Government of Canada | Gouvernement du Canada

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

Sixth Report of Canada

Covering the period
August 2004 – December 2007

Canada

FOREWORD

The *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* was adopted by the United General Assembly on December 10, 1984. Canada ratified the Convention on June 24, 1987.

States Parties are required to report to the United Nations on measures they have taken to give effect to the Convention. The present report was submitted to the Committee against Torture on October 4, 2010 and covers the period of August 2004 to December 2007.

This Sixth Report was prepared in close collaboration by the federal, provincial and territorial governments and describes measures and initiatives taken by these governments with respect to the Convention.

Through publication of this report, it is hoped that Canadians will be encouraged to become familiar with the measures adopted in Canada to ensure the implementation of the Convention and to broaden their understanding of the obligations contracted by Canada through ratification of this important international human rights treaty.

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* In geographical order, from east to west

List of Acronyms

ASIRT	Alberta Serious Incident Response Team
ATA	Anti-terrorism Act
AVR	Audio and visual recording equipment
BC	British Columbia
CAO	Children's Advocate Office
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CCVT	Canadian Centre for Victims of Torture
CD	Commissioner's Directive
CED	Conducted energy device
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEWs	Conducted energy weapons
CHRC	Canadian Human Rights Commission
CPC	Commission of Public Complaints against the RCMP
CPSP	Corrections, Public Safety and Policing
CSIS	Canadian Security Intelligence Service
DFAIT	Department of Foreign Affairs and Internal Trade
EDS	Excited delirium syndrome
F-P/T	Federal, provincial and territorial
GVTAPS	Greater Vancouver Transportation Authority Police Service
ICIS	Integrated Correctional Intervention Strategy
IMIM	Incident Management Intervention Model
IRPA	Immigration and Refugee Protection Act
MBIS	Motivation Based Intervention Strategy
NGOs	Non-governmental organizations
NWT	Northwest Territories
OIPRD	Office of the Independent Police Review Director
OPCC	Office of the Police Complaint Commissioner
PCOC	Program Coordinating Operations Committee
PEI	Prince Edward Island
PRRA	Pre-Removal Risk Assessment
RCMP	Royal Canadian Mounted Police

SACUF	Standing Advisory Committee on the Use of Force
SIS	Segregation Intervention Strategy
SPC	Saskatchewan Police Commission
SPCC	Saskatchewan Public Complaints Commission
US	United States
VOW	Canadian Voice of Women for Peace
VPP	Violence Protection Program

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Part I

Introduction

1. The present report outlines key measures adopted in Canada from August 2004 to December 2007, to enhance implementation of the *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT). As Canada updated the Committee Against Torture during its May 2005 appearance, the primary focus of this report is from June 2005 to December 2007. Information contained in Canada's Interim Report under the CAT, submitted to the Committee in May 2006, is not repeated in the present report.

2. In order to improve the relevance of reporting to United Nations treaty bodies, this report focuses on selected key issues where there have been significant new developments and where information has not already been provided within reports under other treaties to which Canada is a party. Where detailed information is available in other reports, these reports are referred to, but, with few exceptions, the information is not repeated in this report. This report focuses on the following key issues:

   - Review of the *Anti-Terrorism Act*;
   - Immigration and Refugees Protection Act;
   - Protection of Canadians abroad;
   - Results of the Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar;
   - Prosecution in Canada of alleged offenders for acts in foreign countries;
   - Treatment of persons detained or imprisoned;
   - Use of conducted energy weapons;
   - Independent oversight of law enforcement;
   - Compensation to victims of torture.

3. These issues were identified through an examination of the 2005 Concluding Observations of the Committee against Torture by federal departments and the Continuing Committee of Officials on Human Rights, the principal federal-provincial/territorial (F-P/T) body responsible for intergovernmental consultations and information sharing on the ratification and implementation of international human rights treaties.

4. The views of 46 non-governmental organizations (NGOs) were sought with respect to the issues to be covered in this report. Organizations were also encouraged to forward the correspondence to other interested organizations. The following organizations responded to the invitation: the Canadian Centre for Victims of Torture (CCVT) and Canadian Voice of Women for Peace (VOW).

5. The CCVT commended the Government of Canada for a number of initiatives, including guidelines on child refugee claimants, acceptance of gender-related persecution as grounds for claiming refugee status, leadership in the global campaign against impunity for torturers, legal compliance with Article 2 of the CAT with respect to the principle of absolute prohibition of torture under the *Canadian Charter of Rights and Freedoms* and the *Criminal Code*, and incorporation of the Rome Statute of the International Criminal Court into Canadian legislation by passing and implementing the *Crimes Against Humanity and War Crimes Act*.

6. Issues of concern raised by the CVVT included enforcement measures in Canada under the *Anti-terrorism Act* and *Public Safety Act*, the use of security certificates under the *Immigration and Refugee Protection Act*, potential deportation of Security Certificate detainees, lack of protection against torture for Canadian citizens abroad, lack of effective measures to provide civil compensation to victims of torture, and the condition of non-citizens in Canadian immigration detention centres.

7. The VOW report, entitled "Torture of Canadian Women by Non-State Actors in the Private Sphere: A Shadow Report," is an integrated response to Canada's Sixth and Seventh Reports on the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW) and the CAT.

8. The VOW report discusses effect-based discrimination against Canadian women as a violation under CEDAW articles 1-3, and what VOW defines as torture of Canadian women by non-state actors in the private sphere as a violation under CAT articles 1 and 2(1). The issues raised in VOW's report relate primarily to alleged torture perpetrated by non-state actors in the private sphere, inclusion of a separate offence of non-state actor torture in the *Criminal Code*, education about non-state actor torture at all levels of government and civil society, including NGOs, persons who work in judicial, legal, and police services, health and community services, child protection services, educational departments and universities, and access to justice and treatment interventions for women victimized by actors of non-state torture committed in the private sphere.

Optional Protocol to the Convention

9. The Government of Canada is strongly committed to the prevention and elimination of torture and other forms of cruel, inhuman or degrading treatment or punishment. Canada supports the principles of the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman, Degrading Treatment or Punishment* (the Optional Protocol) and voted in favour of its adoption. Canada has many mechanisms already in place to protect persons deprived of their liberty in places of detention from torture and the other forms of ill-treatment prohibited by the Optional Protocol.

10. Canada is presently considering whether to become a party to the Optional Protocol. Canada takes its human rights obligations very seriously and will become a party to an international human rights treaty only after a thorough review is undertaken by the federal, provincial and territorial governments to ensure that domestic laws and policies meet the obligations of the treaty. Once this analysis is completed, Canada will be in a position to make a final decision on whether to become a party to the Optional Protocol.

Federal-Provincial-Territorial Collaboration

11. Federal, provincial and territorial governments collaborate through various F-P/T fora on legislation, policies and programs that serve to implement the provisions of the CAT. Some committees, like the Continuing Committee of Officials on Human Rights referred

to above, discuss general issues, while others focus on specific issues, such as the FPT Continuing Committee of Heads of Corrections.

Part II

Measures Adopted by the Government of Canada

Article 2: Legislative, administrative, judicial and other measures

12. Previous periodic reports outlined a series of constitutional and legislative measures related to implementation of the CAT. There has not been any new legislation adopted by the Government of Canada during the period of this report.

Anti-terrorism Act

13. As outlined in Canada's Fifth Report under the CAT, Canada's *Anti-terrorism Act* (ATA) addresses a number of specific areas and has implemented Canada's international obligations under Security Council resolution 1373 of September 28, 2001. The ATA underwent a mandatory Parliamentary review, in accordance with section 145 of the ATA, that was completed in 2007. The review was carried out by two Parliamentary committees: the Special Senate Committee on the *Anti-terrorism Act* that tabled its report, *Fundamental Justice in Extraordinary Times: Main Report of the Special Senate Committee on the Anti-terrorism Act,* on February 22, 2007[1], and the Subcommittee on Public Safety and National Security of the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness of the House of Commons, that tabled its final report, *Rights, Limits, Security: A Comprehensive Review of the Anti-terrorism Act and Related Issues*, on March 27, 2007.[2] The Government of Canada tabled its response to the findings of the House of Commons Subcommittee on July 18, 2007.[3] The Special Senate Committee did not request a response.

14. Two provisions of the ATA, discussed in the Fifth Report, namely the investigative hearing and recognizance with conditions, were subject to a sunset clause that would make the provisions inoperative generally after five years of coming into force unless renewed. The resolution seeking to extend these provisions was voted down by the House of Commons in late February 2007, with the result that these provisions ceased to have the force of law on March 1, 2007.

Immigration and Refugee Protection Act

15. The *Immigration and Refugee Protection Act* (IRPA) that came into force on June 28, 2002, discussed in the Fifth Report, has also been considered in the course of the Parliamentary review. The House of Commons Subcommittee suggested that more needed to be done to assure individual rights and freedoms in the security certificate process under IRPA, and recommended a scheme whereby security-cleared counsel could challenge evidence in a closed hearing, so that a balance could be achieved between protecting information in the interest of national security and preserving both the safety of any person named as well as the right of the named person to make full answer and defence.

1 Available online at: www.parl.gc.ca/39/1/parlbus/commbus/senate/com-e/anti-e/rep-e/rep02feb07-e.htm
2 Available online at:
http://cmte.parl.gc.ca/cmte/CommitteePublication.aspx?COM=10804&Lang=1&SourceId=199086
3 Available online at:
http://cmte.parl.gc.ca/cmte/CommitteePublication.aspx?COM=10804&Lang=1&SourceId=199086

16. The Senate Committee released its main Report, which called for the possible use of special advocates, shortly before the Supreme Court of Canada released its judgment in the case of *Charkaoui v. Canada (Citizenship and Immigration)* ([2007] SCC 9). The Supreme Court ruled that the process for determining the reasonableness of a security certificate was unconstitutional as it placed sensitive information into evidence in immigration related proceedings without providing for a fair process to ensure adequate disclosure to affected parties. The Court suspended its declaration for one year to provide time for Parliament to amend the procedure. The Senate Committee then issued a supplementary report[4], commenting on issues raised by the judgment and its earlier recommendations that special advocates should be available in all cases where there is limited disclosure for national security reasons.

17. To address the issue, the Government of Canada tabled in the House of Commons on October 22, 2007, Bill C-3, *An Act to Amend the Immigration and Refugee Protection Act (certificate and special advocate) and to make a consequential amendment to another Act*. (www2.parl.gc.ca/HousePublications/Publication.aspx?Docid=3300375&file=4). The Bill amends the IRPA to provide a new procedure relating to security certificates and, in particular, to provide for the appointment of a special advocate to represent the interests of a person named in a security certificate during the closed portions of the hearing (see discussion under Article 11). In addition, amendments to section 83 of the Act prohibit the use of evidence obtained from torture in Division 9 cases – security certificates and others that use classified information. Bill C-3 came into force on February 22, 2008. (See also the paragraphs under Article 15).

Criminal Code

18. As noted in Canada's Fifth Report under the CAT, the *Criminal Code*, subsection 269.1(4), which bars the use of any statement obtained by torture for any purpose except as evidence that it was in fact obtained by torture, applies to any proceedings over which Parliament has jurisdiction. In addition to the directions already in place in its training material with respect to subsection 269.1 related to "torture," in May 2007, the Royal Canadian Mounted Police (RCMP) amended its policy. Its National Security Criminal Investigations manual states, inter alia, with respect to the sharing, handling and dissemination of information that "every attempt must be made to ensure there is no support or condonation of torture or other abuse of human rights."

Consular services

19. Consular officials and other foreign service officers have been receiving training on torture awareness since February 2005. A workshop was originally developed in partnership with the Canadian Centre for Victims of Torture, and offered to new Management/Consular Officers in 2005 and 2006. It was also offered as part of the pre-assignment program for officers in 2005.

4 The Fourth Report of the Special Senate Committee on the Anti Terrorism Act is available at: http://www.parl.gc.ca/39/1/parlbus/commbus/senate/com-e/anti-e/rep-e/rep04mar07-e.htm.

20. The workshop was redesigned in the fall of 2006, in response to recommendations contained in the Commissioner's Report of the *Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar* (O'Connor Inquiry Report).[5] The enhanced two-day workshop is designed to raise awareness of consular cases that may involve torture/abuse. It is intended to provide consular staff with tools to better enable them to recognize the signs of torture/abuse, and to then take appropriate action.

21. This workshop is offered regularly, in both official languages, to consular staff at headquarters and in the field. It is part of the mandatory training for new Management/Consular recruits and has been incorporated into the annual pre-posting program for officers deployed on mission abroad. As of December 2007, over 270 officers had benefited from this training, which has also been made available on occasion to members of other diplomatic missions.

22. The Government of Canada takes its consular role on behalf of Canadian nationals overseas very seriously, and seeks to provide its detained nationals with assistance that ensures fair, equal and humane treatment and adequate health care. The Government of Canada endeavours to secure consular access to Canadian nationals detained overseas, including private access whenever possible, and to ensure that they have access to legal representation.

23. Consular staff routinely visit Canadian nationals who are detained abroad in order to verify that conditions of detention are appropriate and to assure the wellbeing of the Canadian detainees. Consular access is not always granted by the Detaining State when the detainee is a dual nationality Canadian and is being held in his/her country of other nationality. In cases where it is suspected that Canadian nationals have suffered torture, cruel, degrading or inhuman treatment or punishment, Canada makes the strongest efforts to gain consular access and to ensure that the full range of a detainee's consular rights are respected, including access to medical care and legal counsel. This could involve having the Canadian ambassador make direct representations to the Ministry of Foreign Affairs, calling in the ambassador from the Detaining State to make the same representations, having the Canadian Minister of Foreign Affairs write to his counterpart in the Detaining State and taking other actions to ensure that the situation is remedied.

Canadians abroad

24. As set out in the *Comments of the Government of Canada on Draft General Comment No. 2* (the Comments), the Government of Canada notes that the jurisdictional competence of a state is primarily territorial, as reflected in Article 2 of the Convention. A state may not actually exercise jurisdiction over the territory of another state without the latter's consent, except in certain exceptional circumstances such as when a state is an Occupying Power. It must be emphasized that the Government of Canada is not an Occupying Power of any other territory.

5 Available on-line at: http://epe.lac-bac.gc.ca/100/206/301/pco-bcp/commissions/maher_arar/07-09-13/www.ararcommission.ca/eng/26.htm.

25. As set out in the Comments, the Government of Canada agrees that a State Party cannot circumvent its obligations by delegating torture to private actors. A general claim that all transfers of individuals on foreign territory in which there are questions of a potential risk of torture inflicted by a recipient would be a violation of obligations under the CAT, in the Government of Canada's view, is not supported by the text of the Convention. This is not to say that the Government of Canada is not mindful of its obligations under international humanitarian law, in the context of military operations, and customary international law not to transfer individuals who face a substantial risk of torture. The Comments have been appended to this report for the Committee' reference.

Article 3: Prohibition of expulsion and extradition

26. Previous periodic reports outlined a series of legislative measures directed at prohibiting expulsion and extradition to torture, including measures under IRPA, which came into force on June 28, 2002. The following updates the protections provided by those measures.

Immigration and Refugee Board hearings

27. The refugee status determination process is generally *non-adversarial*; this means that the questions asked of refugee claimants are about the facts of the claim, in order to establish or clarify the basis. No one in the hearing process has the role of disputing the claim unless the Minister chooses to intervene in a case to argue for the exclusion of the person, for instance.

28. In December 2006, guidelines were published to provide procedural accommodation for individuals who are identified as "vulnerable persons." Vulnerable persons include victims of torture, survivors of genocide and crimes against humanity, and women who have suffered gender-related persecution. These guidelines articulate the Government of Canada's commitment to making procedural accommodations for such persons so that they are not disadvantaged in presenting their cases. The guidelines reiterate that while claims are assessed on the facts, claimants need to be treated with sensitivity and respect, taking into account their specific vulnerabilities.[6]

Exclusion from refugee status on security grounds

29. As noted by the Committee, exclusion under section 98 of the IRPA is used to reject claimants who are found not to be entitled to protection, because they are referred to in section E (persons who benefit from protection in another country) and section F (persons who have committed war crimes, crimes against humanity, serious non-political crimes or who are guilty of acts contrary to the purposes and principles of the United Nations) of Article 1 of the 1951 Refugee Convention. Section 98 incorporates these provisions of the Convention refugee definition into Canadian law.

6 These guidelines are available at: http://www.irb-cisr.gc.ca/en/references/policy/guidelines/vulnerable_e.htm.

30. A claimant who is excluded pursuant to section 98 of the IRPA may still apply for a Pre-Removal Risk Assessment (PRRA) prior to removal from Canada. As noted in Canada's Fifth Report, the PRRA is used to ensure that people are not returned to a country where they would be at risk of persecution, torture, risk to life or risk of cruel and unusual treatment or punishment. The PRRA process will, in these cases, assess the risk of torture, or threat to life, or cruel or unusual treatment, if they are returned to their country, and will balance those risks, if they exist, against the potential danger a claimant poses to the safety and security of Canada.

31. In 2007, a full-scale evaluation of the PRRA program was commissioned to support evidence-based decision-making in improving program delivery and outcomes. The report will be used in the future to support further program improvement.

32. As set out in Canada's Fifth Report, as a rule, the Government of Canada will not remove persons to a country where they risk being tortured (section 115 of IRPA). The Committee has noted concern with the exclusion of certain categories of persons posing security or criminal risks from the protection against refoulement provided by section 115 (2) of the IRPA.

33. Subsection 115(2) provides a legislative exception to the principle of non-refoulement, or bar against removal, of protected persons if they have been found inadmissible on grounds of serious criminality and are considered a danger to the public or are inadmissible on grounds of security, violating international rights or organized criminality. Under subsection 115(2), a protected person may be removed, provided that the danger they pose outweighs the extent to which the person's life or freedoms are threatened by removal from Canada, and any humanitarian and compassionate factors that should be considered by the Minister of Citizenship and Immigration. The Minister's decision in this regard is subject to review by the courts.

34. In Canada's Fifth Report it was noted the Supreme Court of Canada decision in *Suresh v. Canada (Minister of Citizenship and Immigration)* ([2002] 1 S.C.R. 3) found that while deportation to States that may engage in torture will generally violate the principles of fundamental justice protected by the *Canadian Charter of Rights and Freedoms,* it may be justified under the balancing process in exceptional circumstances.

35. In *Re Jaballah* ([2006] F.C.J. No. 1706), the Federal Court interpreted the Supreme Court of Canada decision in *Suresh* by first noting that the *Suresh* decision reflects the prohibition in Article 3 of the Convention against expelling, returning or extraditing a person to another state where there are substantial grounds for believing that the person would be in danger of being subjected to torture. The Court further noted that the reference in the Supreme Court's judgment to "exceptional cases" cannot have been intended to leave many cases to be classed as "exceptional." Rather, the Court held at paragraph 81 of its judgment that "the general principle, as I read *Suresh,* is that deportation to a country where there is a substantial risk of torture would infringe an individual's rights, in this case Mr. Jaballah's rights, under s.7 of the Charter, and, in my view, infringement generally

would require that the exceptional case would have to be justified under s.1." (See also Appendix 1).

36. As the Government of Canada does not concur with this interpretation of the Supreme Court of Canada decision in *Suresh,* leave to appeal this decision to the Federal Court of Appeal was requested by the Government of Canada and granted by the Court. However, the appeal was adjourned *sine die* as the transitional provisions of Bill C-3 arguably render the appeal moot given that a new Federal Court decision will be sought on the reasonableness of Mr. Jaballah's security certificate and a new PRRA decision sought under the amended provisions of IRPA.

37. It is important to note that while the Government of Canada has reserved the option of removal to a substantial risk of torture in exceptional cases, in the period covered by this report, it did not remove anyone in a case where domestic processes had concluded that the individual faced a substantial risk of torture upon removal.

Removals and diplomatic assurances

38. Since submission of Canada's Interim Report under the CAT in May 2006, there have been no cases of removal of individuals from Canada pursuant to the IRPA involving requests by the Government of Canada of diplomatic assurances from countries of origin. In this same period, there has been one case of extradition from Canada where diplomatic assurances have been sought in order to attenuate the alleged risk raised by an individual that they face a substantial risk of torture upon return to their country of origin. This individual has filed a communication with the Committee.

39. In a March 2007 report on legislation and practice in anti-terrorism, the Senate of Canada made specific recommendations regarding diplomatic assurances:

> *To the extent that the Canadian government may consider a diplomatic assurance to be reliable evidence that an individual does not face a risk of torture if removed to another country under a security certificate, we wish to ensure that appropriate mechanisms are in place for monitoring the return. This includes the ability to obtain information regarding the status and condition of the returned individual from a reliable source.*

40. Canadian jurisprudence has assisted in indicating the circumstances where assurances may be of value in supporting efforts to remove individuals where there are allegations of a substantial risk of torture. As well, the courts provided insight into the question of what requirements an assurance must fulfill to enhance its reliability.

41. The Government of Canada has sought assurances in other cases where specific undertakings have been requested with respect to treatment of the individuals in accordance with international standards including the Convention. However, as noted above, no immigration-related removals have occurred on the basis of these assurances; reliance was placed on assurances in one extradition.

42. The Federal Court of Canada, in *Lai v. Minister of Citizenship and Immigration Canada*, (2007 FC 361), reviewed diplomatic assurances received from China concerning a possible transfer of Mr. Lai and found that the PRRA officer had not sufficiently assessed whether it was appropriate to rely on the assurances on torture. The Court favourably referred to the minimal conditions for diplomatic assurances listed by the former UN Special Rapporteur on Torture in his 2004 report to the UN General Assembly, such as: prompt access to a lawyer, recording of all interrogation sessions, prompt and independent medical examination, no incommunicado detention and a system of effective monitoring. Another Federal Court decision in 2006, *Mahjoub v. Canada (Minister of Citizenship and Immigration),* (2006 FC 1503), assessed diplomatic assurances from Egypt as unreliable largely due to the country's human rights record, but also noted the absence of provision for a monitoring mechanism in the assurances received.

43. The Government of Canada recognises that monitoring mechanisms may constitute an effective means of strengthening the reliability of diplomatic assurances received from another country that an individual will not be subject to torture upon return.

Article 7: Prosecution of persons alleged to have committed torture

44. As noted in Canada's Fifth Report, an interdepartmental group, the Program Coordinating Operations Committee (PCOC) (formerly titled the Interdepartmental Operations Group), coordinates investigation of allegations of crimes against humanity and war crimes under Canada's War Crimes Program. The Committee ensures that the Government of Canada has properly addressed all allegations of war crimes and crimes against humanity against Canadian citizens or persons present in Canada. It also ensures that Canada complies with its international obligations.

45. A major activity of the PCOC has been the review of all crimes against humanity and war crimes files, determining the appropriate course of action, and channeling the files to the appropriate departmental authority for action. There are regular reviews to examine new files that have come to the attention of program partners. The PCOC meets on a monthly basis (or more often when required). Decisions are made by consensus and the chair rotates between the partner organizations.

46. If persons suspected of involvement in atrocities do arrive in Canada or are found to be living in Canada, the program partners assess the situation to determine the most appropriate remedy. Remedies include the following:

- Criminal proceedings that are based on investigations conducted by the RCMP under the *Crimes Against Humanity and War Crimes Act* (http://laws.justice.gc.ca/en/C-45.9/);
- Enforcement of the IRPA, including denial of access to and exclusion from refugee protection and removal proceedings;
- Citizenship revocation; and,

- Extradition to foreign states and surrender to international tribunals under the *Extradition Act* (http://laws.justice.gc.ca/en/E-23.01/).

47. In order to be added to the inventory for criminal investigation, the allegation must disclose personal involvement or command responsibility, the evidence pertaining to the allegation must be corroborated, and the necessary evidence must be able to be obtained in a reasonable and rapid fashion. As there are resources available for criminal investigation, the partners have redefined the test for inclusion in the modern war crimes inventory in order to recognize the narrowed strategic focus for criminal investigation and prosecution - one of the most difficult and expensive remedies available under the program. The inventory for criminal investigation has been re-examined and the number of files has been reduced. The files removed from the inventory will be dealt with by using remedies under the IRPA or the *Citizenship Act* (http://laws.justice.gc.ca/en/C-29/index.html). The need for these files to be investigated and finalized will increase processing times on all files, including those already in process.

48. While the Committee has expressed some concern about the low number of prosecutions for terrorism and torture offences, the Government of Canada notes that prosecution is but one way in which Canada can impose sanctions on war criminals and those who have participated in crimes against humanity. The decision to utilize a particular remedy is carefully considered and is assessed in accordance with the Government's policy that Canada not be a safe haven for war criminals. The decision to use one or more of these mechanisms is based on a number of factors which include: the different requirements of the courts in criminal and immigration/refugee cases to substantiate and verify evidence; the resources available to conduct the proceeding; and Canada's obligations under international law.

49. There were two new prosecutions that were underway but not yet completed during the period covered by this report. On October 19, 2005, Désiré Munyaneza, a Rwandan national, was arrested regarding his alleged participation in the events in the region of Butare in Rwanda between April 1, 1994 and July 3, 1994. Mr. Munyaneza was charged with two counts of genocide, two counts of crimes against humanity and three counts of war crimes pursuant to the *Crimes Against Humanity and War Crimes Act*.

50. In February 2007, a member of the RCMP stationed in Merritt, British Columbia was charged with one count of torture under section 269.1 of the *Criminal Code of Canada* [7] and the Crown prosecutor filed a direct indictment in the British Columbia Supreme Court. This member was also charged with various other *Criminal Code* offences such as aggravated assault, unlawful confinement and obstruction of justice. In the result, the

7 Section 269.1 of the *Criminal Code* makes it an offence for any person, either acting in an official capacity or acting at the instigation or acquiescence of an official, to inflict torture on another person. Any statement obtained as a result of the commission of an offence under the section is inadmissible in evidence in any proceedings over which Parliament has jurisdiction. Section 269.1 is also found in the Criminal Code provisions relating to the collection of DNA, in the category of a "secondary designated offence," for which a judge may issue a warrant for the taking of bodily samples from an accused for forensic DNA analysis if it is found to be in the best interests of justice to do so.

member was convicted of assault causing bodily harm following a guilty plea to this charge.

Article 11: Treatment of persons arrested, detained or imprisoned

Corrections / Persons Serving Criminal Sentences

51. The safety and security of staff, offenders, and the public remain paramount concerns for the Government of Canada, which strives in its day to day operations of its federal correctional services system to address these issues through effective correctional programs and dynamic security procedures.

52. Research has demonstrated that the Violence Prevention Program (VPP) is an effective intervention for reducing major violent incidents among high-risk and high-need violent offenders. *An Examination of the Effectiveness of the Violence Prevention Program* (Cortoni, Nunes, & Latendresse, 2006)[8] compared a sample of male high-risk violent offenders treated in the VPP between 2000 and 2004 with matched untreated violent offenders. The results demonstrated that 333 treated high-risk violent offenders had a 52 percent reduction in violent recidivism (from 21.8 percent for the benchmark high-risk group to 8.5 percent for the treated high-risk group).

53. Results of the study also showed that completion of the VPP was related to improved institutional behaviour. Specifically, offenders who completed the program had significantly fewer major institutional misconduct charges in the 6-month and 1-year period following completion when compared to the corresponding pre-program periods.

54. Based on this research, a Moderate Intensity Violence Prevention Program and a Women's Violence Prevention Program were developed and implemented in 2007 to compliment the existing VPP.

55. The VPP results also confirmed meta-analytical research demonstrating that effective correctional programs delivered early in an offender's sentence can significantly reduce major violent incidents. In 2006, the substance abuse and violence prevention programs were successfully implemented at reception units so that offenders (particularly those that are serving sentences of short duration) can be placed in correctional programs at the earliest opportunity.

56. Information on the Integrated Correctional Intervention Strategy (ICIS) and Motivation-based Intervention Strategy (MBIS) was presented in Canada's Interim Report in Follow-up to the Review of Canada's Fourth and Fifth Reports.

57. The ICIS is an approach that combines staff training, structural changes, and targeted interventions to address various population management challenges in maximum-security institutions. These challenges, identified in previous task forces (e.g., Task Force on

8 Available online at: www.csc-scc.gc.ca/text/rsrch/reports/r178/r178_e.pdf.

Security, Task Force on Administrative Segregation) and discussions with stakeholders, include the management of a small number of highly disruptive and threatening offenders, the timely delivery of appropriate programming, and enhancing positive interactions between staff and offenders.

58. ICIS was piloted at three maximum-security institutions: Kent, Millhaven, and Atlantic. One pilot site, Millhaven Institution, was unable to achieve full implementation. The earliest stages of the implementation process occurred at the pilot sites between December 2003 and April 2004 in the form of general staff training on the MBIS approach. Staff at ICIS pilot sites identified structural and population challenges that significantly delayed the implementation and sustainability of the full model at all sites.

59. In 2006, three evaluations were conducted on the ICIS. A monthly incident rate (per 100 inmates) was calculated for Kent and Atlantic Institutions to examine whether the structural changes and components of the ICIS model had any impact on performance indicators of success. For comparative purposes, monthly incident rates were also calculated at three similar maximum-security institutions (Kingston, Saskatchewan, and Edmonton penitentiaries). Pre- and post-ICIS incident rates were calculated for seriousness of incidents, staff and inmate assaults, disciplinary problems, and requests for protective custody.

60. Results of all three evaluations suggested that there was little impact of ICIS on the institutions as a whole. There were, however, significantly fewer requests for protective custody at the Kent Institution in the two years post-ICIS implementation, relative to the two years prior to implementation. Similar trends were noted at the Atlantic Institution, using a one-year pre- and one year post-ICIS timeframe. In contrast, the comparison group (non-ICIS sites) showed an increase, though not statistically significant, in requests for protective custody over the same (Kent's) pre-post time frame.

61. MBIS, a component of ICIS, was designed to enable the correctional system to be more efficient in motivating disruptive offenders to change their behaviour in Maximum Security settings. MBIS is a short-term, directive method of individual intervention that focuses on the needs of offenders who are not motivated to follow their correctional plans. It was designed to prepare the offenders to change problematic behaviours by making them aware of the advantages of change and provide basic skills to make those changes.

62. Pre-post analyses of the MBIS revealed that participants had significantly fewer placements in segregation units post-MBIS, relative to the same timeframe (5.5 months) pre-MBIS. No such decrease was noted for a matched comparison group. For the MBIS participants, results also showed trends for reductions in perpetrating incidents (ranging, for example, from murder, assault, forcible confinement and sexual assault to property damage or theft), though they did not achieve statistical significance. Rates for the comparison group remained stable over comparable time periods.

63. A trend also showed an increased likelihood of participation in at least one correctional program after having engaged in MBIS. Again, the trend did not meet criteria set for

statistical significance. While both MBIS and their matched counterparts successfully completed fewer programs at post-test (relative to pre-test), the decline was significantly less for the MBIS participants. There were no pre-post differences found in the likelihood of participating in or successfully completing employment or education programs, and no between group (post intervention) differences were found in the likelihood of being transferred to lower security.

64. Based on the limited success of the ICIS, an Enhanced Security Unit was maintained at Kent Institution (Maximum Security). The MBIS was redesigned into the Segregation Intervention Strategy (SIS) and available at five Maximum Security Institutions and one Medium Security Institution.

65. The SIS was designed to improve staff safety in maximum security institutions. SIS is not, in itself, a correctional program, but rather an intervention in support of programs for a select group of inmates who have been identified as particularly problematic. It is a targeted intervention designed to increase inmates' motivation to change their problematic behaviours as well as to follow their correctional plans.

66. In December 2007 the Report of the Correctional Service of Canada (CSC) Independent Review Panel was released. The Panel was assigned the task of completing a review of CSC's operational priorities, strategies and business plans. The report, entitled A Roadmap to Strengthening Public Safety, contains 109 recommendations. CSC subsequently launched a long-term transformation agenda with the goal of enhancing public safety for Canadians. The transformation agenda comprises a number of inter-related initiatives in the following themes: enhancing offender accountability; eliminating drugs; enhancing correctional programs and interventions; modernizing physical infrastructure; and strengthening community corrections.

Inmate injuries due to assaults by inmates

67. The rate of inmate injuries due to assaults by other inmates has remained relatively constant, although in absolute numbers, there has been a steady increase in inmate injuries due to assaults by inmates between 2002-2003 and 2006-2007.

		2002-03	2003-04	2004-05	2005-06	2006-07
Inmates Injuries	Year	483	423	435	491	498
	3-year average	483.7	457.3	447.0	449.7	474.7
Institutional Flowthrough	Year	18588	18532	18623	19039	19490
	3-year average	18628	18567	18581	18731	19051
Rate	Year	2.6%	2.3%	2.3%	2.6%	2.6%
	3-year average	2.6%	2.5%	2.4%	2.4%	2.5%

Source: Offender Management System (April 8, 2007).

Women offenders

68. Reviews are conducted on all incidents involving use of force on female offenders at federal penitentiaries for women and certain regional treatment facilities. Full reviews are conducted for each incident with a focus on cross-gender issues, strip-searching procedures, and in consideration of offenders who are pregnant. Recommendations may also be made to areas responsible for health and for security to conduct reviews where it is deemed appropriate.

69. To follow-up on information provided in Canada's Fourth and Fifth Reports under the CAT, the Government of Canada notes that in 2005, the response to the *Third and Final Annual Report of the Cross-Gender Monitor* was published to coincide with its response to the 2004 Canadian Human Rights Commission (CHRC) Report entitled *Protecting Their Rights: A Systematic Review of Human Rights in Correctional Services for Federally Sentenced Women* (given the overlap in the areas reviewed in these reports).

70. Previous reviews of the practice of employing men in front-line positions in the federal correctional services system noted limited impact on daily operations resulting from the presence of male Primary Workers in women's institutions. The majority of parties consulted, including women offenders, were in favour of maintaining a percentage of men in front-line positions. Based on these findings and the conclusion of the CHRC that "the Correctional Service of Canada must vigorously pursue other alternatives before impairing the employment rights of men in such a fashion" (i.e. excluding men from front-line positions), it was decided that cross-gender staffing processes would be maintained within the federal correctional services system.

71. In keeping with the CHRC's recommendations that the *National Operational Protocol - Front Line Staffing in Women Offender Institutions* be converted to a policy document, in March 2006, the *Commissioner's Directive (CD) 577 Operational Requirements for Cross-Gender Staffing in Women Offender Institutions*[9] was issued. The CD formalizes requirements that must be met where men are working in women's institutions. It ensures that the dignity and privacy of women offenders is respected to the fullest extent possible, consistent with safety and security, and that cross-gender situations in the workplace do not expose staff or offenders to vulnerable situations.

72. Cross-gender policy, staff training, and staff selection processes ensure that sufficient 'checks' are in place to protect the privacy, dignity and safety of women offenders while they are incarcerated. These mechanisms require ongoing focus to ensure these principles are fully respected. In addition to regular reviews of staff training and staff selection processes, a Management Control Framework was developed and implemented in 2007 to provide a monitoring tool to assess compliance with the policy. In addition, as recommended by the CHRC, a review of the cross-gender staffing policy and any related issues will be conducted. These mechanisms will contribute to the overall accountability framework in this critical area of women's corrections.

9 Available at: http://epe.lac-bac.gc.ca/100/201/301/focus_infectious_diseases/html/v5n1/text/plcy/cdshtm/577-cd_e.shtml.

73. During the period of this report, a *Safer Institutional Environment (Anti-Bullying) Strategy* for women offenders that focuses on reducing bullying and aggressive behaviour was under development. The Strategy's objective will be achieved through the explicit promotion of a more positive institutional community culture and through a proactive and strategic approach.

74. Within the context of federally sentenced women, there have been two specific allegations of correctional staff negligence in the context of the responsible discharge of duties. In both instances, the Government of Canada acted promptly and decisively. Relevant law enforcement agencies were immediately notified and internal disciplinary and investigatory processes were initiated.

Immigration Detention

75. The security certificate process within the IRPA is not a criminal proceeding, but an immigration proceeding. The objective of the process is the removal from Canada of non-Canadians who are inadmissible to Canada on grounds of security (e.g. espionage, subversion or terrorism), violating human or international rights, serious criminality or organized criminality and therefore have no legal right to be in Canada.

76. The Government of Canada issues a certificate only in exceptional circumstances where the information to determine the case cannot be disclosed without endangering the safety of any person or national security. An arrest warrant can be issued by two Ministers for the arrest and detention of the person named in the certificate if the Ministers have reasonable grounds to believe that the person is a danger to national security or the safety of any person, or is unlikely to appear at a proceeding for removal.

77. There were five active security certificate cases as of December 2007.

78. In January 2007, three individuals subject to security certificates filed an Action in the Federal Court concerning the detention conditions at the Kingston Immigration Holding Center. In May 2007, the Federal Court ordered that the matter be adjourned *sine die* in accordance with the minutes of the settlement, the terms of which have been sealed by the court.

79. Of the five active security certificates, only one (Hassan Almrei) remained in custody. Mohamed Mahjoub, Mohamed Harkat, Adil Charkaoui and Mahmoud Jaballah had been released subject to conditions.

80. Also, as noted above under Article 2, in response to the February 2007 Supreme Court of Canada decision in *Charkaoui v. Minister of Citizenship and Immigration,* which found that certain provisions of the security certificate regime were inconsistent with the *Canadian Charter of Rights and Freedoms,* the Government of Canada introduced Bill C-3.

81. The legislation introduces a number of new measures to the process to address the Supreme Court of Canada's ruling, including the introduction of special advocates. The special advocate's role is to protect the interests and rights of individuals who are subject to security certificates, ensuring they are adequately represented during closed proceedings. Special advocates:

- Are qualified, security-cleared lawyers;
- Are able to communicate with the subject of a security certificate without restriction until such time as they see the confidential information upon which a certificate is based;
- Ensure the individuals are adequately represented during closed proceedings;
- Have the ability to challenge the Government of Canada's claim that the disclosure of confidential information would be injurious to national security or would endanger the safety of any person. They may also challenge the relevance, reliability and sufficiency of the information and evidence presented and not disclosed and the weight to be given to it; and,
- Are authorized to participate and cross-examine witnesses and make oral and written submissions to the Court during closed hearings. With the judge's authorization, they can exercise any other powers that are necessary to protect the interests of the individual named in the certificate.

82. The legislation also reflects the Supreme Court's decision by providing foreign nationals with the same detention review rights as permanent residents. Any person detained subsequent to being named in a security certificate will be entitled to an initial detention review by a Federal Court judge within 48 hours. This may be followed by ongoing reviews at six-month intervals thereafter.

83. By passing this legislation, the Government of Canada has strengthened and improved an immigration process that is designed to protect Canadians from threats while respecting human rights and freedoms.

Law Enforcement

84. The policies, procedures and training of the RCMP ensure that all persons arrested, detained and imprisoned are treated in accordance with the Convention, as well as those rights afforded individuals under Canadian law. Policy enhancements in the areas of "Prisoner Care" and "Closed Circuit Video Equipment" were proposed to increase accountability, transparency and best evidence collection practices.

85. In order to identify trends in training needs and required enhancements in policy and procedures, an annual *In-custody Death* internal report is completed. Findings indicate that the vast majority of in-custody deaths have been as a result of high-risk life-styles (i.e. drug and alcohol abuse) and behaviour of individuals prior to death. Similar to this report is the *RCMP Member Involved Shooting* internal report that examines these occurrences for policy consistency in the area of use of force, and to identify trends that could be addressed through training or policy development. The vast majority of these incidents can be

directly linked to the subjects high-risk lifestyles and their attempts to cause grievous bodily harm and death to police members and the public.

Conducted energy weapons/devices

86. The Standing House Committee on Public Safety and National Security conducted hearings associated to the use of Conducted Energy Weapons/Devices (CEWs) by Canadian law enforcement and correction agencies. Prior to and following their adoption by the RCMP as a less lethal device in 2001, considerable research, review and testing was conducted to ensure consistent policy and training development for the CEWs. National and international studies, subject matter experts and research influence the creation and amendment of policy in this area.

87. On the issue of the categorization of CEWs within use of force policies/models, national and international research and experts were consulted. Research demonstrated that the vast majority of law enforcement agencies of democratic societies categorize their CEWs as an intermediate weapon and use them on subjects displaying actively resistant and combative behaviour. Approximately 86 percent of all international law enforcement agencies that use the "taser" categorize it as an intermediate weapon.

88. In August 2007, the CEW policy was enhanced in regards to reporting procedures, accountability processes, voluntary exposures, deployment aftercare, equipment upgrades and the area of excited delirium syndrome (EDS). This policy development included international consultation with medical experts. During November 2007, a comprehensive review on CEWs and EDS was completed and the report entitled "RCMP Report on Conducted Energy Weapons and Excited Delirium Syndrome" was presented to the Minister of Public Safety.[10] Stand-alone policy on EDS continues to be drafted to further augment RCMP members' responses to situations of this nature. International consultation from subject matter experts, in particular those from within the medical community, have also been conducted in relation to this new policy development.

89. On December 11, 2007, the Commission of Public Complaints against the RCMP (CPC) completed its interim report on CEWs. The following summarizes the 10 recommendations of the CPC:[11]

- Immediately restrict the use of the CEW by classifying it as an "impact weapon" in the use of force model; for use only on individuals with combative behaviours or posing a risk of "death or grievous bodily harm" to the officer, themselves or the general public;
- Only use in situations where an individual appears to be experiencing the condition(s) of EDS who is combative or pose a risk of behaviours described above;
- Immediately communicate the change in the use of force classification to all RCMP members;
- Immediately redesign the CEWs training, identifying it as an impact weapon;

10 Available online at: www.rcmp.ca/ccaps/cew/cew_eds_report_e.htm
11 The final CPC report including the interim recommendations is available online at: http://www.cpc-cpp.gc.ca/DefaultSite/Whatsnew/index_e.aspx?ArticleID=1851#_Toc200948373

- Amend the CEWs policy to reflect a two-year re-certification process;
- Appoint an RCMP National Use of Force Coordinator;
- Immediately institute and enforce stricter reporting requirements and procedures on CEW usage;
- Produce a CEW quarterly report;
- Complete an annual CEW report; and,
- Engage in continued research on CEWs.

90. In response to the CPC's interim report, the RCMP made enhancements to its Incident Management Intervention Model (IMIM), which is a visual aid that helps RCMP members envision an event and explain why certain intervention methods were used.

91. Passively and actively resistant behaviours were clearly labeled on the Model to assist the national police force members' understanding of the different types of resistant behaviour. A national bulletin within operational policy was published outlining these changes to the Model. The IMIM was under continuing review during the period of this report, with the assistance of several external law enforcement agencies and other experts with a view to identify other areas that require further enhancements. The principles of course training standards will not be impacted, in terms of members' understanding of responding to appropriate behaviours, while considering situational factors. The associated lesson plans provide examples of the types of behaviour and other factors that lead to situations when members may use a CEW to gain control of a subject..

92. Since their adoption in 2001, all CEW usages are reported through a standardized and comprehensive CEW report. The detachment supervisor, Divisional Criminal Operations Section as well as the National Criminal Operations Branch review these reports.

93. Along with the appointment of an RCMP Use of Force Manager and Coordinator, other areas that have been addressed with respect to the national use of force program are:

- Quarterly and annual reporting analyzing CEW usage;
- CEWs quality assurance guide for auditing usage at the RCMP detachment level.

94. As well, an international review of CEWs was conducted by the Canadian Police Research Center and an independent review of the RCMP CEW program was contracted.

95. It should be noted that as of December 2007 there had been no direct link or evidence that suggested that CEW applications cause death. A number of recent studies have demonstrated that use of the CEW on actively resistant behaviour and other behaviours substantially reduces injuries to both officers and suspects, and is one of the least injurious means to bring suspects under control.

96. Federal-provincial/territorial Ministers responsible for Justice discussed the use of CEWs at their November 2007 meeting and released the following information as part of the communiqué press release for the meeting:

"Given that there has recently been work done, in policing sectors in a number of jurisdictions on the use of tasers, Ministers requested officials to have this work brought together to share information and best practices on the use of tasers in Canada."

Article 12: Impartial and prompt investigation

The Commission for Public Complaints Against the RCMP

97. There have been no changes to the mandate of the Commission for Public Complaints (CPC) Against the RCMP during the 2005-2007 reporting period.

98. With respect to independent oversight of the RCMP, there have been no new mechanisms established during the 2005-2007 reporting period. However, the CPC and RCMP launched the Independent Observer Pilot Project on March 21, 2007, in British Columbia. As part of this pilot project, CPC staff observed and reported on RCMP investigations involving serious injury or death, that are high profile or sensitive in nature, or that may involve allegations of conflict of interest.

99. Regarding impartial investigations, a number of provinces and territories had or were in the process of establishing independent investigative teams or oversight bodies in order to enhance accountability and transparency of policing. The practice of requesting external independent investigations of allegations of wrongdoing, or in the cases where there may be a perception of wrongdoing by the RCMP, has increased, along with the practice of engaging the CPC in an observer role during certain sensitive investigations.

100. RCMP members are governed and held accountable for their actions, both administratively and legally/legislatively. The following are some of the significant internal and external mechanisms and processes in place that govern, and hold accountable for their actions:

- The *RCMP Act* (http://laws.justice.gc.ca/en/R-10/index.html), which includes the Code of Conduct, and the *RCMP Regulations* (http://laws.justice.gc.ca/en/R-10/SOR-88-361/index.html) hold them accountable both on- and off-duty;
- All investigative files are reviewed by supervisors/detachment commanders and or Divisional Criminal Operational Sections;
- Minor statutory allegations against members are routinely investigated by members external from the District and/or Division where the alleged offence took place;
- External police agencies review and/or investigate alleged incidents of a serious nature;
- Crown Prosecutor offices routinely review statutory allegations against members to determine if there is sufficient evidence to proceed with charges;
- Some provinces have established independent integrated police investigative teams to investigate allegations against officers. Investigators are not from the same agency as the officer under investigation;
- Members must maintain notebooks and electronic records justifying their actions and completely document any and all investigations on the two approved records management systems of the RCMP;

- The Independent Professional Standards Units handle serious high profile investigations of officers;
- Court testimony when acting as a witness for the Crown ensures accountability;
- If charged, members will be held to account for their criminal activities through the *Criminal Code* of Canada (http://laws.justice.gc.ca/en/C-46/) and other applicable legislation through the courts;
- Members are held to account through numerous national, divisional and unit policies/protocols/procedures;
- The Independent Officer Reviews examine members' actions during serious incidents;
- The External Review Committee reviews specific referred cases, such as grievances and disciplinary/discharge and demotion appeals;
- The CPC deals with public complaints. It may initiate investigations into any allegations, review police investigations, and call public hearings when it considers it to be in the "public interest" to do so. The RCMP investigates these complaints, which are not criminal allegations or code of conduct issues;
- Members actions related to use of force are reviewed by use of force experts from other police agencies in some instances;
- Members may be sued civilly for negligent investigation and other types of wrongdoing recognized under tort law;
- The CPC conducted, as a pilot project, an observer program that calls for immediate notification of serious cases and real time access to the investigation as it unfolds;
- Internal Audit and evaluation tools such as quality assurance guides provide a check and balance of certain activities;
- Closed Circuit TV program in cells;
- The Auditor General can also review the security activities of the RCMP;
- The *Privacy Act* (http://laws.justice.gc.ca/en/P-21/index.html) and the *Access to Information Act* (http://laws.justice.gc.ca/en/A-1/index.html) are good tools for reviewing the actions of government departments and agencies, including the RCMP;
- An array of civil society institutions (e.g. the Canadian Association for Civilian Oversight of Law Enforcement), both formal and informal, monitor and comment upon the actions of the RCMP;
- The media, when acting responsibly, also monitor and comment on RCMP activities;
- Parliament can commence an inquiry into RCMP actions at any time via the *Inquiries Act* (http://laws.justice.gc.ca/en/I-11/index.html). The current inquiry demonstrates that the system of checks and balances functions well (i.e. national security operations are being examined in detail).

Article 13: Allegations of torture or abuse by authorities

Crowd Control

101. The Committee has expressed concern about law enforcement activities in the context of crowd control. Canada' Fifth Report provided information about the national police force crowd control activities and the creation of the National Tactical Troop Training Committee.

102. Ongoing review and modification of policies and/or methods impacting crowd control responses, as required, falls under the responsibility of the program manager of the Critical Incident Program for the RCMP National Public Order.

103. Major public order events in Canada, and specific to RCMP areas of jurisdiction, are relatively few in number. As a result, there have been no recent independent studies or reviews conducted in this area.

Article 14: Redress, compensation and rehabilitation

104. Since 2005, the Government of Canada has funded service provider organizations who primarily work with victims who have suffered torture abroad and who have come to Canada. Depending on the community, the services provided include individual counseling; support services; specialized referrals; as well as educational workshops for allied health care professionals, community groups and front-line workers who work with and for people who have survived torture and political violence. Services are also provided to their families

105. Government of Canada funding to the CCVT totaled $2,423,561 for the period 2005 to 2008. In 2007, $11,400 was provided for a CCVT special event for the United Nations International Day in Support of Victims of Torture called "Trauma of Exile and Challenges to Settlement." Funding of $15,000 was provided to the Edmonton Torture and Trauma Center for the first time in 2007, and funding to the Calgary Catholic Immigration Society for a "Survivors of Torture" Youth Coordinator totaled $25,750 for the period 2006-2008. The Vancouver Association for Survivors of Torture received $406,172 over the reporting period. Between 2005 and 2007, the Government of Canada made contributions to the United Nations Fund for Victims of Torture, in the amount of $60,000 Canadian dollars annually, for a total of US$163,237.

106. The Government of Canada operates a Victims Fund that aims to improve the experience of victims of crime in the criminal justice system. This goal is achieved through a variety of objectives including: promoting access to justice and participation by victims in the justice system; encouraging governmental and non-governmental organizations to identify victim needs and gaps in services, and develop and deliver programs, services and assistance to victims; and, promoting capacity-building within non-governmental organizations. The projects and activities component of the Victims Fund provides funding through grants and contributions to governmental and non-governmental organizations to promote the objectives set out above. It is for projects that encourage the development of new approaches, promote access to justice, improve the capacity of service providers, foster the establishment of referral networks, and/or increase awareness of services available to victims of crime and their families. Non-governmental organizations working in the area of preventing torture or victims of torture may apply for funding through this component of the Victims Fund.

107. The Government of Canada approved enhancements to the Victims Fund, effective April 1, 2007. One of the initiatives under this enhancement provides limited financial assistance to Canadians who are victims of serious violent crime abroad who may incur unanticipated or exceptional expenses resulting from their victimization where no other source of funding is available. The types of crimes eligible for emergency financial assistance are: homicide, sexual assault, aggravated assault, and assault with serious personal violence, including against a child. A Canadian who was tortured through one of the listed crimes while abroad could apply to the Fund for financial assistance.

Article 15: Evidentiary use of statements made under torture

108. Amendments introduced to the IRPA in Bill C-3 prohibit the use of evidence that is believed to have been obtained as a result of torture in security certificate and other Division 9 proceedings. Section 83 now states that only reliable and appropriate evidence may be used, and specifies that this does not include information that "is believed on reasonable grounds to have been obtained as a result of the use of torture within the meaning of section 269.1 of the *Criminal Code*, or cruel, inhuman or degrading treatment or punishment within the meaning of the Convention against Torture."

Part III

Measures Adopted by the Governments of the Provinces

Newfoundland and Labrador

Article 2: Legislative, administrative, judicial or other measures

109. Newfoundland and Labrador changed its 'Use of Force' policies and training for the adult correctional system. This includes policies related to physical force and the use of devices such as restraint chairs, as well as more safeguards and accountability. As well, more video cameras were installed to witness interactions between staff and inmates.

110. In 2006, correctional officers across the province received training on the 'Use of Force' methods. Training was also offered in 2007 on Officer Safety.

111. A committee was formed in an effort to standardize 'Use of Force' training in the province. Instructor Trainers qualified local instructors to allow more on-going training and readily available expertise. The Use of Force Management Model was incorporated in all training and posted in many areas of the institutions, allowing for consistency in tactics, response, and report writing.

Article 11: Treatment of persons arrested, detained or imprisoned

Cases of mistreatment

112. There were two incidents of alleged mistreatment that were being investigated by law enforcement agencies in the province during this reporting period.

Use of conducted energy devices

113. During this reporting period, the use of conducted energy devices (CEDs) was limited in Newfoundland and Labrador. They were not used in the corrections sector. Within the provincial police force they were used only in Special Units such as the Emergency Response Team. The CED was not generally available to front-line police officers.

Prince Edward Island

Article 11: Treatment of persons arrested, detained or imprisoned

Cases of mistreatment

114. There were no known cases of mistreatment in situations of detention during the reporting period and no studies of crowd control methods.

Use of conducted energy devices

115. At the national level, the RCMP amended its policies regarding the use of conducted energy devices (CEDs). During the period of this report, there were no incidents in Prince Edward Island (PEI) resulting from the use of CEDs.

Article 12: Impartial and prompt investigation

116. A new *Police Act* (www.gov.pe.ca/law/statutes/pdf/p-11.pdf), which includes a mechanism for independent oversight of law enforcement officials, was passed in December 2006.

Article 14: Redress, compensation and rehabilitation

117. The province provides some funding to the PEI Association of Newcomers to Canada, an NGO that provides services to new immigrants, some of whom may have been victims of torture in their countries of origin.

Nova Scotia

Article 2: Legislative, administrative, judicial or other measures

118. A new *Correctional Services Act* (www.gov.ns.ca/legislature/legc/bills/59th_1st/3rd_read/b247.htm) came into effect in Nova Scotia in November 2005 and its regulations (www.gov.ns.ca/just/regulations/regs/CORserv.htm) in June 2006. New aspects of the Act include conditional sentencing, monitoring of offenders and community corrections.

119. Correctional Services Policies and Procedures, developed to complement the new Act can be found at www.gov.ns.ca/just/Corrections/policy_procedures/.

120. Human rights and *Criminal Code* requirements are respected in all aspects of these Policies and Procedures as well as the Standard Operating Procedures. The safety and security of offenders are of paramount importance. The Policies and Procedures are very detailed and prescribe how correctional services staff are to respond appropriately to offenders in use-of-force situations.

121. Although there are no procedures in place to ensure that the application of these measures are in compliance with the CAT, in practice, internal review processes hold staff accountable when violations are evidenced. As well, accountability through inspections, reports and complaint mechanisms is built into the system for all involved in the process.

Article 11: Treatment of persons arrested, detained or imprisoned

Cases of mistreatment

122. Any mistreatment of offenders results in immediate internal disciplinary action.

123. There were no public or independent studies or policy reviews of crowd control methods in Nova Scotia during the period of this report.

Use of conducted energy devices

124. New policy and procedures were written during the period of this report, as a result of an offender dying in custody, one day after a conducted energy device (CED) was deployed on him by police.

125. The use of CEDs is subject to the following limitations:

- Approval by the Deputy Superintendent or Superintendent;
- Prior check of health information of offender before application/deployment;
- Limit of two applications/deployments per incident;
- Detailed medical response and close monitoring following application/deployment ;

- Detailed documentation process;
- Audit of all incidents; and,
- Required reporting to head office.

New Brunswick

Article 2: Legislative, administrative, judicial or other measures

126. The Government of New Brunswick continues to be in compliance with the provisions of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. The legislative and administrative measures outlined in New Brunswick's previous report under this treaty remain in effect. No significant developments have occurred during the period of this report that would add to the information already provided to the Committee.

Article 11: Treatment of persons arrested, detained or imprisoned

Use of conducted energy devices

127. In New Brunswick, all municipal police forces are required to submit 'Use of Force' reports, which include the use of a conducted energy device (CED) as they occur.

128. During the period of this report, New Brunswick had CEDs in adult correctional institutions. They were deployed infrequently and only by qualified/trained correctional officers. Institution superintendents reported on their use and statistics were maintained by Correctional Services Head Office. Tasers were not used in the Miramichi Youth facility.

129. The useage/discharge information for the municipal/regional forces that utilize CEDs was:

	2004	2005	2006	2007	Total
Saint John	2	2	2	4	10
Fredericton	5	2	3	3	13
Edmundston				2	2
Rothesay Regional	2	0	1	1	4

130. Each of these forces had their own policy in-place since they commenced using the CEDs, as well as their own training programs.

131. CEDs were only issued to fully trained officers.

Québec

Article 2: Legislative, administrative, judicial or other measures

132. The *Act respecting the Québec correctional system* (http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=/S_40_1/S40_1_A.htm), adopted in 2002, was gradually introduced starting in February 2007. By December 31, 2007, it was in full force except for articles 5 (status of peace officers) and 16 (electronic records). This Act clearly reaffirms that social reintegration of offenders must remain the primary goal of interveners in the correctional system. The Act seeks to: ensure that offender are properly assessed, improve the social reintegration of offenders and provide better protection for society.

133. The introduction of the Act resulted in a major reform in correctional services. The main impacts of the Act are the:

- Adoption of an approach to social reintegration that clearly reflects the values and principles related to correctional intervention;
- Development or updating of several directives, instructions, administrative procedures and guides;
- Numerous training sessions for correctional staff on the approach;
- Complete revision of the occupational integration program for new staff in correctional services; and,
- Strengthening of the prisoner release system, making it more stringent, transparent and coherent.

134. The *Act to amend the Youth Protection Act and other legislative provisions* (http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=5&file=2001C78A.PDF) was adopted on June 15, 2006, and the provisions dealing with intensive supervision in rehabilitation centres came into effect on November 1, 2007. The Act and the *Regulation respecting the Conditions of placement in an intensive supervision unit* (http://www.canlii.org/en/qc/laws/regu/rq-c-p-34.1-r0.3/latest/rq-c-p-34.1-r0.3.html), in effect since November 8, 2007, provide a legislative foundation for placement in an intensive supervision unit and provide guidelines on when to apply it. In the years preceding these legislative changes, the Commission des droits de la personne et des droits de la jeunesse had made various representations claiming that placement with intensive supervision lacked a legal basis, in contravention of article 24 of the *Charter of Human Rights and Freedoms*. With the new provisions in force, the Association des centres jeunesses du Québec developed terms of reference for the adoption of a protocol on the establishment of a rehabilitation program with placement in an intensive supervision unit.

Article 11: Treatment of persons arrested, detained or imprisoned

135. A planning framework for projects involving the construction, expansion, refurbishing and upgrading of prison infrastructures over 15 years was developed. Implementation of the

framework began in 2006 with financial costs studies, and the approval of the renovation or construction of detention facilities in 2007. The objective of all of these projects is to reduce overpopulation in prisons in Québec and to provide a safer and more functional environment for inmates and correctional staff.

136. Admissions to detention facilities continued to diminish in 2004 2005 and 2005-2006, but rose somewhat in 2006-2007. The number of persons admitted to detention facilities over the three year period were 38,918, 38,281 and 39,527 respectively.

137. In Québec, inmates in detention facilities who believe they have been mistreated have various avenues to assert their rights. They can register a complaint before civil or criminal tribunals, communicate at any time with the Ombudsman as well as access an internal system for dealing with complaints.

138. Complaints concerning allegations of abuse (physical maltreatment) on the part of correctional staff are systematically sent to the Ombudsman and are analyzed by a Correctional Services representative from the Ministère de la Sécurité publique. A written response is systematically provided to the complainant and, when the complaint is founded, corrective action is taken. According to the Ombudsman's 2006-2007 annual report, out of 507 complaints examined and found to be legitimate, 5 percent dealt with staff behaviour and allegations of abuse. The complaints generally relate to the use of force during physical interventions. Among the other grounds given for complaints were health care (25 percent), loss of rights or privileges (12 percent), living conditions (9 percent), transfers and transportation between institutions (9 percent <) and the loss of personal effects (8 percent).

139. In addition, as part of his mandate to carry out regular visits, the Ombudsman made 14 visits to 11 institutions in the year 2007-2008. These visits enabled the Ombudsman to observe the state of the correctional facilities, as well as speak to the management of each of these institutions, their staff and the inmates.

140. There are other mechanisms in place for identifying and managing problematic situations, such as incidents of ill treatment. There is an administrative procedure aimed at detecting and managing events that are disruptive to the operations within a correctional institution. A second mechanism allows for administrative investigations to be carried out by a branch of the Ministère de la Sécurité publique, independently of the correctional institution. Finally, a coroner's investigation is mandatory when there is a death in a detention facility.

Use of tasers

141. On February 7, 2006, the Ministère de la Sécurité publique issued rules for the use of conducted energy devices (CEDs) in the province. These rules were to remain in place until a police procedure on the use of CEDs could be formulated.

142. On December 17, 2007, the *Standing Advisory Committee on the Use of Force (SACUF*) submitted its report entitled *Analyses and Recommendations for a Québec Police Practice on the Use of Conducted Energy Devices*, with a view to identify all relevant elements that

should be included in a police procedure. A communiqué was sent to police directors the same day to make them aware of the new rules stemming from the work of the SACUF. The recommendations contained in the communiqué relate to specific rules on the use of CEDs, the stipulation that only appropriately trained police officers could use the device and the requirement to keep a registry to this effect that would feed into the provincial registry. The communiqué also recommended that the use of CEDs should be avoided when a person is very agitated; that officers should call upon medical services before intervening physically with this type of individual; that the physical intervention techniques used should interfere as little as possible with the breathing of an individual when a CED is deployed; and, that the device should not be used on individuals offering passive resistance.

143. The École nationale de police du Québec offers training adapted to the different contexts for using a CED, as well as training for persons responsible for maintaining the competencies of CED users. The director of the police force will ensure that all police officers who receive a CED requalify at least once a year, in accordance with the standards established by the École nationale de police du Québec.

144. A CED police procedure was incorporated into the *Guide de pratiques policières* in 2008.

Article 16: Prevention of other acts of cruel, inhuman or degrading treatment or punishment

145. During the reporting period, the Court of Appeal confirmed a decision of the Police Ethics Committee stating that police officers showed a definite and deliberate lack of concern for the state of a citizen's health while he was in custody, leading to his death. The case in question is *Auger v. Monty et al.*, J.E. 2006-1002, better known under the name the Barnaby affair.

Ontario

Article 2: Legislative, administrative, judicial or other measures

146. In 2007, Ontario implemented new legislation, the *Private Security and Investigative Services Act, 2005*, governing security industry workers such as security guards, private investigators, and bodyguards. Businesses and individuals active in the industry are required to be licensed and must abide by a new code of conduct and meet more stringent training requirements (www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_05p34_e.htm).

147. The changes introduced by the new legislation include standards for uniforms, equipment, vehicles, conduct, licence eligibility, agency documentation/record keeping requirements, business registration, insurance, use of animals, term of validity and exemptions. These changes strengthen the professionalism of the security guard and private investigator industries and increase public safety.

148. The updated regulatory requirements for the security industry are in line with the provisions of the CAT.

Article 11: Treatment of persons arrested, detained or imprisoned

Cases of mistreatment

149. Ontario is not aware of any cases of mistreatment in situations of detention by correctional services in this reporting period.

Use of conducted energy devices

150. A wide range of research supports that conducted energy devices (CEDs) provide police with an alternative, less lethal option when responding to high-risk incidents that might otherwise lead to the use of deadly force by police.

151. Section 14 of the *Equipment and Use of Force Regulation* 926/90 (www.canlii.org/on/laws/regu/1990r.926/20080716/whole.html) made under the *Police Services Act* (www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90p15_e.htm), permits the Minister of Community Safety and Correctional Services to approve the use of CEDs in Ontario. As provided for in the Regulation, the Minister has established technical standards that police services need to adhere to in order to use CEDs.

152. In 2002, Ontario approved CEDs for use by trained members of Tactical Units and Hostage Rescue Teams, and in 2004 expanded their use to Preliminary Perimeter Control and Containment Teams, as well as trained frontline supervisors, and designates acting on their behalf.

153. CEDs have not been authorized for use by frontline police officers. The Ministry inspected municipal police services on use of force and an element of that inspection included examining the issue of CEDs.

154. Ministry officials keep up-to-date on emerging information and trends on the use of CEDs and worked with the Canadian Police Research Centre to study literature on CED safety.

Article 12: Impartial and prompt investigation

155. In 2007, Ontario enacted the *Independent Police Review Act, 2007* (www.ontla.on.ca/web/bills/bills_detail.do?locale=en&BillID=413). The Act created an independent civilian body, the Office of the Independent Police Review Director (OIPRD), to handle public complaints about municipal and provincial police in Ontario. The Independent Police Review Director, who is appointed on the advice of, and reports to the Attorney General, is responsible for the day-to-day decisions of the OIPRD. The new legislation was based on recommendations from a review of the police complaints system in Ontario.

156. The establishment of the OIPRD has enhanced accountability and transparency in police oversight. The OIPRD is responsible for setting up and administering the public complaints system, determining, on a case-by-case basis, who would investigate a complaint – the OIPRD, the police service affected or another police service.

157. The Ontario Civilian Commission on Police Services was renamed the Ontario Civilian Police Commission and continues to have an appellate role in disciplinary hearing decisions. Any appeals are dealt with through the Ontario Civilian Police Commission.

Article 14: Redress, compensation and rehabilitation

158. A former Chief Justice of Ontario was retained by the Ministry of the Attorney General to review the role that direct compensation to victims of violent crime plays within the array of publicly funded victim services. The consultation/review commenced in the fall of 2007.

159. Over 300 key groups and individuals received letters or e-mails informing them of the Review and inviting submissions. Among those who received correspondence were victims' groups/stakeholders, leading academic commentators on victim compensation, legal organizations, university academic departments in areas related to victim compensation (i.e., law, criminology, psychology, sociology), and all Members of Provincial Parliament. The government has released the report on the review.

Manitoba

Article 2: Legislative, administrative, judicial and other measures

160. A new 'Mandatory Crisis Management Training' policy was adopted on November 23, 2007 to ensure that correctional services staff members are adequately trained to manage and respond to crisis situations. On November 3, 2006, an 'Offender Death' policy was adopted, to ensure clear and lawful responses towards the death of an offender in custody. This includes a process for determining cause and manner of death, etc.

161. After a lengthy review, Manitoba drafted a custodial policy addressing "Cross-Gender Staffing in Female Facilities or Living Units." It recognises that a "reasonable degree of privacy is essential for human dignity and is a basic right afforded to offenders/inmates." Amongst other things, it requires that all staff regularly posted to a female facility or female living unit must receive Gender Responsive Training. A detailed training program has been developed in the province.

162. The Government of Manitoba undertook to build a new women's correctional facility located in the rural municipality of Headingley to replace the Portage Jail for Women. The facility was expected to be completed by the fall of 2009.

Article 11: Treatment of Persons Arrested, Detained or Imprisoned

Cases of mistreatment

163. A human rights complaint relating to conditions at the Portage Jail for Women was resolved in a positive and proactive manner (see www.gov.mb.ca/hrc/english/news_releases/06_28_07.html).

Use of conducted energy devices

164. During the period of this report, Manitoba did not have legislation or policies with respect to the police use of conducted energy devices (CEDs). In 2006, the Brandon Police Service and the Winnipeg Police Service began to utilize such devices. Before their adoption, the members of both police forces were trained in their use in accordance with policies developed in consultation with the best practices, experiences and policies of police agencies across the continent.

165. With respect to the use of CEDs within the corrections setting, Manitoba's policy, "Electronic Control Weapons" was updated in December 2006. No substantiated allegations regarding inappropriate use were reported during the period of this report. The device had been used on two occasions.

166. It should be noted that F-P/T Ministers responsible for Justice discussed the issue of the use of CEDs at their November 2007 meeting in Winnipeg and released the following information as part of the press release for the meeting:

> **"**Given that there has recently been work done, in policing sectors in a number of jurisdictions on the use of tasers, Ministers requested officials to have this work brought together to share information and best practices on the use of tasers in Canada."

Article 12: Impartial and Prompt Investigation

167. Manitoba has previously reported on the active role of the Manitoba Ombudsman in investigating complaints from inmates at its correctional facilities. The Ombudsman continues this role. In order to ensure that inmates are aware of this resource, in 2006, it finalized three new posters and two pamphlets for inmates. The posters are geared to adult and youth populaces and are also available in the Cree language. A sample brochure is available at:http://www.ombudsman.mb.ca/pdf/138272_Adult_Bro72.pdf. Representatives of the Ombudsman Manitoba attended correctional centres and met with focus groups consisting of both correctional staff and inmates. Its materials are accessible on its website www.ombudsman.mb.ca.

168. The volume of complaints received by the Ombudsman's Office illustrates that its presence and jurisdiction are well known by inmates. For example, its Annual Report for 2005 shows that 41 files were opened with respect to the Winnipeg Remand Centre, and a further 15 files in 2006. In some cases these files were discontinued; resolved through the supply of information or in whole or in part through the intervention of the Ombudsman. In many other cases, they were found to be "not supported." None of the cases led to specific recommendations by the Ombudsman to the Legislative Assembly.

169. Manitoba has previously reported on the role of *The Law Enforcement Review Act* (http://web2.gov.mb.ca/laws/statutes/ccsm/l075e.php) and the Law Enforcement Review Commissioner in receiving and investigating a wide range of allegations of mistreatment with respect to law enforcement authorities. When the Commissioner declines to proceed with a complaint, the complainant may (within 30 days of receiving notice) apply to have the Commissioner's decision reviewed by a provincial judge.

170. Other forms of independent oversight (with respect to which international legal principles may be of relevance) include the Children's Advocate, the Manitoba Human Rights Commission, and where there has been a fatality, the Office of the Chief Medical Examiner.

Saskatchewan

171. The mechanism in the Saskatchewan Government for the coordination of activities related to the implementation of international human rights treaties, including CAT, is an Inter-ministerial Committee on Human Rights. The Inter-ministerial Committee has broad representation across Government, and serves as a conduit for information flow among ministries, and between ministries and the Saskatchewan representative on the F-P/T Continuing Committee of Officials on Human Rights.

Article 11: Treatment of persons arrested, detained or imprisoned

172. The Ministry of Corrections, Public Safety and Policing (CPSP) is committed to ensuring that clients' rights are respected and that due process is followed. The Saskatchewan Ombudsman has authority to investigate complaints from members of the public who believe that the Government has dealt with them unfairly. Adult Corrections works with approximately 30,000 offenders each year, and the Ombudsman initiates an average of 140 investigations annually, involving Adult Corrections' clients. Of those, a very small number are found to be substantiated[12]:

Fiscal Year	Substantiated Complaints
2007-2008:	(New baseline to be established and reported on in 2008-09*)
2006-2007:	1
2005-2006:	1
2004-2005	8
2003-2004	10

* In 2006-07, the office of the Ombudsman redefined its method of recording complaints, inquiries and outcomes. In September 2007, Adult Corrections adjusted internal record-keeping mechanisms to reflect the new categories adopted by the Ombudsman. Data using a new baseline that matches the Ombudsman's new recording system will be presented starting in 2008-09.

173. The 2007 Annual Report of the Ombudsman referred to two individual complaints involving Corrections issues, one related to payment of bus fares home for persons released from remand, and the other related to restraint measures. The report outlined the recommendations of the Ombudsman and noted that the Government of Saskatchewan accepted those recommendations.

174. The Ombudsman's 2007 Annual Report also referred to two systemic investigations related to corrections, one involving the methadone program in the Saskatoon Correctional Centre and one related to the use of restraint chairs. The report noted the recommendations of the Ombudsman and the acceptance, by the Government of Saskatchewan, of all but one of the recommendations. The 2007 and earlier Annual Reports of the Ombudsman can be found at: http://www.ombudsman.sk.ca/annual-reports.html.

12 Corrections, Public Safety and Policing 2007-08 Annual Report, p. 20: www.cpsp.gov.sk.ca/Annual-Reports

175. The Saskatchewan Children's Advocate performs a similar role for youth who offend.

176. Government of Saskatchewan officials involved in Young Offenders programs maintain open communication with the Office of the Children's Advocate (CAO) and meet regularly with the CAO to provide program information, progress to CAO recommendations and discuss issues and concerns (CPSP 2007-08 Annual Report, p. 24). The 2007 Annual Report of the Children's Advocate may be found at: http://www.saskcao.ca/. See http://www.saskcao.ca/adult/links_and_publications.html for earlier reports.

177. A new 216-cell facility was constructed at the Regina Provincial Correctional Centre, replacing the wing of the Correctional Centre built in 1913 and improving the living conditions of inmates. The new facility provides a workable balance between necessary supervision and control of inmates and effective programs to help offenders return to their communities as productive citizens. It was the result of an ongoing partnership among Aboriginal leaders, community-based organizations, municipal and federal police services, and the Government of Saskatchewan.

178. In 2007, the Saskatchewan Police Commission (SPC) decided to permit the use of conducted energy devices (CEDs) or tasers, by 12 municipal police services, after a policy was developed for their use. The Province was also in the process of introducing CEDs in correctional centres. However, there were a few high profile deaths across Canada and boards of enquiry were created to investigate the deaths and any role that tasers may have played in them. In the meantime, the SPC and Adult Corrections put on hold their decisions to deploy the tasers within municipal police services and in correctional institutions.

179. The decision did not apply to the RCMP, which is responsible for provincial policing as well as municipal policing in those municipalities that have contracted its services. Consequently, 56 percent of Saskatchewan's police officers were not covered by this decision.

Article 12: Impartial and prompt investigation

180. On April 1, 2006, the Saskatchewan Public Complaints Commission (SPCC) was created, replacing the office of the Saskatchewan Police Complaints Investigator. The Commission is "an independent panel of non-police persons appointed by the government to ensure that both the public and the police receive a fair and thorough investigation of a complaint against the municipal police in Saskatchewan.[13]"

181. The SPCC consists of five members, at least one of whom must be of First Nations ancestry, one of whom must be of Métis ancestry, and one of whom must be a lawyer. The SPCC decides whether an investigation will be conducted by SPCC investigative staff, by the police service whose member is the subject of the complaint, by that police service

13 P.4, 2007-2008 Annual Report of the SPCC.

with the assistance of an observer appointed by the SPCC to monitor the investigation, or by an alternative police service.

182. From April 1, 2006, to March 31, 2007, the SPCC processed 146 complaints against municipal police officers, and from April 1, 2007, to March 31, 2008, it processed 135 complaints. The findings were as follows[14]:

	2006-2007	**2007-2008**
Substantiated (supported by evidence)	0	2
Unsubstantiated (allegation cannot be proved or disproved)	1	0
Unfounded (unsupported by evidence)	19	25
Withdrawn/Other	29	30
Not yet completed	98	85
TOTAL	**147***	**142***

*These figures are higher than those referred to in the paragraph above because some of the complaints filed involved multiple complaints and findings.

183. The unsubstantiated complaint in 2006-2007 was classified as a complaint of abuse of authority. Of the two substantiated complaints in 2007-2008, one was classified as discreditable conduct and one abuse of authority.

Article 14: Redress, compensation and rehabilitation

184. Section 269(1) of the *Criminal Code* (torture) is included in Saskatchewan's *Victims of Crime Regulations, 1997*, as an eligible offence under the Victims Compensation Program (www.qp.gov.sk.ca/documents/English/Regulations/Regulations/V6-011R1.pdf). (This program is for offences occurring in Saskatchewan.)

185. On December 1, 2006, *The Victims of Crime Act, 1995* and Regulations were updated (www.qp.gov.sk.ca/documents/English/Statutes/Statutes/V6-011.pdf). This resulted in the following improvements to the Victims Compensation Program:

- Lengthening the deadline to apply for compensation from one to two years after the date of the offence;
- Making immediate family members of homicide victims eligible for compensation to cover the cost of counselling;
- Increasing the maximum amount available for counselling from $1,000 to $2,000 in exceptional cases;
- Including traditional Aboriginal healing methods under the definition of "counselling"; and,
- Providing a structured appeal process for the Victims Compensation Program.

14 The 2006-2007 and 2007-2008 Annual Reports of the Saskatchewan Public Complaints Commission: http://www.publications.gov.sk.ca/deplist.cfm?d=9&c=1731

Alberta

Article 2: Legislative, administrative, judicial and other measures

186. A number of mechanisms were created to monitor and assess the performance of the public police and private security. These include:

- Developing Provincial Policing Standards and creating a Policing Standards and Evaluation Unit that sets provincial standards and evaluates performance of public police organizations in relation to these standards; and,
- Making changes to the *Private Investigator and Security Guard Act* (www.canlii.org/ab/laws/sta/p-23/20080715/whole.html), developing Provincial Standards for Private Investigators and Security Guards, and establishing a regulatory unit to evaluate performance against standards.

187. The *Police Amendment Act, 2007* (www.assembly.ab.ca/bills/2007/pdf/bill-016.pdf) in Alberta provides for:

- Mandatory notification required by the Chief of Police or Commanding Officer to the Director of Law Enforcement and Police Commission within specified timeframes on occurrence of incidents considered to be serious or sensitive;
- External investigation of serious incidents involving police. This has since been followed by the formation of the Alberta Serious Incident Response Team (ASIRT) that will investigate serious incidents involving police and/or matters or complaints considered to be of a serious or sensitive nature;
- Commissions and committees to appoint Public Complaints Directors. This has led to the introduction of two new positions:
  - Provincial Public Complaint Director that monitors and addresses performance of police complaints processes; and,
  - Manager of Civilian Oversight that develops training, standards, and model policies for police commissions.

188. The *Corrections Amendment Act, 2007* (www.assembly.ab.ca/bills/2007/pdf/bill-052.pdf) introduced a new process of conducting inmate disciplinary hearings that is designed to enhance impartiality in the disciplinary process.

189. Alberta's Legislative Assembly passed Bill 31, the *Mental Health Amendment Act, 2007* (www.assembly.ab.ca/bills/2007/pdf/bill-031.pdf), on December 5, 2007. The revised legislation broadens the criteria for involuntary admission to mental health treatment, and allows physicians to issue Community Treatment Orders. The public consultations that were undertaken in the drafting of the legislation occurred during the reporting period and dealt with some of the issues highlighted in the Convention.

190. The Standing Committee on Community Services invited written submissions on Bill 31 from identified stakeholders and advertised for written submissions from the public. The

presentations and written submissions cover a wide range of issues, including the potential of the proposed legislation to infringe on individual rights through broadening the criteria for involuntary confinement for mental health treatment.

191. The Committee received 49 written submissions and heard sixteen presentations at the Public Hearing, held on October 1, 2007. A list of the presenters is available in Appendix B of the Standing Committee on Community Services' *Report on Bill 31: Mental Health Amendment Act, 2007* at: www.assembly.ab.ca/committees/reports/CS/Bill_31_Report_FINAL_proofread_with_cover(no%20blank%20pages).pdf.

Article 11: Treatment of persons arrested, detained or imprisoned

Cases of mistreatment

192. Ongoing litigation was initiated in 2004 regarding conditions of custody at the Edmonton Remand Centre. Justice Marceau of the Court of Queen's Bench of Alberta made rulings in relation to this action, on the operational safety of prisoner transport vans, and the impartiality of inmate disciplinary hearings. In both instances, Alberta Correctional Services has responded as necessary in order to comply with the rulings.

193. The Government of Alberta allowed/approved the Edmonton Police Service review of the handling of those in custody during the 2006 Whyte Avenue Stanley Cup riot and disturbances. The Courts have addressed a number of issues in relation to in-custody treatment of detainees.

Use of conducted energy devices

194. In 2006-2007, Alberta conducted an extensive review of the use of Conducted Energy Devices (CED) and issued a report on the findings. In October 2007, Alberta released Provincial Guidelines for the use of CEDs by police.

Article 12: Impartial and prompt investigation

195. As identified in Article 2, Alberta has introduced a new position to conduct Civilian Oversight of Policing, created the ASIRT, and hired a provincial Public Complaints Director.

196. The informal mechanism of complaint resolution through the Ombudsman's office in Alberta has been very successful.

British Columbia

Article 2: Legislative, administrative, judicial or other measures

197. British Columbia (BC) appointed former justice Josiah Wood to conduct a review of the police complaint process for the independent municipal forces in the province. Wood's report and recommendations (www.pssg.gov.bc.ca/police_services), released in February 2007, identified a need to improve the process by strengthening the powers of the Office of the Police Complaint Commissioner (OPCC), shifting the model to one of contemporaneous oversight, among a number of other procedural changes. The Province is looking at making changes to the legislative framework governing complaints against the independent municipal forces.

198. On January, 14, 2005, the Greater Vancouver Transportation Authority Police Service (GVTAPS) became a designated policing agency in BC. As a result, the GVTAPS officers fall under the mandate of the OPCC and the *Police Act* (www.qp.gov.bc.ca/statreg/stat/P/96367_01.htm). Two additional investigative analysts were hired. The records tracking system was updated and modified for greater reporting accuracy and the identification of emerging trends.

199. The OPCC received government funding for mediation and four successful *Police Act* mediations were completed during the period covered by this report. Information sessions were provided to various parties, including the police unions, on mediations.

200. The OPCC also took on a much more visible presence at the Justice Institute of BC, giving presentations to recruit classes, Field Trainer courses and Supervisor courses. The OPCC was also involved in various outreach presentations to multi-cultural and First Nations groups and agencies.

201. In 2006, the Province passed the *Representative for Children and Youth Act* (www.qp.gov.bc.ca/statreg/stat/R/06029_01.htm), establishing the Legislative Assembly's authority to appoint a new officer of the legislature as the Representative for Children and Youth. The Representative's responsibilities include advocating for children and youth, protecting their rights, and improving the system for protection and support of children and youth, particularly those who are most vulnerable (www.rcybc.ca). The Act provides the Representative the authority to assist and advocate for youth and others involved in youth custody/youth forensic psychiatric services and the Maples Treatment Centre.

202. Accreditation is a key strategy to support quality improvement, province-wide standards, accountability and organizational risk management. In 2006-2007, BC continued to show international quality assurance leadership. A total of 93 percent of agencies required to be accredited achieved accreditation.

Article 11: Treatment of persons arrested, detained or imprisoned

Cases of mistreatment

203. Following the death of Ian Bush in the Houston, BC RCMP Detachment, a BC Coroners Service jury recommended the installation and mandatory use of audio and visual recording equipment (AVR) in police buildings. British Columbia's Solicitor General requested that all police work with provincial officials to develop a new provincial policing standard governing the location, installation, management and use of AVR equipment in RCMP and independent forces police buildings. The policy change helps ensure that persons detained in police buildings are under surveillance video recordings as determined in the standard.

Frank Paul Inquiry

204. In February 2007, the provincial government announced a public inquiry in response to ongoing public concern and interest in the death of Frank Paul in 1998, and a need to ensure public confidence in the administration of justice. Information about the public inquiry is available online at: www.frankpaulinquiry.ca.

Use of conducted energy devices

205. In November 2007, the provincial government announced a full public inquiry into the October 2007 death of Robert Dziekanski at Vancouver International Airport and the policy governing the use of tasers by police in BC. Two commissions of inquiry were headed by Thomas R. Braidwood, QC. A study commission of inquiry was to report on the use of conducted energy devices (CEDs) in British Columbia, while a second hearing and study commission of inquiry was convened to provide Mr. Dziekanski's family and the public with a complete record of the circumstances of his death. The British Columbia's Coroners Service undertook an inquest into Mr. Dziekanski's death in spring 2008; details will be included in Canada's next report under the CAT.

206. The policy on the use of Stun Devices - CED Technology was revised in October 2005. Key elements of the policy changes are:

- The devices are locked in secure storage within the correctional centre and removed for use only when deployment is authorized by the Warden or designate;
- There are strict criteria for when the device may be deployed;
- All deployments are recorded by video;
- Only correctional officers with current CED training and certification are authorized to use the device; and,
- Each time use of the device is authorized - whether or not it is taken from the holster, activated, or discharged - a *Use of Force Report* is completed and forwarded to the Provincial Director, Adult Custody.

Article 12: Impartial and prompt investigation

207. The OPCC complaint process is posted on the OPCC web site in 11 different languages and printed brochures are also available. The OPCC has also been actively working with the Commission for Public Complaints against the RCMP in order to try and harmonize the complaint process between the two organizations.

Public Hearings

208. During the period covered in the present report, the Police Complaint Commissioner ordered two public hearings:

- The Stanley Park matter in which two officers were subsequently dismissed; and,
- The Eveleigh public hearing in which the respondent officer resigned prior to the conclusion of the hearing.

209. File statistics on complaints are summarized in the tables below.

Complaints Received					
	Total Files Opened	**Public Trust**	**Internal Discipline**	**Service or Policy**	**Other**
2005	**426**	365	6	2	53
2006	**503**	491	28	8	56
2007	**476**	433	14	5	24

Complaints Concluded							
	Total Files Concluded	**Reviewed & Closed**	**Informal Resolution**	**Withdrawn**	**Summarily Dismissed**	**Unsub-stantiated**	**Substantiated**
2004	**393**	25	38	35	91	174	30
2005	**381**	26	55	43	73	167	17
2006	**482**	18	22	28	99	290	25
2007	**492**	17	19	128	70	239	19

Reviewed & Closed: *For Service and Policy complaints and for non-lodged complaints. Upon receipt of the final response by the police board or department, the OPCC reviews and closes the file.*
Withdrawn: *Complainant chooses to withdraw their complaint.*
Informal Resolution & Mediations: *Complaints successfully resolved through informal or professional mediation.*
Summarily Dismissed: *The Discipline Authority can summarily dismiss a complaint if: there is no likelihood further investigation would produce evidence of a default; the incident occurred more than 12 months prior to filing the complaint; or the complaint is frivolous or vexatious.*

Part IV

Measures Adopted by the Governments of the Territories

Nunavut

210. The Government of Nunavut reports that, in the period covered by this report, no new developments occurred that would add to the information already contained in previous reports.

Northwest Territories

Article 11: Treatment of persons arrested, detained or imprisoned

Cases of mistreatment

211. The policies of the Government of Northwest Territories (NWT) ensure that individuals in detention facilities have the ability to report allegations of mistreatment, and allegations of this nature do occur. However, during the reporting period, there were no cases/incidents of mistreatment that have been substantiated after the appropriate investigation was conducted.

Use of conducted energy devices

212. The RCMP are contracted to carry out policing responsibilities in the NWT, and use conducted energy devices (CEDs) subject to their own standards and internal policies. There are no Government of NWT employees (including those working in Corrections) that use CEDs.

213. An incident occurred on March 13, 2007, involving the use of a CEW on a 14-year-old young offender at the Arctic Tern correctional facility. The young offender was tasered by a member of the RCMP who was called to the facility at the request of Arctic Tern staff.

214. The response to the incident was that a Correctional Investigator completed an investigation into the matter and subsequently released a report on the results of the investigation. The RCMP conducted a separate investigation into the use of the taser gun in that instance.

Yukon

Article 2: Legislative, administrative, judicial or other measures

215. The Government of Yukon has not passed any new pieces of legislation or amended others since the last reporting period with respect to the CAT.

216. The *Torture Prohibition Act*, R.S.Y. c. 220 (www.gov.yk.ca/legislation/acts/topr.pdf), was last amended in 2002. It only applies to public officials and "every person acting at the instigation or with the consent or acquiescence of a public official" (Section 1). No other administrative or other measures have been taken relative to the Convention.

Article 11: Treatment of persons arrested, detained or imprisoned

Use of conducted energy devices

217. On November 22, 2007, the Whitehorse Correctional Centre issued notice of a moratorium on the use of conducted energy devices (CEDs). The Occupational Health and Safety Committee within the Centre unanimously supported the moratorium and the restoration of the previous Use of Force procedures in place prior to introduction of the CEDs in June 2004. The moratorium was to remain in effect until a review of the appropriate use and effects of CEDs was undertaken by the Department of Justice. A contractor with expertise in the use of CEDs was hired to conduct the review on behalf of the Department. The review was informed by the work done for the F-P/T Deputy Ministers of Justice and reviews conducted by other Canadian jurisdictions.

Appendix 1 – Review of Jurisprudence

Article 3: Prohibition of expulsion and extradition

In *Jaballah (Re),* [2006] F.C.J. No. 1706, 2006 FC 1230, the Federal Court considered (1) whether a security certificate issued against the respondent Mr. Jaballah was reasonable and (2) if so, whether there was any legal limitation to the exercise of the Government of Canada's discretion to remove him. After finding the certificate reasonable on the facts, the court found that based upon the decision in *Suresh,* mere suspicion of involvement with terrorism would not qualify as an exceptional circumstance under which an individual could be deported to torture. The court emphasized that the reference by the Supreme Court in *Suresh* to "exceptional cases" cannot have been intended to leave many cases to be classed as "exceptional." Rather, the court held at paragraph 81 of its judgment that "the general principle, as I read *Suresh,* is that deportation to a country where there is a substantial risk of torture would infringe an individual's rights, in this case Mr. Jaballah's rights, under s.7 of the *Charter,* and, in my view, infringement generally would require that the exceptional case would have to be justified under s.1." The Court found that in this case, there were no considerations before the Court that would justify deporting an individual to torture, even in light of the fact that the individual in question was suspected of being involved with terrorist activities. Leave to appeal this decision to the Federal Court of Appeal was requested by the Government of Canada and granted by the Court. However, the appeal was adjourned *sine die* as the transitional provisions of Bill C-3, *An Act to Amend the Immigration and Refugee Protection Act,* arguably render the appeal moot given that a new Federal Court decision would be sought on the reasonableness of Mr. Jaballah's security certificate and a new pre-removal risk assessment sought pursuant to the amended provisions of the *Immigration and Refugee Protection Act* (IRPA).

In *Li v. Canada (Minister of Citizenship and Immigration),* 2005 FCA 1, the Federal Court of Appeal considered, among other issues, the "requisite degree of torture envisaged by the expression 'substantial grounds for believing that' found in section 97(1)(a) IRPA.[15] Given the almost identical language used in section 97 (1)(a) and Article 3 of the *Convention against Torture*, the court referred to both domestic jurisprudence and the Committee Against Torture's recommendations in interpreting Article 3 for assistance in interpreting section 97 (1)(a) and found that the protection of section 97 (1)(a) will apply where the danger of torture is "more likely than not."

The Canadian Council for Refugees challenged the constitutionality and legality of Canada's Safe Third Country Agreement with the United States in *Canadian Council for Refugees v. Canada*, [2007] F.C.J. No. 1583, 2007 FC 1262. Safe Third Country Agreements designate asylum seekers entering from the safe third country as ineligible for refugee protection in Canada. Such Agreements can be entered into by the Governor-in-Council pursuant to section 102 (1) of IRPA provided that the other country complies with, among other items, the *non-refoulement* requirements set out in Article 33 of the *Convention Relating to the Status of*

15 Section 97(1)(a) designates as persons in need of protection those whom there is a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture.

Refugees and Article 3 of the CAT. In examining U.S. state practices, the Federal Court determined that the Governor-in-Council acted unreasonably in concluding that the U.S. complied with its *non-refoulement* international law obligations. Moreover, the court held that the Agreement was unconstitutional contrary to section 7 (which protects the life, liberty or security of the person) and section 15 (right to equality) of the Charter.

The Quebec Court of Appeal in *Boily v. Canada (Minister of Justice),* [2007] J.Q. no 1223, considered an application by Mr. Boily for judicial review of a decision ordering his surrender to Mexico to serve the remainder of his 14 year prison sentence. The court dismissed the application, finding that the Government of Canada had adequately considered the applicable legal principles, the serious allegations of police brutality, the charges against Mr. Boily, the protective measures set out in the laws and constitution of Mexico, Canada's international obligations and the assurances sought from the Mexican government in concluding that his allegations of torture upon return to Mexico were baseless.

In *Covarrubias v. Canada (Minister of Citizenship and Immigration*), [2007] 3 F.C.R. 169, the appellants appealed a Federal Court ruling upholding the decision of a pre-removal risk assessment officer. The officer had denied the appellants protected status by reason of section 97 (1)(b)(iv) of the IRPA, which excludes from protection those whose risk to life is caused by the inability of the claimants country of nationality to provide adequate health or medical care. The appellants further alleged that section 97 was contrary to the section 7 guarantees of the right life, liberty and security of the person under the Charter. Although the appellants submitted that the exclusion should only apply where the country has a genuine inability to provide medical care, not where the risk to life is a result of a country's unwillingness to provide medical care, the Federal Court of Appeal found that the interpretation proposed by the appellants, namely that the exclusion should only apply where a country has a genuine inability to provide medical care, would result in an unseemly analysis of another state's medical system in relation to its fiscal capacity and current political priorities and would, by necessary implication, impose a significant burden on the already overburdened Canadian health care system. In dismissing the Charter arguments, the court held that there was insufficient evidence of a risk to the appellants' life on account of inadequate medical care if deported to Mexico and in addition noted that the appellants had not yet exhausted all of the alternative remedies available to them.

In *Quintanilla v. Canada (Minister of Citizenship and Immigration),* [2006] F.C.J. No. 923, the applicants were ordered removed to El Salvador. Although the applicants had been granted permanent resident status in 1995 based on a well-founded fear of persecution under the now non-existent *Political Prisoners and Oppressed Persons Designated Class Regulations*, they had returned to live in El Salvador for six years and thus failed to meet the residency requirements necessary to maintain their permanent residence status. A pre-removal risk assessment determined they were not be at risk of persecution or torture should they be returned to El Salvador. The applicants argued that although they were not Convention Refugees they should be afforded the same protection. The Federal Court disagreed, declaring that the applicants were not protected persons and that to declare that they were would be contrary to the text and object of the IRPA.

The case of *Mahjoub v. Canada (Minister of Citizenship and Immigration),* [2007] 4 F.C.R. 247, was a judicial review of a finding by a delegate of the Minister that ordered Mr. Mahjoub deported to Egypt on the basis that he posed a danger to the security of Canada and would not be at substantial risk of torture or other ill-treatment in Egypt. The court, in allowing the application, found that the delegate's finding that Mr. Mahjoub would not face a substantial risk of torture in Egypt was patently unreasonable. In particular, the court noted that the delegate had arbitrarily rejected evidence from organizations like Amnesty International and Human Rights Watch, had ignored the observations of the Committee against Torture in *Agiza v. Sweden* that torture is systematic in Egypt and had placed too much reliance on diplomatic assurances from Egypt. The court remitted the case for redetermination by another delegate of the Minister.

In *Nagalingam v. Canada (Minister of Citizenship and Immigration),* [2007] F.C.J. No. 295, the Federal Court found that even where a person had previously acquired Convention Refugee status, this was not determinative of whether there was a substantial risk of torture or persecution in the country of origin several years later.

Article 5: Jurisdiction

In *Arar v. Syrian Arab Republic*, [2005] O.J. No. 752 (S.C.J.), Mr. Arar sought to sue Syria and Jordan in the Ontario courts regarding allegations of torture committed in Syria. The court dismissed the claim on the basis that the *State Immunity Act* (http://laws.justice.gc.ca/en/S-18/) exempts foreign states from being sued in Canada without approval of the state accused of fault, or Canadian complicity in the activity. Given that Syria and Jordan had not given approval for the claim and the claim did not allege Canadian complicity, the court was unable to hear the case.

Article 11: Treatment of persons arrested, detained or imprisoned

In *Charkaoui v. Canada (Citizenship and Immigration),* [2007] 1 S.C.R. 350, Mr. Charkaoui appealed the security certificate process under the IRPA which allows the Minister of Citizenship and Immigration, and the Minister of Public Safety, to issue a certificate declaring that a foreign national or permanent resident inadmissible to Canada on grounds of security. The Supreme Court ruled that the process for determining the reasonableness of a security certificate was unconstitutional in allowing the issuance of a certificate of inadmissibility based on secret material without providing a fair process to better protect the named person's interests, and was therefore of no force or effect. The Court suspended its declaration for one year to provide time for Parliament to amend the procedure. The Court also considered Mr. Charkaoui's claim that the potential for extended detention constituted a violation of section 7 or section 12 of the Charter guarantee against cruel and unusual treatment. The Court found that although detentions under the IRPA may be lengthy, properly interpreted, the legislation provides a process for reviewing detention and obtaining release, and for reviewing and amending conditions of release, where appropriate.

In *Jaballah (Re),* [2006] F.C.J. No. 110, (2006) FC 115, the Federal Court considered an application by Mr. Jaballah for release from detention under the security certificate process of the IRPA. Mr. Jaballah had been held in detention since 2001. The reasonableness of the

certificate had not yet been determined and the IRPA provided no opportunity for review of the detention until the certificate had been determined to be reasonable. He argued, among other things, that his detention violated section 12 of the Charter, which protects against cruel and unusual treatment or punishment, because he was being kept in a maximum security institution designed to hold persons charged with serious criminal offences and the conditions were quite difficult. The Court held that this did not violate section 12 of the Charter because it was not punishment, but preventative action designed to protect the security of the Canadian public. Additionally, Mr. Jaballah did not endure any harsher conditions than did other inmates of the same institution.

In *R. v. Ferguson*, [2008] SCC 6, the appellant argued that a four-year minimum sentence for manslaughter was cruel and unusual punishment contrary to section 2 of the Charter. The case arose out of the shooting by the appellant RCMP officer of a detainee. The Court noted that the test for whether a particular sentence constitutes cruel and unusual punishment is whether the sentence is "so excessive so as to outrage the standards of decency" and disproportionate to the extent that Canadians "would find the punishment abhorrent or intolerable". The Court concluded that on the facts of the case, including aggravating factors such as the appellant's training in firearms and the fact that he stood in a position of trust with respect to the deceased detainee, there was no basis for concluding that the four-year minimum sentence was cruel and unusual punishment.

Article 15: Evidentiary use of statements made under torture

In *Lai v. Canada (Minister of Citizenship and Immigration)*, 2005 FCA 125, the appellants appealed a decision of the Federal Court which had dismissed the appellants' applications for judicial review of their failed Convention refugee claims. Among other issues, the appellants claimed that evidence relied upon by the Minister may have been obtained by torture. The Federal Court of Appeal found that the Minister need only provide general evidence as to the credible or trustworthy nature of the statements offered. The Immigration and Refugee Board may then take into consideration specific evidence presented by the Minister or a claimant as to the voluntariness or involuntariness of a particular statement. The weighing of evidence is clearly within the Board's authority. The Federal Court of Appeal found that there was credible and trustworthy evidence upon which the Board could rely in finding that the statements were given voluntarily and dismissed the appellants' claim.

Appendix 2 – Commissions of Inquiry

The Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar (The O'Connor Commission)

Mr. Arar was apprehended in New York on September 26, 2002, while transiting through the United States of America on his way to Canada. He was declared ineligible to enter the United States (U.S.) as he was allegedly a member of al-Qaida. U.S. officials deported Mr. Arar to Jordan on October 8, 2002, from where he was transferred to Syria.

In January 2004, Justice Dennis O'Connor was appointed to head of the Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar (The O'Connor Commission) with a mandate to: (1) investigate and report on the actions of Canadian officials; and, (2) recommend an arm's length review mechanism for the activities of the RCMP with respect to national security.

The two-part report was tabled in the House of Commons in the fall 2006. Addressing the House of Commons on September 19, 2006, the Prime Minister of Canada stated that there was an "injustice against Mr. Maher Arar" and that the Government of Canada intended to act promptly on Commissioner O'Connor's recommendations.

Commissioner O'Connor's principal findings were that:

- No Government of Canada official was responsible for, or acquiesced in, the U.S. decision to deport Mr. Arar to Syria;
- Consular officials in New York and Damascus took reasonable steps to provide service to Mr. Arar and secure consular access to him;
- Government of Canada officials failed to provide assessments that information about Mr. Arar received from Syrian Military Intelligence was "likely the product of torture;"
- Mixed signals were sent to Syria about Mr. Arar's links to terrorism and the Government of Canada's willingness to have him returned which may have prolonged his detention;
- The RCMP provided information to the U.S. authorities without complying with RCMP policies governing relevance, reliability and personal information, some of which related to Mr. Arar, and some of which, in his view, was not caveated appropriately; and,
- Before and after Mr. Arar's return to Canada, Canadian officials leaked "confidential and sometimes inaccurate information about the case for the purpose of damaging Mr. Arar's reputation or for protecting their self-interests or government interests."

Among the recommendations made in the report were:

- The Government of Canada should lodge formal objections against the Governments of the United States and Syria about their treatment of Mr. Arar and Canadian officials involved in the case;
- The Government of Canada should assess Mr. Arar's claims for compensation in light of the findings of the report;

- A protocol should exist to ensure coordination and coherence among all Government of Canada departments and agencies when Canadian citizens are detained abroad for terrorist related activities;
- Consular officials should receive training to deal with Canadian detainees who may be at risk of torture and should explain to such detainees that personal information about them may be shared outside the Consular Operations Bureau; and,
- The powers for the Commission for Public Complaints should be enhanced to address national security law enforcement work of the RCMP.

During the period of the present report, the Government of Canada made substantial progress in implementing the recommendations in Part I of Commissioner O'Connor's report, including the Government of Canada's apology to and compensation for Mr. Arar and his family (Mr. Arar was paid $10.5 million Canadian dollars in compensation and his legal expenses were covered ($1 million)). The Minister of Foreign Affairs wrote to his U.S. and Syrian counterparts objecting to the treatment of Mr. Arar (October 6, 2006), a memorandum of understanding between the Canadian Security Intelligence Service (CSIS) and the Department of Foreign Affairs and International Trade (DFAIT) was completed to ensure coordination between the departments, and consular officials received training on how to deal with Canadian detainees who may be at risk of torture.

With respect to the recommendations in Part II of Commissioner O'Connor's report, the Government of Canada indicated its intention to improve its national security review framework.

Commission of Inquiry Into the Actions of Canadian Officials in Relation to Abdullah Almaki, Ahmed Abou-Elmaati and Muayyed Nureddin (Iacobucci Inquiry)

On December 11, 2006, the *Internal Inquiry into the Actions of Canadians Officials in Relation to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin* was established on the recommendation of the Minister of Public Safety. The Honourable Frank Iacobucci, a former Supreme Court of Canada Justice, was appointed Commissioner.[16]

The three men were under investigation regarding their suspected links to international terrorist organizations. All three were detained by Syrian authorities on arrival in Syria – at Damascus Airport in the cases of Elmaati (November 2001) and Almalki (May 2002) and at the Iraq-Syria frontier in the case of Nureddin (December 2003). Syria transferred Elmaati to Egypt in January 2002, where he was released in January 2004. The Syrians released Nureddin in January 2004 and Almalki in March 2004.

All three men alleged that they were interrogated by Syrian authorities on the basis of information provided to Syria by the RCMP or CSIS and that they received inadequate support from DFAIT consular officials. They also asserted that they were subject to torture during interrogation.

As Commissioner of the Inquiry, Mr. Iacobucci's mandate was to determine:

16 The rules of procedure and transcripts can be found on the official Commission's website: http://www.iacobucciinquiry.ca/en/home.htm

- Whether the detention or any mistreatment of Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin in Syria or Egypt resulted, directly or indirectly, from actions of Canadian officials, particularly in relation to the sharing of information with foreign countries and, if so, whether those actions were deficient in the circumstances; and,
- Whether there were deficiencies in the actions taken by Canadian officials to provide consular services to the three named individuals while they were detained in Syria or Egypt.

The Commission interviewed more than 40 Canadian officials. Commissioner Iacobucci has also interviewed the three named individuals in relation to their allegations of torture. As well, the Commissioner held three sets of public hearings, where he received oral and written submissions from parties on a variety of subjects, including the standards of conduct with respect to information sharing and the provision of consular services. The final inquiry report was released in October 2008.