitution, international agreements were concluded by the federal Government - in other words, by the Governor General acting on the advice of the Prime Minister and his Cabinet, but international agreements did not alter domestic law. If the federal law had to be amended in order to comply with an international obligation, it lay with Parliament to legislate for that purpose. If the subject of the law to be changed was within provincial jurisdiction, only the provincial legislatures had power to make the amendments required. Consequently the federal Government did not conclude an international agreement which the provinces would have to implement unless it could ensure that the provincial authorities were prepared to apply the provisions of the agreement.

4. Since the Canadian Parliament and the provincial legislative assemblies had not yet amended the legislation in accordance with the provisions of the Covenant, the Canadian courts could not directly apply the provisions of that instrument which differed from existing Canadian law. When, however, it was necessary to interpret domestic laws whose meaning was ambiguous, they could refer to the Covenant as part of international law.

5. Although, in keeping with one of the fundamental principles of the Canadian system, Parliament and the provincial legislative assemblies could not bind themselves for the future, they could accord priority status to a particular law by declaring that it must govern the interpretation of other laws. Thus the Canadian Bill of Rights provided that "every law of Canada shall, unless it is expressly declared by an Act of the Parliament of Canada that it shall operate notwithstanding the Canadian Bill of Rights, be so construed and applied as not to abrogate, abridge or infringe or to authorize the abrogation, abridgement or infringement of any of the rights or freedoms herein recognized and declared ...".

6. Moreover, any differences that were found between the provisions of the Covenant and Canadian legislation were to be removed. In fact, the federal and provincial authorities had decided to review all Canadian laws in order to modify those which did not conform to the provisions of the Covenant. For that purpose, any assistance which the Human Rights Committee could give in the proper interpretation of the Covenant would be greatly appreciated.

7. He wished to emphasize that even if at the present time the provisions of Canadian legislation were not entirely in conformity with those of the Covenant, he was confident that the human rights enjoyed in Canada were essentially in accord with the rights set forth in the Covenant. In that connexion, he pointed out that Canada had not only acceded to the Optional Protocol but was one of the few States Parties to the Covenant to have made a declaration that it recognized the Committee's competence to receive and consider communications in which a State Party claimed that another State Party was not fulfilling its obligations under the Covenant.

8. The Canadian delegation had taken note of the observations made by various members of the Committee concerning a number of provisions in Canadian legislation relating to human rights. Some, for example, had noted that the prohibited grounds for discrimination set forth in various Canadian laws did not correspond exactly to those specified in articles 2 and 26 of the Covenant; others had stressed the fact that no Canadian law expressly prohibited propaganda for war. Others had said that, in their view, some provisions of the War Measures Act were contrary to article 4 of the Covenant, which dealt with measures that a State party might take at a time of public emergency which threatened the life of the nation; it had been said, too, that certain provincial laws governing education were not, perhaps, fully in conformity with article 18 of the Covenant, which guaranteed the right to freedom of religion, and that, in accordance with article 14, paragraph 6, of the Covenant, the Canadian authorities should establish a system of compensation for persons wrongly convicted. Some members of the Committee had thought it regrettable that Canadian law lacked any constitutional or statutory provision expressly prohibiting Parliament from enacting a retroactive law, since the principle of non-retroactivity of laws was set forth in article 15 of the Covenant; others, lastly, had considered that the fact that a person could be arrested without being informed of the reasons for the arrest was at variance with the requirements of article 9, paragraph 2, of the Covenant. All those observations would be brought to the attention of the appropriate Canadian authorities.

9. In addition to observations on specific points, members of the Committee had raised some questions of a general nature concerning political freedoms in Canada and the right of peoples to self-determination, as guaranteed by article 1 of the Covenant. He would point out, firstly, that a number of provincial laws expressly prohibited discrimination on political grounds. Furthermore, the Canadian Constitution and legislation guaranteed complete political freedom. No political party was outlawed in Canada. Everyone was free to join any political party or none. With the exception of public servants who, in certain jurisdictions, might have to leave their employment for the purpose, any adult Canadian citizen could be a candidate for public office.

Freedom of expression was restricted only by the provisions of the Criminal Code which prohibited defamation and sedition, it being understood that sedition was confined to the advocacy of unlawful use of force to bring about a change of government.

10. Lastly, while the Canadian Constitution made provision for the creation of new territories and provinces, it did not provide for the severance of provinces or territories from the Canadian State or for major variations in their constitutional status. Such change would have to be the subject of constitutional amendment; there was indeed a widespread feeling in Canada that the 113-year-old Constitution needed modification.

11. Mr. STRAYER (Canada) provided some information on the status of Indians in Canada. After giving a brief history of the question, he said that there had always been a special relationship between the Indians and the Canadian authorities. As expressly provided in the Constitution of 1867, they came under the exclusive authority of the Parliament of Canada. The first Indian Act had been adopted in 1868 and numerous amendments had been made later.

12. With regard to the philosophy underlying the Act, he said that the first Indian Act had been enacted to protect Indians and Indian lands from non-Indians. It had therefore been necessary to define who was an Indian in order to determine who had a right to occupy reserve lands. It had also been necessary to provide rules for the management of the reserve by the Indians themselves. At the present time Band Councils were either selected by "tradition" or elected under the terms of the Indian Act.

13. Over the years substantive changes had occurred and consultative mechanisms had been set up at various times. The 1951 Indian Act had introduced measures that allowed Band Councils to exercise many local government functions. In general, the Bands had assumed increased responsibility for administration. Review of the Indian Act had been undertaken in 1962 and had been going on ever since. Major proposals had been formulated in 1960 and 1973 but no decision had yet been taken. Government funding of Indian associations had been agreed upon in order to ensure that Indian representatives could participate in the review of the Act. Over the years, various bodies, such as the National Indian Brotherhood/Federal Cabinet Committee, had been established to enable representatives of the Indians and representatives of the Government to exchange views on various aspects of Government policy and to review proposed changes to the Indian Act.

14. Indians, Metis and Eskimos had recently been invited to participate in meetings to discuss possible constitutional changes for the better protection of native rights.

15. The Indian Act of 1970 defined the term "Indian", set forth the principles governing the organization of Band Councils and their power over the management of the affairs of the reserve, laid down rules governing the use of the land on the reserve and established tight procedural measures concerning the surrender of land to the Crown. It also established certain fiscal exemptions for Indians

and laid down the rules according to which an Indian could be "enfranchised". Before 1960 Indians had not been entitled to vote at the federal elections; enfranchisement had been a simple formality confirming that Indians who left the reserve were no longer entitled to the various rights and privileges accorded to Indians in the reserve by the Indian Act but could now be registered on electoral lists. The present situation was that, as long as a person remained a registered Indian, he had most of the rights of non-Indians, in particular the right to vote, and was also entitled to tax exemptions.

16. In 1961 there had been about 180,000 Indians in Canada. By 1979 there had been about 300,000 in 573 Bands. Some 30 per cent were living outside Indian reserves, compared with less than 16 per cent in 1966. Except in the North, Indian lands were located on reserve lands set aside for their exclusive use, through treaties or other legal arrangements; they covered a total area of 10,021 square miles. About 65 per cent of the Indian population lived in rural or remote communities. Since 1965 the Indian Affairs Department had, as a matter of policy, been transferring the administration of programmes to Indian Bands. Section 69 of the 1951 Indian Act allowed Bands to assume control over Band funds, with the Minister's approval. Band funds had expanded rapidly and had now reached a total of about $120 million. The number of Bands using the provisions of section 69 had almost tripled since 1967.

17. The Indians participated in the same social security system as the rest of the population. A number of programmes had been established over the years to foster the social and economic development of Indian communities. The Government had financed Indian cultural and educational centres. An Indian Economic Development Fund had been established to foster Indian business. The Indians could apply for loans or grants from the Fund. Various programmes had been established to assist farming and fishing.

18. With regard to Indian territorial claims, the Canadian Government had announced in 1973 that it would negotiate with all natives in areas where original title to land had not been extinguished. Those territories had comprised mainly the north of Quebec, the Yukon and the North West Territories. Except for the James Bay area, those negotiations were still under way and pending settlement of claims the Canadian Government had paid the Indians $40.7 million, 42 per cent in the form of non-repayable contributions and 58 per cent in loans.

19. Estimates of the number of Indians living off reserves varied widely according to various definitions. Some Indians lived permanently off reserves, while others migrated back and forth with great frequency. Whatever criteria were used, however, it was certain that the off-reserve Indian population had grown steadily in the past few years, rising, according to official estimates, from 42,000 in 1966 to 77,000 in 1976. Over the past 20 years a variety of institutions providing services and support to Indians off reserves had developed. Most centres with significant numbers of Indians now had Indian-run Friendship Centres funded by the Secretary of State. In addition to those centres, which served as drop-in and counselling centres, there were also Indian-run cultural and educational centres, financed by the Department of Indian Affairs, which supported cultural research and educational programmes.

20. Indians were free to leave the reserve at all times. In other words, reserves were created as territory over which Indians had exclusive rights. They were not places where Indians were obliged to live.

21. The Department of Indian Affairs did not provide services direct to Indians living off reserves. It did, however, maintain a presence in most of the centres with high Indian populations, through its district offices.

22. Section 4 (3) of the Immigration Act, 1976, aimed at removing any doubt about the right of persons registered as Indians pursuant to the Indian Act to enter and reside in Canada. Although the Citizenship Act applied to Indians as to all other individuals, not all Indians registered under the Indian Act were Canadian citizens. Under the Indian Act, the Canadian citizenship was not a requirement for registration; thus if a special provision had not been adopted, Indians who were not Canadian citizens would be governed by the same principles, in respect of immigration, as those applying to foreigners. The Government of Canada believed, however, that persons registered as Indians should be granted the same right of entry and residence as Canadian citizens and had therefore included a provision to that effect in the Immigration Act, 1976.

23. There was no special act governing Eskimos in Canada. In 1939, when the issue had arisen of which level of Government was responsible for the Eskimo community, the Supreme Court of Canada had held that they came under federal jurisdiction like the rest of the population. Unlike the Indians, the Eskimos of Canada had not pressed for special legislation governing their situation, but they were part of the discussions at federal meetings on the possible revision of the Canadian Constitution and they received assistance through various Government programmes.

24. The question why the Yukon and the Northwest Territories had not yet attained provincial status had been discussed for many years. The Government of Canada would be placing before the Committee the Drury Report, which was the latest of numerous voluminous reports on the question. Without going into detail, it could be said that the fact that those regions had not yet become provinces was largely due to their sparse population and poor financial capacity. The population of the Yukon was about 25,000 and that of the Northwest Territories about 45,000.

25. Mr. RAYNER (Canada) said that he would like to explain the mechanisms which existed in Canada to provide for a co-ordinated approach to implementation of the Covenant at the different levels of Government. There were two types of co-ordinating mechanism: firstly, the vertical mechanisms within a Ministry or Department, whether at the federal or provincial level, and, secondly, the horizontal mechanisms which existed between Ministries or Departments, particularly between the Federal and the provincial Governments.

26. In the case of the first type of mechanism, each member of the Executive, in other words each Cabinet Minister, whether at the federal or the provincial level, was assigned responsibility, by the Prime Minister concerned, for a particular functional area or areas of Government responsibility. Each Minister was responsible for administering his or her mandated area, subject to general administrative policy guidelines established by the Government, many of which were relevant to the International Covenant on Civil and Political Rights. For example, there were Government guidelines and procedures in respect of personnel administrative practices to avoid discrimination in the engagement and dismissal

of public servants and with respect to the advancement of women's rights. The co-ordination of such guidelines within a given Ministry was the responsibility of the Minister and public officials concerned. A second area of vertical co-ordination concerned relations between Ministries and the public - either particular client groups, such as voluntary citizens' organizations, or the public at large. There again the Minister concerned was responsible for implementing Government policy, within his or her mandated area, in respect of the relevant public organizations, groups and individuals. In some cases, a Ministry's policies and programmes concerned human rights matters; indeed a great many programmes set up by Government Ministries and Departments were designed specifically to promote the kind of objectives reflected in the Covenant, even though the programmes might not have been established as a direct result of the Covenant. He had in mind, for example, the Government's multicultural policy which recognized the pluralistic nature of Canadian society and offered financial and other assistance to ethno-cultural groups to help them to preserve their identity. That was in conformity with article 27 of the Covenant.

27. Co-ordination was also exercised through the Commissions on Human Rights, which were responsible at the federal and the provincial level for enforcement of the Human Rights Acts or Codes. They were also responsible for promoting human rights in their respective areas of competence, handling complaints and encouraging research, publications, information and education on human rights.

28. With regard to the horizontal co-ordinating mechanisms, the Federal and Provincial Governments had each designated one particular Minister to assume responsibility, among other government duties, for co-ordinating matters pertaining to human rights within the Government. That arrangement made it possible to focus on human rights questions in a wider perspective and to develop an over-all position. In the case of the Federal Government that responsibility rested with the Secretary of State of Canada, who was also responsible for cultural affairs, citizenship, official language programmes and post-secondary education. He exercised some of his co-ordinating authority by means of an Interdepartmental Human Rights Committee mentioned in the report of Canada. The Interdepartmental Committee, whose authority derived from the Cabinet and which was composed of officials or public servants from all federal departments and agencies active in the field of human rights, was chaired by an Assistant Under-Secretary of the Secretary of State's own department. The purpose of the Committee was to co-ordinate federal policy on human rights matters and to review the way in which the various government Departments were applying it. As was indicated in the report, the Committee was currently determining to what extent federal law was in accordance with the Covenant with a view to recommending any changes that might be required. Given the excessive body of legislation at the federal level alone, it would take some time to complete the work. Interdepartmental Committees, under the jurisdiction of other Ministers, existed also at the federal level in certain other areas which might be complementary to human rights.

29. With regard to horizontal co-ordination between the federal and provincial governments, an important event had been the Federal-Provincial Conference on Human Rights held in December 1975, attended by federal and provincial Ministers concerned with human rights and representatives of the two territorial Governments. The principal purpose of the Ministerial Conference had been to consider the question of Canada's accession to the International Covenant on Civil and Political Rights

and to establish the mechanisms for implementing in Canada the tresties, conventions and other international instruments concerning human rights. The participants at the Conference had also taken decisions with a view to co-ordinating federal and provincial policies by the establishment of a continuing Federal-Provincial Committee of Officials responsible for Human Rights. The Committee was composed of representatives of the federal, provincial and territorial Governments and met twice a year to co-ordinate approaches to human rights matters throughout the country. He himself had been Chairman of the Committee for the past three years and all the members of the Canadian delegation to the Human Rights Committee were serving on it. The Committee had in fact produced Canada's report to the Human Rights Committee. There were, of course, many other ways and means for the federal and provincial Governments to keep in touch with each other - most of them at the level of officials.

30. Co-ordination in a federal system might not be simple, but it was certainly an essential ingredient of successful implementation of policies and programmes on human rights.

31. Mrs. GELLER (Canada), referring to the application of article 3 of the Covenant, said that discriminatory measures against women had been eliminated from provincial and federal legislation in Canada. Special services had been set up to analyse the impact of legislation, policies and programmes on the status of men and women, and both federal and provincial Governments were trying to foster equality of status within the government service.

32. Replying to questions on the position of women in the federal, political and judicial system, she stated that there were 14 women Members of Parliament out of 282, 11 women Senators out of 102 and two women Cabinet Ministers out of 23; 34.2 per cent of Federal Government employees were women and there were five women ambassadors out of 112. With regard to the Federal judicial system, 18 District Court judges out of 645, 11 Supreme Court judges out of 309 and two out of 85 judges of the Court of Appeal were women; there were no women among the nine members of the Supreme Court of Canada.

33. With regard to the role of women in the economy, in 1977 women had represented 38 per cent of the labour force, and 46 per cent of all women of 15 years of age and over had been in the labour force. Projections were that the participation of women in the labour force would continue to increase.

34. In addition, the Federal Government and the provincial Governments encouraged women's organizations to achieve their objectives and to undertake special projects focusing on women's causes, by contributing to the funding of research, seminars, conferences and studies. Most Governments had established advisory councils on the status of women to advise them on problems of women and were granting financial aid to voluntary women's organizations.

35. Further information had been requested on section 11 of the Canadian Human Rights Code, which guaranteed equal pay for women doing work of equal value to that of men, except when a "reasonable factor" justified a difference. According to provincial law, the only factors which could justify differences in pay were basically seniority and merit - for example, in the case of persons paid on commission. The Canadian Human Rights Commission, whose duty it was to decide in cases of dispute, had not yet had occasion to intervene; hence it could be assumed that there was no reasonable factor to justify departure from the principle of

equal pay for men and women. With respect to the special provisions in the legislation of Saskatchewan, such as the Homestead Act and the Exemptions Act, it should be remembered that those provisions had been enacted many years earlier to safeguard the economic position of women. It did not seem that the time had yet come to rescind them.

36. In general, women played an active role at the municipal level and in school boards and in local organizations, in spite of the difficulties inherent in the long distances in Canada and in the fact that women still bore the greater burden of family responsibility. It was encouraging to see that, although women had represented only 14.9 per cent of law students in 1971-72, they had represented 29.9 per cent in 1976-77. Among medical students, the proportion had risen from 20.3 per cent to 31.2 per cent during the same period.

37. Undoubtedly much remained to be done on behalf of women. The international community had recognized that by its adoption, in December 1979, of the Convention on the Elimination of all forms of Discrimination against Women. The Canadian Government fully supported the full integration of women in all aspects of the life of the country and was working to achieve that end.

38. In reply to the questions raised by members of the Committee concerning article 18 of the Covenant, she explained firstly, on the question of conscientious objection, that there was no compulsory military service in Canada, so that that problem did not arise in practice. During the Second World War, however, arrangements had been made to permit conscientious objectors to be exempted from military service and to perform tasks of a humanitarian nature. The question of conscientious objection was not covered in the Criminal Code of Canada.

39. Freedom of religion was guaranteed by law. Furthermore, persons whose day of worship was other than Sunday could not be required to work on that day and their employers were obliged to observe that rule, unless they could prove that its application would cause undue hardship to their business. With respect to blasphemous libel, according to section 260 of the Criminal Code no one could be convicted of that offence if he had expressed, or endeavoured to express, in good faith and in decent language an opinion upon a religious subject. It was clear, therefore, that the advocacy of atheism could not be considered to be blasphemous libel. It was interesting to note that for the last few years persons who appeared before a court or who had to take an oath in order to enter the Civil Service, for example, were no longer obliged to swear on a Holy Book.

40. Some questions had been asked concerning the application of article 22 of the Covenant, which dealt with the right of association. Trade unions could and did play a political role in Canada. Some of them contributed part of their membership fees to a political party, and in the May 1979 general federal election the Canadian Labour Congress, to which nearly all Canadian trade unions belonged, had publicly supported one of the political parties. Trade unions could also advocate new laws or changes in existing laws through their local or provincial offices, through their national union or through the organization to which they were attached. Representatives of trade unions met yearly with the federal, provincial and municipal executives, to present resolutions to put into effect the decisions taken at their annual meetings.

41. With regard to the employers' responsibility, all provinces had legislation providing for workers' compensation programmes to cover accidents at work; all employers contributed to those programmes. On the question whether the Labour Code provided for special tribunals, she explained that all the provinces and the Canadian Government had labour legislation which included provisions for tribunals or labour relations boards to settle labour disputes.

42. The unions did not directly engage workers but some of them, particularly in the building industry, acted as agencies in finding work for their members, taking into account their qualifications and their seniority. In fact, in view of the seasonable nature of employment in the building industry, workers had previously been recruited for periods of extremely short duration and had not enjoyed the usual social benefits. The unions in the industry had therefore filled the gap by taking on the responsibility of recruiting workers in an orderly and equitable manner and providing them with social benefits.

43. Mrs. DESJARDINS (Canada), replying to a number of questions concerning article 6 of the Covenant, said that she would deal first with abortion. Section 251 of the Criminal Code imposed a sentence of imprisonment for life for anyone procuring an abortion. A woman who procured, or tried to procure, an abortion for herself was liable to two years' imprisonment, unless the abortion had been authorized by the Committee for therapeutic abortion of an accredited or approved hospital, which had considered that the continuation of the pregnancy would endanger her life or her health.

44. With respect to genocide, the Criminal Code prohibited all propaganda inciting hatred against a group distinguishable by colour, race, religion or ethnic origin. Sections 281.1 and 281.2 forbade more specifically incitement to genocide or to hatred, and section 281.3 authorized the seizure or confiscation of all propaganda material which incited to hatred. Furthermore, any person found guilty of advocating or encouraging genocide was liable to five years' imprisonment. Canada had acceded to the Convention on the Prevention and Punishment of the Crime of Genocide, the provisions of which were implemented by the Criminal Code. Mention should be made in particular of the prohibition of murder, common assault and causing bodily harm, kidnapping and abduction of a child under 14 years of age.

45. In reply to a question on the use of firearms by the police and other security forces, she stated that the Criminal Code exempted members of the police and armed forces from the regulations controlling the acquisition and possession of firearms and authorized them to use what force was necessary in order to carry out what the law required them or permitted them to do or to prevent an offence. Nevertheless, a peace officer was liable in law for any excessive use of force. In addition, his personal liability in law obliged him to restrict the use of firearms to the defence of his own life or that of another person.

46. With respect to article 9, paragraph 2, concerning arrest without a warrant, it should be pointed out that at the federal level, the Criminal Code provided that a peace officer could, without a warrant, arrest a person who had committed a criminal act or appeared to have committed one, who was in the course of

committing a criminal act or who was liable to a warrant of arrest. A peace officer could not, however, without a warrant, arrest a person committing an offence unless he had reason to believe that the public interest could not be otherwise safeguarded and that, if he did not arrest that person, the latter would not appear in court. Similarly, it was not permitted to arrest a person who had committed a criminal act falling exclusively within the competence of the judges. Furthermore, anyone could, without a warrant, arrest a person who was in the process of committing or who was suspected of having committed a criminal act, or was in flight. Finally, the proprietor or lawful owner of a property or a person authorized by him could, without a warrant, arrest a person who was in the course of committing an unlawful act on his property. The justices of the peace could issue a warrant for arrest on information supplied by any person who had reason to believe that someone had committed a criminal act. That, however, was the exception rather than the rule and the justice of the peace must first summon the party concerned to appear, unless he had reason to believe that it was necessary in the public interest to issue a warrant. He must not sign an open warrant. The warrant must give the name or the description of the suspected person, state the offence and order that the person concerned should be arrested and brought before a justice of the peace.

47. With regard to the questions asked about detention conditions in federal prisons, she referred the members of the Committee to the Canadian Government's report, in which the procedures in force to ensure the supervision of disciplinary measures imposed on prisoners in federal prisons were described at length (pp. 37 and 38). The Chairman of the disciplinary board was no longer the director of the penitentiary but an independent chairman appointed from among the members of the legal profession. In a recent decision the Supreme Court of Canada had recognized that disciplinary boards were obliged to act fairly and had laid down that their decisions were subject to control by the judiciary in cases where such boards had failed to respect that principle. Referring to the system of punishment in prisons, she said that section 2.28(4) of the Penitentiary Service Regulations, which allowed a punishment diet to be imposed, was shortly to be revoked. In the meantime, the Commissioner of Penitentiaries had issued an order which forbade forthwith the imposition of punishment diets.

48. Replying to questions concerning electronic surveillance, she explained that under the Canadian Criminal Code a judge other than a "magistrate" could, at the request of the Solicitor-General, at the federal level, or of the Attorney-General, at the provincial level, or of their agents, authorize the interception of private communications. The judge did not grant such authorization unless he was sure that it would enable the administration of justice to be best served, that other methods of investigation had failed or had little chance of success and that the matter was so urgent that it would not be practicable to carry out the investigation using other methods only. The authorization had to show the offence necessitating the interception and the type of private communication which could be intercepted. In addition, it had to show the identity, if known, of the persons whose private communications were

to be intercepted, outline in general terms the place where those communications could be intercepted and the way in which the operation was to be conducted, and lay down the procedures which the judge deemed to be advisable in the public interest. The period for which the authorization was valid must be mentioned: it could not exceed 90 days, but the authorization could be renewed. Persons whose communications had been intercepted under an authorization had to be informed of it within the 90 days following the end of an authorized or renewed period of interception, unless a stay, which was not to be longer than three years, was granted.

49. Illegal interception was a crime punishable with five years' imprisonment. A private communication that had been illegally intercepted was inadmissible as evidence, unless the judge or presiding magistrate declared it admissible on the grounds that it concerned one of the points at issue and the non-admissibility of the communication arose from a flaw in the request for interception. Evidence obtained from a communication which had been illegally intercepted did not for that reason become inadmissible, unless the judge or the presiding magistrate considered that to admit it would tarnish the image of justice. It should be noted that privileged information acquired in the course of a legal interception remained privileged and was not admissible as evidence without the consent of the person who had exemption. Under the Official Secrets Act, the Solicitor-General of Canada could issue a warrant authorizing the interception or seizure of any communication if he was convinced, on the basis of evidence given under oath, that such interception or seizure was necessary in order to forestall or divert subversive activity directed against Canada or prejudicial to Canadian security.

50. With regard to the question asked about article 19 of the Covenant, she confirmed that the principle of "one man, one vote" was respected throughout Canada, except at the municipal level where it was sometimes necessary to be a land-owner in order to have the right to vote.

51. Mr. McCURDY (Canada), replying to questions which had been raised in connexion with articles 2 and 26 of the Covenant, explained, firstly, that it was impossible to state categorically that a legal remedy would be available in Canada for every breach of the Covenant. The remedies available were cited in the report. It was, of course, possible for Parliament to enact discriminatory legislation, as in the case of pension schemes that made special provision for married pension-holders. The point which the Canadian Government had wished to make in its report, however, was that the laws must be applied equally to everyone unless Parliament deliberately and publicly provided for distinctions of that nature.

52. With respect to legal action which might be taken against the Canadian Government or its federal employees, there was a procedural requirement of notice to the Government only in the case of claims concerning injury suffered because of the Government's use or ownership of property. In cases involving wrongdoing by Government employees in the course of their employment, both the Government and the employee could be sued and it therefore did not matter if the employee was insolvent. In such a case, the Government would have to pay any damages obtained.

53. With respect to the Canadian Bill of Rights and its practical effect, he cited several judicial decisions in which its provisions had taken precedence over those of other federal laws. In the Drybones case, for example, the Supreme Court of Canada had decided that a section of the Indian Act could not be applied because it treated Indians more harshly than non-Indians with respect to an offence involving intoxication. Similarly, in the Brownridge case, the Supreme Court had quashed a conviction under the Criminal Code of an individual who had refused to submit to a breath test because the accused had not first been able to consult a lawyer. That decision had since been followed by other courts in numerous cases. Furthermore, in more recent cases, provincial courts had declared inoperative section 459.1 of the Criminal Code, which purported to replace habeas corpus by other procedures when the person concerned was in detention pending trial. It had been held that the provision of the Canadian Bill of Rights relating to habeas corpus should prevail over section 459.1 of the Criminal Code.

54. Replying to the questions which had been raised regarding the monitoring role of the Minister of Justice in determining whether bills and regulations were in conformity with the Canadian Bill of Rights, he stated that that process went on regularly and that normally the views of the Minister were not submitted to the House of Commons because the modifications he deemed necessary were made when the bills were being drafted. The bills and regulations which in the view of the Minister of Justice would be inconsistent with the Bill of Rights were not submitted for adoption by Parliament. He cited the case of an amendment to a bill which had been put before the Senate without prior examination by the Minister. The Minister had expressed the opinion that the amendment would conflict with the Bill of Rights in certain aspects and it had subsequently been modified accordingly.

55. Turning to the questions relating to article 10 of the Covenant, he explained the procedure for the appointment of judges. For an individual to be appointed to the judiciary he must fulfil the necessary conditions. Section 3 of the Judges Act provided that "no person is eligible to be appointed a judge of a superior court (including the Supreme Court of Canada and the Federal Court), circuit or country court in any province or territory, unless ... he is a barrister or advocate of at least ten years standing at the Bar of any province or territory". Under the British North America Act, federally appointed judges of the Courts of Quebec were selected from the Bar of that province. The same rule applied implicitly in the other provinces. Judges of the Federal and Supreme Courts, for their part, were appointed from throughout Canada. The members of the judiciary were appointed primarily on the basis of merit. Legal ability and experience were two important factors in the appointment of judges, but human qualities such as generosity, the ability to listen, integrity and an impeccable personal life were also taken into consideration. Wealth, social origin, position and sex, on the other hand, were not. At present only 18 out of 645 judicial positions were occupied by women, but the growing number of women admitted to the Bar in the last ten years would result in more appointments to the Bench in the future.

56. In connexion with article 13 of the Covenant, a member of the Committee had asked what were the rights of aliens whose ministerial residence permit had expired or was cancelled and whether some protection should not be afforded to such persons. The Minister of Employment and Immigration had full discretion to cancel permits for admission to Canada issued by his Ministry. However, such permits were issued, mainly on humanitarian grounds, to persons who sought to enter the country without having qualified for admission or who could not qualify. They were issued on a temporary basis so as to enable such persons to enter for a special purpose or to give them time to qualify for admission if they could. Persons wishing to enter the country under such conditions were informed that without such permission their presence in Canada would be considered unlawful.

57. In reply to a member of the Committee who had asked whether under the Immigration Act, 1976, entry into Canada required not only a visa but also a certain amount of money and whether a person could be turned back for lack of the right amount of money, he stated that a visitor, with or without a visa, must be able to prove that he would not become a public charge. It was not necessary that he should be in possession of a certain amount of money; a letter from a friend, a member of the family or an employer could be enough. The principle which applied was that the person concerned should be able to prove to the Canadian immigration officer that he had the financial means to provide for his needs for the period of his stay. Immigrants were divided into three categories: some were sponsored, i.e., a member of their family or someone else undertook to answer for them for a period of five years, and in that case there was no financial requirement upon entry. Other immigrants were regarded as independent: either they had a working contract and employment waiting for them in the country or they intended to set up a business either on their own or in partnership, in which case they would have to provide evidence that they had the necessary funds. The third category of immigrants were those who had to demonstrate their financial capacity to become established in the country and they usually had a period of three months in which to do so.

58. Mr. HURTUBISE (Canada) explained what was covered by the term "competent tribunal" used in the part of the Canadian Government's report dealing with article 14 of the Covenant. It meant primarily the courts referred to in the laws governing procedure, whether federal (Criminal Code, Federal Court Act), territorial or provincial (Code of Civil Procedure). Under the Canadian Bill of Rights, however, the term could in principle refer also to a commission, an office or a council empowered to compel a person to testify. Under article 56 of Quebec's Charter, the word tribunal included a coroner, a fire investigation commissioner, a commission of inquiry and a person exercising quasi-judiciary functions.

59. With regard to the presumption of innocence, he stressed that section 5 (1)(a) of the Criminal Code, mentioned on page 59 of the report, fully answered the requirements of article 14, paragraph 2, of the Covenant. The same was true of the provisions of article 33 of the Quebec Charter relating to questions which were within the legislative competence of that province. In accordance with the principles set forth in those texts, a person acquitted of a criminal offence would not be required to pay the legal charges and, should a legal action be abandoned, it was obvious that the person against whom the accusation was pending remained innocent and that his reputation in the eyes of the law remained intact.

60. Replying to the questions relating to article 14, paragraph 3, he explained that every accused or witness had the right to the services of an interpreter and that there were provisions to that effect in Canadian law. With regard to the right to be tried without undue delay, he could only repeat what was stated in the report (page 61), i.e., that that right was not recognized in federal law and that since the majority decision of the Supreme Court of Canada in Rourke v The Queen, the courts could no longer rely upon the theory of abuse of process to suspend proceedings which might cause prejudice to an accused owing to undue delay in the conduct of the prosecution's case. Furthermore, it was in the Crown's interest to institute proceedings because if the trial was delayed the witnesses' memories might fade somewhat and their credibility could suffer. Even if there were no legislative provisions recognizing the right of a person to be tried within a reasonable time, it should be pointed out that under federal law the accused were usually released pending trial. Nevertheless, when that was not the case, section 459 of the Criminal Code provided that any person accused of an offence other than those mentioned in section 457.7 (murder, sabotage, incitement to mutiny, offence in connexion with an aircraft) and who, if prosecuted by indictment, was still held in custody 90 days after his appearance or after the rescission under sections 457.6 and 458 of the Code of an order for release or a summons, of a promise or commitment to appear, or who, if summarily declared guilty, was still held 30 days after his appearance or after rescission under the same sections of the Code of an order or commitment to appear, must, if his trial had not started by the end of that period, be brought by the person in charge of him before a judge mentioned in section 448 in order to determine whether that person should be released. That applied in all cases in which the person's detention was not required for another case. The judge would then determine whether the detention of the accused was warranted. If he held that it was unwarranted, he would release the accused on conditions which he would determine. The judge before whom an accused was brought under section 459 could also issue the instructions he considered necessary in order to hasten the trial of the accused. In short, both at the federal and at the provincial level, any person arrested or held in custody must be brought promptly before the competent court and if necessary could resort to habeas corpus if improperly deprived of his liberty.

61. Replying to a member of the Committee who had raised a question regarding the marriageable age in Quebec and who had asked what the current situation and future prospects were in that regard, he confirmed that in thatProvince the marriageable age was 14 for a man and 12 for a woman but that until the age of 18 the consent of the father or the mother was essential. Nevertheless, if the bill currently under consideration by the National Assembly of Quebec was adopted, the minimum age for marriage would be raised to 18 for both sexes, but persons of at least 16 years of age could obtain permission from the court if they applied for it. Natural children were made legitimate by the subsequent marriage of their father and mother, and in that case they had the same rights as if they had been born of that marriage. The parents must support, provide for and bring up their natural children. Natural children had the same rights as legitimate children, except in the case of ab intestat inheritances, which, under section 606 of the Civil Code, were handed over to the legitimate heirs in the order established by law. Nevertheless, a parent could favour his illegitimate child in his will. If the draft reform under consideration was adopted, natural children would in future be placed on a completely equal footing with legitimate children.

62. The CHAIRMAN thanked the members of the Canadian delegation warmly for their extremely detailed replies to the questions which had been raised by members of the Committee. He requested that the replies should be reproduced as completely as

possible in the summary record of the meeting. He thanked the Canadian Government for its co-operation and looked forward to such additional information as it might submit in writing to the Committee.

63. Mr. McPHAIL (Canada) thanked the members of the Committee for having examined his Government's report so thoroughly and was glad to have had the opportunity to get to know its work better. His Government would continue to operate with the Committee and would not fail to provide any additional information which might be requested of it.

The meeting rose at 1 p.m.