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Government of Canada Responsibilities for Domestic and International Human Rights

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Government of Canada Responsibilities for Domestic and International Human Rights
(Background Paper)

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GOVERNMENT OF CANADA RESPONSIBILITIES FOR DOMESTIC AND INTERNATIONAL HUMAN RIGHTS

1 INTRODUCTION

The Government of Canada is responsible for a broad range of domestic and international human rights issues: from ensuring the protection of such fundamental rights as the freedom of speech to reducing discrimination in public sector workplaces, and from promoting equality rights abroad to apprehending war criminals. Federal human rights obligations originate from several sources, including the Canadian Constitution, international treaties, and laws passed by Parliament. As a federal state, Canada has constitutional and international human rights obligations that may be shared or divided with provincial or territorial governments in accordance with the division of powers set out in the Constitution.

The manner in which federal responsibility for addressing human rights issues is assigned is complex. No single department within the Government of Canada is mandated to oversee all of Canada's federal human rights obligations. Rather, responsibilities for human rights are horizontally distributed throughout all federal government agencies and departments, which are frequently required to work together. Since human rights issues may come up in so many different contexts, most federal departments will be required at various times to respond to them. Three core departments with significant human rights expertise, however, handle Canada's main human rights commitments: Canadian Heritage; Justice Canada; and Foreign Affairs, Trade and Development Canada.

This paper examines how the federal government is currently organized to meet its domestic and international human rights obligations. It first briefly reviews the legal sources of human rights in Canada before examining the work performed by the three core departments and other select federal-level departments, working groups and institutions that handle human rights matters.

2 SOURCES OF FEDERAL RESPONSIBILITIES FOR HUMAN RIGHTS

The federal government's principal source of domestic responsibility for human rights matters originates from the *Constitution Act, 1867*.¹ The Constitution sets out both the powers granted to the federal government and the rights that are constitutionally protected in the *Canadian Charter of Rights and Freedoms*. All governments in Canada must ensure that their actions, policies, programs, laws and other initiatives conform to the Constitution, the country's highest law.²

2.1 THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS

The *Canadian Charter of Rights and Freedoms*, which is a schedule to the *Constitution Act, 1982*,³ is perhaps the most important vehicle for human rights in Canada. It establishes, among other rights, the basic legal, democratic, mobility and

equality rights to which all Canadians are entitled. It also establishes the “fundamental freedoms” of Canadians, including the freedoms of association, assembly, expression, the press, belief, religion and thought.

As per section 32, the Charter applies to the laws and actions of the federal, provincial and territorial governments, including the actions of municipal governments, public school boards, and other institutions that have been delegated statutory authority by a government, such as police forces or administrative tribunals. The federal government must comply with the Charter when passing laws, developing policies and programs, or undertaking other initiatives. Furthermore, Canadians are entitled to rely on Charter rights when interacting with any government agencies or authorities. This could take place during such circumstances as when receiving a government service, moving to another province or territory, publishing a critical opinion of the government, participating in a religious tradition, or being arrested by the police.⁴

Legislatures are able to limit or override some Charter rights to address any pressing societal concerns by invoking section 33 of the Charter (commonly referred to as the “notwithstanding clause”), although this is extremely rare and has never been used at the federal level.⁵ In all other cases, Canadian courts are able to review the actions of a government or the laws passed by the legislature to determine whether these have complied with the Constitution. If a court finds that there has been an infringement of a Charter right, then the government responsible for the law, program or other initiative in question must demonstrate that its actions are justified in a “free and democratic society” in accordance with section 1 of the Charter.⁶ The court must then balance the interests of and arguments put forward by the government seeking to limit a Charter right and those seeking to exercise a right.⁷ If the government fails the justification test, the courts have the ability to grant remedies and to declare that a law, or part of a law, is unconstitutional and of no force and effect.⁸ As such, courts play an important role not only in protecting human rights in Canada, but also in developing human rights and constitutional law.

The *Canadian Bill of Rights*, a precursor to the Charter, was passed in 1960 and remains in effect today.⁹ It sets out many of the same rights as the Charter and other federal, provincial and territorial human rights legislation. Unlike the Charter, the Bill of Rights is an ordinary federal statute and has no application to provincial laws, can easily be amended by Parliament, has tended to be narrowly interpreted and is seldom used by Canadian courts.¹⁰ Nevertheless, the federal government is required to comply with this law.

2.2 THE CONSTITUTION AND THE DIVISION OF POWERS

The *Constitution Act, 1867* divides legislative authority in Canada between the federal and provincial levels of government by identifying, primarily in sections 91 (federal) and 92 (provincial), which jurisdiction is accorded authority over various constitutional powers.¹¹ (The territories have no inherent jurisdiction, only powers delegated to them by the federal government.) Human rights are not specifically mentioned in these sections. Laws touching on human rights matters have accordingly been enacted and

programs have been developed at the federal, provincial and territorial levels (the latter through authority delegated by the federal legislature).

The powers listed in section 91 that might be used by the federal government to justify human rights initiatives could include the powers to pass criminal laws, laws that promote “peace, order and good government,” or laws pertaining to the military.

A provincial government may use section 92 powers to pass human rights laws pertaining to “property and civil rights” or more generally to “[m]atters of a merely local or private Nature in the Province.”¹² Accordingly, most human rights complaints filed by private citizens against employers, landlords or service providers tend to proceed under provincial jurisdiction, unless they involve the federal government directly, a federally regulated business or organization, or an Aboriginal government under federal jurisdiction (as discussed further in section 2.4).

In exercising its constitutional authority as the federal legislature, Parliament may pass domestic laws that address human rights issues and that may impose additional human rights obligations on the federal government, such as the *Canadian Human Rights Act*, Canada’s primary federal human rights law,¹³ and the *Employment Equity Act*.¹⁴ The federal government also has the power to enter into treaties with other states or international organizations.¹⁵ Many of Canada’s human rights obligations, both at the federal and provincial levels, are found in international human rights instruments.

2.3 INTERNATIONAL HUMAN RIGHTS TREATIES

Canada has signed, ratified or acceded to numerous international treaties that touch on human rights matters.¹⁶ These include treaties with organizations¹⁷ such as the Organization of American States, the International Labour Organization, the International Criminal Court and the United Nations.¹⁸ Canada has also ratified many Geneva Conventions.¹⁹

Canadian governments must implement international treaties by ensuring that all domestic laws, policies and programs conform with them.²⁰ Many international human rights treaties require periodic reporting to ensure that states take stock of their laws, policies and programs in a particular area, and to allow the international community the opportunity to review and comment on their performance. The Government of Canada, in consultation with the provinces and territories, prepares and submits these reports on behalf of Canada (see section 3.1 and the Appendix). The Supreme Court of Canada has noted the important role played by international human rights law in this country and the influence that treaties can have on the interpretation of domestic legislation and the Charter.²¹

Since the federal government exercises the exclusive power to ratify international treaties, but does not have the power to legislate in matters of provincial jurisdiction, it must therefore seek the cooperation of provincial governments, and sometimes legislatures, to fulfill some of Canada’s international treaty obligations.²²

2.4 THE *CANADIAN HUMAN RIGHTS ACT*

Federal, provincial and territorial laws may complement the rights set out in the Charter and in international human rights agreements. For instance, all legislatures in Canada have passed laws specifically designed to protect individuals and groups from discrimination.

The *Canadian Human Rights Act* prohibits an employer, landlord or service provider under federal jurisdiction from making unlawful distinctions among Canadians, through such means as harassment or other discriminatory practices, based on certain grounds: race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, mental or physical disability (which have been found to include previous or current drug or alcohol dependence), or pardoned conviction.²³ It applies to federal government departments and agencies, Crown corporations, certain mining operations, Aboriginal governments under federal jurisdiction, and federally regulated businesses in such sectors as banking, interprovincial transportation, broadcasting, airlines and interprovincial telecommunications.²⁴

The Act establishes the Canadian Human Rights Commission, which is mandated to undertake the following:

- assist parties in resolving complaints of discrimination;
- assist in the investigation of complaints of discrimination;
- monitor programs, policies and legislation that may affect the rights of designated groups (women, Aboriginal peoples, visible minorities and persons with disabilities);
- undertake information programs to promote public understanding of the Act and of the role and activities of the commission; and
- conduct employment equity audits of employers to assess their compliance with the *Employment Equity Act* (further discussed in section 4.1).

The commission carries out studies to report on specific human rights topics and produces an annual report that reviews key current human rights matters.²⁵ It also provides tools and resources for federal employers to help them create self-sustaining human rights cultures in the workplace.²⁶

Complaints that are not otherwise resolved by the commission's complaint resolution procedures may be brought before the Canadian Human Rights Tribunal. The tribunal conducts hearings into complaints and makes decisions to order a remedy or to dismiss the complaints. Its decisions can be appealed to a review tribunal or the Federal Court of Canada, and then finally to the Supreme Court of Canada.

3 THE THREE CORE DEPARTMENTS

Canadian Heritage, Justice Canada, and Foreign Affairs, Trade and Development Canada are the three core departments responsible for the implementation and coordination of Canada's international human rights obligations. As these obligations generally cover the broad spectrum of Canadian human rights issues, they have the primary responsibility for overseeing much of the federal government's overall approach to human rights. Justice Canada and Canadian Heritage also have programs that focus on domestic human rights issues.

3.1 CANADIAN HERITAGE

Canadian Heritage is the federal department responsible for matters involving culture, identity and sport. It delivers policies and programs related to heritage objects and spaces, official languages, arts and cultural industries, sport initiatives and human rights.

The department's Human Rights Program is primarily responsible for promoting "the awareness, understanding, respect for and enjoyment of human rights in Canada."²⁷ It undertakes education and outreach activities aimed at government and non-government institutions and the general public that are focused on the Charter and the international human rights treaties to which Canada is a party.

The Program also coordinates consultations and information-sharing with provincial and territorial governments on the elaboration, ratification and domestic implementation of international human rights instruments. The Human Rights Program has overall responsibility for the preparation of Canada's reports on the implementation of its international human rights obligations to the treaty bodies of the United Nations (UN),²⁸ as well as for the UN's Universal Periodic Review (UPR) process.²⁹ For the UPR, every UN member state undergoes a comprehensive review of its human rights record before the United Nations Human Rights Council. These reviews take place every four and a half years. Canada has faced two reviews so far, the first in 2009 and the second in 2013.³⁰

Preparation of Canada's UPR and treaty body reports involves working with relevant federal departments, as well as with provincial and territorial governments. The department responsible for coordinating federal input for Canada's reports may vary from one treaty to another, depending on the subject matter. Each province and territory is responsible for providing its respective input to the reports. The report preparation process is also designed to include consultations with civil society and organizations representing Aboriginal peoples. The diagrams included in the appendix to this paper outline the process and contributors to the reporting process.

3.1.1 THE CONTINUING COMMITTEE OF OFFICIALS ON HUMAN RIGHTS

The Human Rights Program supports the Director General of the Strategic Management and Human Rights Branch of the Department of Canadian Heritage in his or her work as the representative of the federal government at the Continuing

Committee of Officials on Human Rights (CCOHR) and acts as the Committee's secretariat.³¹

The Committee is the primary forum for dialogue among the federal, provincial and territorial governments regarding international human rights treaties. It was established in 1975 to facilitate consultation and information-sharing with regard to Canada's ratification and implementation of international human rights instruments, as well as any related reporting obligations.³² The CCOHR meets annually and maintains ongoing dialogue through regular conference calls.

It is through the CCOHR that provincial and territorial governments participate in the preparation of Canada's reports to the UN on human rights and Canada's subsequent appearances before the relevant treaty-monitoring committees. The CCOHR discusses the recommendations issued by these bodies and those received from other countries through the UPR.

The CCOHR may also discuss human rights instruments that are being elaborated by an international body; treaties that are being considered for signature, ratification or accession; and relevant domestic legislation, policies, programs or initiatives that serve to implement the international human rights treaties to which Canada is a party. It can make recommendations to government ministers responsible for human rights, although any commitments must be made by the governments themselves. It may also coordinate federal-provincial/territorial ministerial conferences on human rights. These conferences may serve as a forum for various ministers from the federal, provincial and territorial levels to meet and discuss pressing and emerging human rights issues. The last such conference was held in Toronto in 1988.

3.2 THE DEPARTMENT OF JUSTICE CANADA

The Department of Justice Canada is responsible for the development of programs and policies pertaining to Canada's justice system, including the role played by human rights within that system. Most lawyers in the federal government are employed by the Department of Justice Canada, whether they work within the department itself or are posted to other departments and agencies to manage their legal affairs.

Under the *Department of Justice Act*,³³ the Department of Justice Canada is specifically mandated to examine every bill introduced in the House of Commons and every regulation introduced by the Governor in Council in order to confirm that they are consistent with the purposes and provisions of the *Canadian Charter of Rights and Freedoms*. The Minister of Justice is then required to report any inconsistencies to the House of Commons at the first convenient opportunity.³⁴

The Human Rights Law Section of the Department of Justice Canada:

- provides specialized legal and legal policy advice, training and litigation support on matters relating to *the Canadian Charter of Rights and Freedoms*, the *Canadian Bill of Rights* and the *Canadian Human Rights Act*, and Canada's international human rights obligations;

- advises the Minister of Justice in the exercise of his statutory responsibilities to examine government bills and proposed regulations for consistency with the Charter and the Bill of Rights;
- is responsible for advising on the domestic implications of treaty obligations, and for responding to individual petitions to international bodies; and
- provides strategic advice, training, and guidance on a broad range of human rights policy issues, including matters relating to the *Canadian Human Rights Act*.

The Constitutional and Administrative Law Section, International Law Section and Criminal Law Section may also perform similar services pertaining to matters within their expertise.

The Civil Litigation Branch of the Department of Justice Canada handles most litigation on behalf of the Government of Canada and is responsible for ensuring that, among other things, there is consistency among the positions taken in litigation are consistent. It may provide guidance and direction to the federal government when it is involved in cases before the Canadian Human Rights Commission and the Human Rights Tribunal of Canada.

The Crimes Against Humanity and War Crimes Section, a specialized unit in the Department of Justice, is mandated to coordinate and deliver the objectives of Canada's Crimes Against Humanity and War Crimes Program.³⁵ The purpose of the program is to facilitate the prosecution of persons accused of committing genocide, a crime against humanity or war crimes, including criminal prosecution in Canada, extradition, or surrender to an international tribunal in accordance with the *Crimes Against Humanity and War Crimes Act*.³⁶ This law implemented Canada's obligations under the *Rome Statute of the International Criminal Court*,³⁷ the treaty that created the International Criminal Court, where accused war criminals may be tried. The Justice unit works in conjunction with its counterparts in the Canada Border Services Agency and the Royal Canadian Mounted Police (RCMP).

3.3 FOREIGN AFFAIRS, TRADE AND DEVELOPMENT CANADA

The Department of Foreign Affairs, Trade and Development Canada (DFATD) handles Canada's foreign policy and diplomacy. The Human Rights and Indigenous Affairs Policy Division, which forms part of the department's Freedom and Human Rights Bureau, is responsible for the coordination of Canada's international human rights policies.

Along with Canadian Heritage, DFATD works with other federal departments to facilitate the fulfilment of Canada's reporting obligations to international organizations and to consult with provincial ministries concerning international agreements. The division also coordinates international negotiation on human rights-related resolutions and international instruments with other states and international organizations.

The department works to promote and protect human rights around the world through engagement with other countries, development assistance, and initiatives in

multilateral bodies, including the UN system, the Organization of American States, the Organization for Security and Co-operation in Europe, the Francophonie, the Commonwealth and the G8. In addition to providing international assistance programs and initiatives through Canada's missions abroad, the department supports the fieldwork of the UN Office of the High Commissioner for Human Rights (OHCHR) and other UN Agencies that promote and protect human rights, such as the UN Development Program, UNICEF, the UN Population Fund and UN Women.

4 HUMAN RIGHTS: COOPERATION ACROSS THE FEDERAL GOVERNMENT

As noted earlier, human rights issues cut across different contexts and therefore involve most federal departments. These issues might include drafting workplace policies to deal with harassment and discrimination, ensuring that government programs respect constitutional and domestic human rights legal obligations, or responding to allegations that departmental employees or agents of a department have violated the human rights of others.

While some government offices may need to consult at times with human rights experts in external departments or with independent consultants, other federal government departments have their own internal offices, divisions or positions for handling human rights issues or administering human rights programs as they relate to their organization or their mandate. In addition to those departments described in more detail later in this paper, Correctional Service Canada, National Defence and Service Canada all have positions within their organizations to deal with human rights matters in some capacity. Other departments include the promotion and protection of human rights within their specific mandates. For example, the responsibilities of Aboriginal Affairs and Northern Development Canada include helping to protect and advocate for the human rights of Aboriginal people nationally and internationally.³⁸

Federal departments also cooperate on many human rights issues through coordinated interdepartmental and intergovernmental working groups and programs. For example, the Interdepartmental Working Group on Children's Rights, co-chaired by the Public Health Agency of Canada and the Department of Justice Canada, was created in 2007 to promote a whole-of-government approach to children's rights and to encourage linkages among departments with policies affecting children.³⁹ The Crimes Against Humanity and War Crimes Program discussed in section 3.2 is another example of such a coordinated approach.⁴⁰ The Department of Justice Canada, the RCMP, Citizenship and Immigration Canada and the Canada Border Services Agency each have specific mandates under the program, but also work collaboratively to take action towards holding war criminals accountable for their crimes.

The following sections provide more detail on some of the work done by various federal government departments with regards to human rights matters. This is not an exhaustive list of all the human rights work done throughout the Government of Canada, however.

4.1 EMPLOYMENT AND SOCIAL DEVELOPMENT CANADA

4.1.1 OFFICE FOR DISABILITY ISSUES

Employment and Social Development Canada (ESDC) has several programs and divisions that touch on human rights. The Income Security and Social Development Branch coordinates social policy and programs that are intended “to ensure that children, families, seniors, people with disabilities, the homeless and those at risk of homelessness, communities and others who are facing social challenges have the support, knowledge, and information they need to maintain their well-being and facilitate their participate in society.”⁴¹

Within this branch, the Office for Disability Issues is described as “a focal point within the Government of Canada for key partners working to promote the full inclusion and participation of Canadians with disabilities in all aspects of society and community life.”⁴² It develops policies and programs designed to promote the rights of persons with disabilities in Canada. It has also contributed to the development of international treaties, including the *United Nations Convention on the Rights of Persons with Disabilities*.

4.1.2 LABOUR PROGRAM

As noted in section 2 of this paper, the *Canadian Charter of Rights and Freedoms* guarantees the equality rights of Canadians. Section 15 of the Charter guarantees, among other things, the “right to the equal protection and equal benefit of the law without discrimination,” while leaving open the possibility for laws or programs designed for the “amelioration of conditions of disadvantaged individuals or groups.”

One such law is the aforementioned *Employment Equity Act*, the purpose of which is to achieve workplace equality so that no one is denied employment opportunities or benefits for reasons unrelated to ability and to correct the conditions of disadvantage experienced by four designated groups: women, Aboriginal peoples, persons with disabilities and members of visible minority groups. It establishes mechanisms to ensure that the representation of such persons in a federal employer’s workforce reflects their representation in the overall Canadian workforce.⁴³ The legislation applies to federally regulated private sector employers and Crown corporations with 100 or more employees and to the federal public sector (including the Public Service as well as employers in the Federal Contractors Program).⁴⁴

The Minister of Labour is responsible for the administration of the Act, and the Labour Program at ESDC runs two statutory programs to help implement it:

- The Legislated Employment Equity Program, which applies to federally regulated private sector employers and Crown corporations with 100 or more employees.⁴⁵ Such employers are required to submit a yearly employment equity report to the Workplace Equity Division. These reports form the basis for the *Employment Equity Act* annual report,⁴⁶ which is tabled by the Minister of Labour in Parliament each year, as required by the Act. The Annual Report outlines the employment situation of members of designated groups in the federally regulated private

sector and in Crown corporations and their progress toward greater workforce equity.

- The Federal Contractors Program, which covers provincially regulated private sector employers with a workforce of at least 100 employees who receive contracts of at least \$1 million from the federal government. The program is designed to ensure that these contractors implement employment equity.

In 2014, the Labour Program launched Workplace Opportunities: Removing Barriers to Equity, a grants and contributions program designed to support employers subject to the *Employment Equity Act* in their efforts to address the under-representation of designated groups through partnerships and industry-tailored strategies. The Workplace Equity Division also offers advice to employers covered by the two statutory programs with regard to the implementation of employment equity and compliance with legislative obligations and provides support for the new grants and contributions program.

4.2 STATUS OF WOMEN CANADA

Status of Women Canada is a federal government organization specifically mandated to promote and provide policy advice regarding equality for women and their full participation in all aspects of Canadian society. It provides support for gender-based analysis in government⁴⁷ and examines policies, programs and initiatives to determine their differing implications for women and men.

4.3 CITIZENSHIP AND IMMIGRATION CANADA, THE CANADA BORDER SERVICES AGENCY, AND THE IMMIGRATION AND REFUGEE BOARD OF CANADA

As its name implies, Citizenship and Immigration Canada is the department responsible for handling citizenship and immigration issues and developing appropriate policies, particularly with regard to Canada's refugee program. As a signatory to the United Nations' *Convention relating to the Status of Refugees*, Canada has international treaty obligations to protect refugees and respect their rights. Canada offers refugee protection to people in Canada who fear persecution, torture, a risk to their life or a risk of cruel and unusual treatment or punishment if they were to return to their home country.

The implementation and enforcement of Canada's immigration and refugee laws is handled largely by the Canada Border Services Agency, including with respect to detention, removals, investigations, and intelligence and immigration control functions overseas.

Immigration hearings are handled by the Immigration and Refugee Board of Canada, which is an independent administrative tribunal. It is responsible for making decisions on immigration and refugee matters in accordance with Canadian laws (including the Charter and human rights laws) and Canada's international human rights obligations. The Immigration Appeal Division hears appeals on immigration-related matters, and its decisions are subject to judicial review before the Federal Court of Canada.

4.4 THE ROYAL CANADIAN MOUNTED POLICE

Police agencies and officers play an important role in the protection of human rights by enforcing the laws that seek to protect the rights of Canadians. For example, by apprehending human traffickers, police officers seek to prevent further crimes against trafficked persons that violate their rights, such as forced labour or sexual exploitation. The RCMP is the national, federal-level police service and is an agency of the Department of Public Safety and Emergency Preparedness.

Occasionally, allegations are made against the RCMP claiming that officers have violated the human rights of civilians. There are several forums where such allegations may be heard. Complaints against the RCMP can be directed to the Civilian Review and Complaints Commission for the RCMP, which may perform its own inquiry and make its own reports and recommendations.⁴⁸ Complaints concerning violations of the *Canadian Human Rights Act* by the RCMP may also be made to the Canadian Human Rights Commission.

Allegations of human rights violations could also arise in the context of a civil trial; an example of such an instance could be a suit against the RCMP for damages resulting from alleged malicious prosecution or false imprisonment. Allegations may also be made in the context of a criminal trial where, for instance, accused persons may claim that their Charter rights were violated by an unreasonable search of their person or property.

5 CONCLUSION

The departments, programs and working groups outlined in this paper reflect the current approach to handling human rights within the Government of Canada. Responsibilities for human rights at the federal level will undoubtedly shift and evolve as the federal government responds to evolving priorities and political developments. Any parliamentary legislative action that affects human rights could also require the government to restructure the manner in which the administration of human rights issues is handled. Furthermore, each new international human rights treaty signed by the federal government may create obligations for Canada, which in turn may require that one or more levels of government introduce laws and organize themselves to meet these new directives.

NOTES

1. *Constitution Act, 1867* (U.K.), 30 & 31 Victoria, c. 3, reprinted in R.S.C. 1985, App. II, No. 5. Canada's Constitution includes the original United Kingdom statute that established the Dominion of Canada at the time of Confederation, the *British North America Act, 1867* (now the *Constitution Act, 1867*). It also includes the *Constitution Act, 1982*, which became part of the Constitution when it was patriated to Canada in 1982, as well as unwritten sources, such as British parliamentary tradition and certain common law principles, such as the rule of law.

2. All Canadian legislatures and governments must ensure that their activities, programs, laws and other initiatives comply with the Constitution. Section 52(1) of the *Constitution Act, 1982* expressly states that “[t]he Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.” Canadian courts and tribunals must also ensure that their decisions are in keeping with constitutional principles.
3. Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.
4. Peter W. Hogg, Chapter 37, in *Constitutional Law of Canada*, 5th Edition Supplemented, Carswell, Toronto, 2009.
5. David Johansen and Philip Rosen, [The Notwithstanding Clause of the Charter](#), Publication no. BP-194-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 16 October 2008.
6. Section 1 of the Charter “guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.” In *R. v. Oakes*, [1986] 1 S.C.R. 103, the Supreme Court of Canada established a test in accordance with this section to determine whether any infringement of a Charter right could be justified. The “Oakes test” has been applied, further developed and elaborated upon in subsequent decisions.
7. For examples of how rights must frequently be balanced in Canada, please see Julia Nicol and Julian Walker, [“Human Rights in Canada: Striking a Balance,”](#) in *41st Parliament: Current and Emerging Issues*, Library of Parliament, Ottawa, June 2011.
8. Further to section 24(1) of the Charter, courts may grant any remedy that is “appropriate and just in the circumstances” where there has been a denial or infringement of a right. A court can also suspend the effect of its decision for a period of time to allow a government to come up with a better alternative that does not violate the Constitution.
9. [Canadian Bill of Rights](#), S.C. 1960, c. 44.
10. Hogg (2009), Chapter 35.
11. Examples of section 91 powers include “Navigation and Shipping” and “Militia, Military and Naval Service, and Defence.” Examples of section 92 powers include “Municipal Institutions in the Province” and “The Solemnization of Marriage in the Province.”
12. When a law is passed in Canada, it is not necessary for a legislature to state which constitutional power is being used. Identifying the proper constitutional power may become relevant only if there is a dispute over which level of government has jurisdiction over an issue.
13. [Canadian Human Rights Act](#), R.S.C., 1985, c. H-6.
14. [Employment Equity Act](#), S.C. 1995, c. 44.
15. For a discussion of the federal government’s power to enter into international treaties and the constitutional source for this power found in the *Letters Patent Constituting the Office of the Governor General of Canada, 1947*, R.S.C. 1985, App. II, No. 31, Art. II, please see Hogg (2009), subchapter 11.2. As noted in this subchapter, “it has been claimed that the Canadian provinces possess treaty-making competence under the Constitution and International law ... suffice it to say that the provincial claim has never been accepted by the federal government, and the federal government does in fact exercise exclusive treaty-making powers.”
16. For more information pertaining to the treaty implementation process in Canada, please see Laura Barnett, [Canada’s Approach to the Treaty-Making Process](#), Publication no. PRB 08-45E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 6 November 2012.

17. Examples of such instruments include the United Nations' *Convention on the Rights of the Child*, *Convention on the Political Rights of Women*, *Convention on the Prevention and Punishment of the Crime of Genocide*, and the *Protocol relating to the Status of Refugees*; the Organization of American States' *Inter-American Convention on the Granting of Civil Rights to Women*; the International Labour Organization's *Convention (n° 105) concerning the Abolition of Forced Labour*; and the *Geneva Convention relative to the Treatment of Prisoners of War*, 12 August 1949. These examples provide a sense of the range of treaties to which Canada is a party, and have not been selected because of any particular importance in international human rights law.
18. Canadian Heritage, [Organization of American States treaties](#); Canadian Heritage, [International Labour Organization treaties](#); website of the [The International Criminal Court](#); Canadian Heritage, [United Nations treaties](#).
19. Canadian Heritage, "[Humanitarian law](#)," *Human Rights Program*.
20. In Canada, international human rights treaties are, in general, not directly incorporated into domestic law but, rather, are implemented through a variety of laws, policies and programs at the federal, provincial and territorial levels. For more see Barnett (2012), at section 3.3.
21. See [Baker v. Canada \(Minister of Citizenship and Immigration\)](#), [1999] 2 S.C.R. 817.
22. As noted in Hogg (2009), subchapter 11.2, and mentioned in an earlier endnote, "it has been claimed that the Canadian provinces possess treaty-making competence under the Constitution and International law ... suffice it to say that the provincial claim has never been accepted by the federal government, and the federal government does in fact exercise exclusive treaty-making powers."
23. The *Canadian Human Rights Act* also includes other provisions, such as section 13, which prohibits the posting of hate messages on the Internet (or by any other means of telecommunication).
24. Service Canada, [Resolving a Dispute Under the Canadian Human Rights Commission](#).
25. Canadian Human Rights Commission, "[Publications](#)," *Resources*.
26. Canadian Human Rights Commission, [Human Rights Maturity Model](#).
27. Canadian Heritage, [Human Rights](#).
28. Canadian Heritage, [Reports on UN human rights treaties and other documents](#).
29. Office of the High Commissioner for Human Rights, [Universal Periodic Review](#).
30. Canadian Heritage, [Canada's Second Universal Periodic Review](#).
31. Canadian Heritage, [Continuing Committee of Officials on Human Rights](#).
32. Canadian Heritage, [How Canada Works with the United Nations](#).
33. [Department of Justice Act](#), R.S.C., 1985, c. J-2, s. 4.1.
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APPENDIX – REPORTING TO THE UNITED NATIONS

Canada is required to submit periodic reports to the UN on its efforts to implement the human rights treaties to which it is a party. As discussed in section 3.1 of this paper, Canadian Heritage has the primary responsibility for the preparation of these reports, including coordinating consultation with civil society and organizations representing Aboriginal peoples, as well as gathering input from the provincial and territorial governments. Because each treaty focuses on a particular set of rights, different government departments may take lead responsibility for coordinating and gathering the information that the Government of Canada will present in its reports. The Department of Foreign Affairs, Trade and Development Canada handles the actual submission to the appropriate treaty body.

Canada's Universal Periodic Review (UPR) reports require a broader coordination effort among federal government departments and provincial and territorial governments, since the UPR process examines the full human rights record of the state under review.

The organizational charts included below were provided by Canadian Heritage and describe the coordination and consultation process used for preparing Canada's reports to UN treaty bodies and for the UPR.

Figure 1 – Reporting Under International Human Rights Treaties

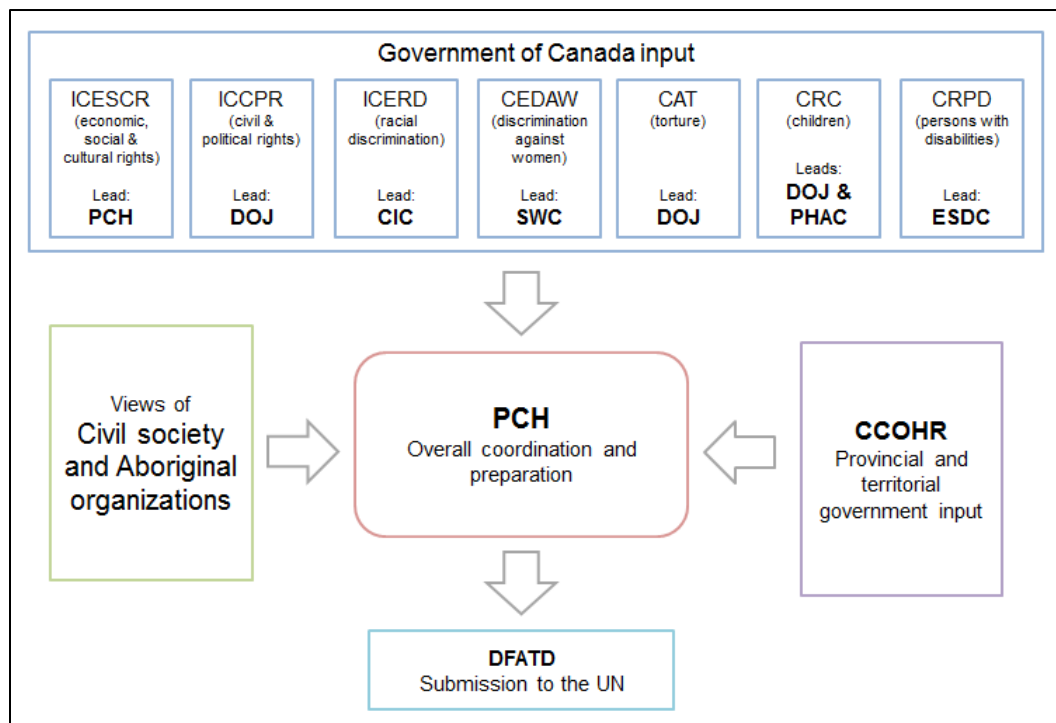
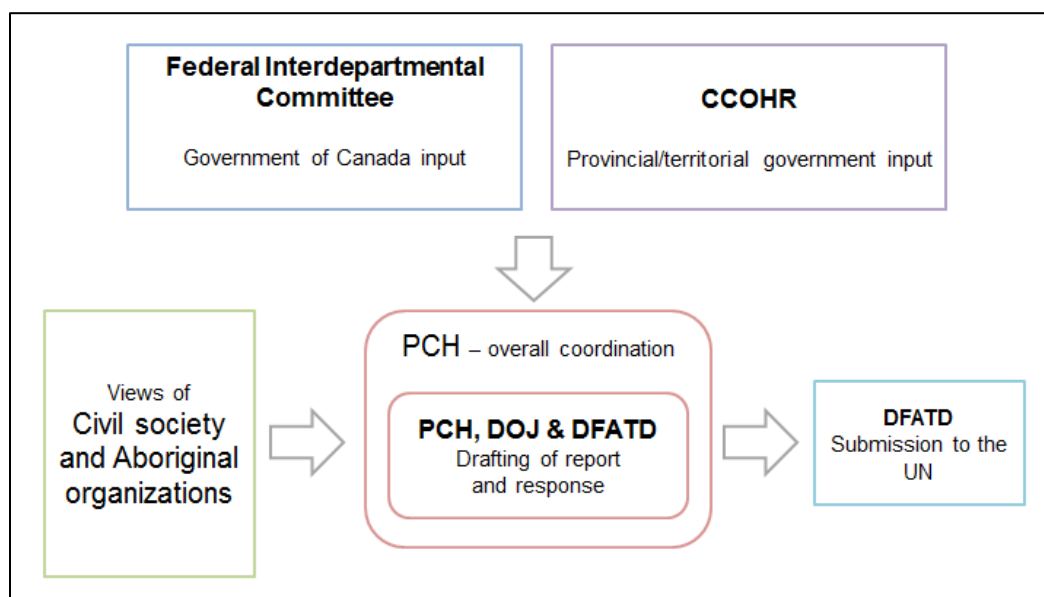


Figure 2 – Reporting Under the Universal Periodic Review**Legend for Figures 1 and 2****Government Bodies**

CCOHR	Continuing Committee of Officials on Human Rights
CIC	Citizenship and Immigration Canada
DFATD	Foreign Affairs, Trade and Development Canada
DOJ	Department of Justice Canada
ESDC	Economic and Social Development Canada
PCH	Canadian Heritage
PHAC	Public Health Agency of Canada
SWC	Status of Women Canada

Treaties

CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights