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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

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## 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 different 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 governments (and, in some cases, 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. There is no single department within the Government of Canada that 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, the Department of Justice Canada, and Foreign Affairs and International Trade 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*.<sup>1</sup> 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.<sup>2</sup>

## 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*,<sup>3</sup> 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.<sup>4</sup>

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”), though this is extremely rare. In all other cases, Canadian courts are able to review the actions of a government or the laws passed by the legislature to determine if 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.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup> 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, and has tended to be narrowly interpreted and seldom used by Canadian courts.<sup>9</sup> 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.<sup>10</sup> (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.”<sup>11</sup> 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,<sup>12</sup> and the *Employment Equity Act*.<sup>13</sup> The federal government also has the power to enter into treaties with other states or international organizations.<sup>14</sup> 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.<sup>15</sup> This includes treaties with organizations<sup>16</sup> such as the Organization of American States, the International Labour Organization, the International Criminal Court and the United Nations.<sup>17</sup> Canada has also ratified many Geneva Conventions.<sup>18</sup>

Canadian governments must implement these agreements by ensuring that all domestic laws, policies and programs conform with them. Many international human rights treaties also 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 prepares and submits these reports on behalf of Canada (see section 3.1 and Appendix A). 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.<sup>19</sup>

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 international obligations.<sup>20</sup>

## 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 discrimination or harassment, based on certain grounds: race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, mental or physical disability (including previous or current drug or alcohol dependence), or pardoned conviction.<sup>21</sup> 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.<sup>22</sup>

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

- assist parties in resolving complaints of discrimination based on prohibited grounds;
- 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.<sup>23</sup> It also provides tools and resources for federal employers to help them create self-sustaining human rights cultures in the workplace.<sup>24</sup>

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

The departments of Canadian Heritage, Justice Canada, and Foreign Affairs and International Trade 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, these departments 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. Its Human Rights Program is primarily responsible for promoting "the development, understanding, respect for and enjoyment of human rights in Canada."<sup>25</sup> It runs educational programs and creates publications for the public, educational institutions, non-governmental organizations and government departments. It also administers grants to eligible organizations.

Another of the program's important roles is to coordinate the domestic implementation of international human rights instruments with provincial and territorial governments. The Human Rights Program also prepares and submits Canada's reports on the implementation of its international human rights obligations to the United Nations and other international treaty bodies. As many government departments have responsibilities that touch on human rights matters, the actual coordination of these reports is very complex and generally involves working with the Department of Justice Canada and Foreign Affairs and International Trade Canada. An example of this process and a chart are included in the appendix to this paper. They demonstrate the organization involved in preparing for Canada's reporting to the United Nations Human Rights Council's Universal Periodic Review.

##### 3.1.1 THE CONTINUING COMMITTEE OF OFFICIALS ON HUMAN RIGHTS

The Human Rights Program also supports the director general of the Multiculturalism 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. The committee is the primary forum for dialogue between the federal, provincial and territorial governments regarding human rights matters. It was established in 1975 to facilitate consultation and cooperation with regard to Canada's ratification and implementation of international human rights instruments, as well as any subsequent reporting obligations.<sup>26</sup>

The committee meets regularly each year and may discuss any international human rights instruments that are being considered for signature, ratification or accession, or human rights issues affecting Canada generally. It can make recommendations to government ministers responsible for human rights, though 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 (such as justice or labour ministers) to meet and discuss pressing and emerging human rights issues. The last such federal–provincial–territorial conference on human rights 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, and consequently the important 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*,<sup>27</sup> 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.<sup>28</sup>

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

- provides legal opinions to any government department or agency on the interpretation and application of all federal legislation with human rights and Charter implications;
- provides litigation support to other government lawyers on human rights issues;
- advises government organizations on the domestic implications of treaty obligations; and
- assists with individual petitions to international bodies.

The Constitutional and Administrative Law Section may also perform similar services pertaining to matters with a constitutional focus.

The Civil Litigation Branch of the Department of Justice Canada handles the majority of litigation on behalf of the Government of Canada and is responsible for ensuring that, among other things, there is consistency in the positions taken in litigation. 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.

Specialized units in the Department of Justice Canada are mandated to coordinate and deliver the objectives of Canada's Crimes Against Humanity and War Crimes Program. 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*.<sup>29</sup> This law

implemented Canada's obligations under the *Rome Statute of the International Criminal Court*,<sup>30</sup> 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 AND INTERNATIONAL TRADE CANADA**

Foreign Affairs and International Trade Canada handles Canada's foreign policy and diplomacy. The Human Rights Policy Division forms part of the department's Human Rights and Democracy Bureau, and is responsible for developing and implementing Canada's international human rights policies. It works with other federal departments to facilitate Canada's reporting obligations to international organizations and to consult with provincial ministries concerning international agreements. The division also negotiates conventions and international instruments with other states and international organizations.

The department is primarily responsible for promoting the Canadian agenda on human rights internationally. It offers technical assistance and training to other states to help them meet their human rights commitments and to develop democratic institutions. During ministerial visits overseas, the department may also assist in raising human rights issues. Finally, the department represents Canada in multilateral, international fora on human rights matters, such as the Commonwealth, l'Organisation Internationale de La Francophonie, the Organization of American States and the United Nations.

## **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, the Canadian International Development Agency, 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.<sup>31</sup>

Federal departments also cooperate on many human rights issues through coordinated interdepartmental and intergovernmental working groups and programs. For example, the Inter-departmental 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.<sup>32</sup> The Crimes Against Humanity and War Crimes Program discussed earlier in section 3.2 is another example of such a coordinated approach.<sup>33</sup> 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 a bit more detail on some of the work done by various federal government departments with regards to human rights matters. This is not an exhaustive selection of all the human rights work done throughout the Government of Canada, however.

#### **4.1 HUMAN RESOURCES AND SKILLS DEVELOPMENT CANADA**

Human Resources and Skills Development Canada (HRSDC) has several programs and divisions that touch on human rights. The Office for Disability Issues within HRSDC 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." 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*.

The Racism-Free Workplace Strategy is run by HRSDC's Labour Program and is designed to promote a fair and inclusive federal workplace, free of discriminatory barriers to the employment and advancement of members of visible minorities and Aboriginal peoples.<sup>34</sup> It is itself part of a broader program titled A Canada for All: Canada's Action Plan Against Racism,<sup>35</sup> begun in 2005 and led by Canadian Heritage in partnership with the HRSDC's Labour Program, Citizenship and Immigration Canada, and the Department of Justice Canada. It represents a horizontal approach across the federal government to combat racism. Racism prevention officers assist employers in creating racism-free workplaces and deliver awareness sessions to promote inclusive work environments.

HRSDC's Labour Program also receives annual reports from employers regarding their progress in meeting obligations under the *Employment Equity Act*. In addition, the Workplace Equity Division of HRSDC provides consultation services and advice to federally regulated private employers for achieving compliance with the Act. The Act is designed to promote policies and practices that ensure that the representation of persons in certain designated groups in a federal employer's workforce reflects their representation in the overall Canadian workforce.<sup>36</sup> The four designated groups are women, Aboriginal peoples, persons with disabilities, and members of visible minority groups. The Act applies to the federal public service, federal Crown

corporations, and federally regulated companies employing 100 or more people.<sup>37</sup> It requires that employers identify and eliminate barriers for designated group members that result from the employer's policies regarding such practices as hiring, workplace promotion and pay. Overall progress on the implementation of this Act is summarized in the minister of Labour's annual report to Parliament.<sup>38</sup>

#### **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 also provides support for gender-based analysis in government. This is the process of examining policies, programs and initiatives to determine their different impacts on 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 largely handled by the Canada Border Services Agency, including 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 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 different forums where such allegations may be heard. Complaints against the RCMP can be directed to the Commission for Public Complaints Against the RCMP, which may perform its own inquiry and make its own reports and recommendations.<sup>39</sup> 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, for instance, where the RCMP could be sued for damages resulting from such malicious prosecution or false imprisonment cases. 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 if they were subjected to 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 change 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.

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## 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*, 5<sup>th</sup> Edition Supplemented, Carswell, Toronto, 2009.

## GOVERNMENT OF CANADA RESPONSIBILITIES FOR DOMESTIC AND INTERNATIONAL HUMAN RIGHTS

5. 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.
6. 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.
7. 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.
8. [Canadian Bill of Rights](#), S.C. 1960, c. 44.
9. Hogg (2009), chapter 35.
10. 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.”
11. 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 only become an issue if there is a dispute over which level of government has jurisdiction over an issue.
12. [Canadian Human Rights Act](#), R.S.C., 1985, c. H-6.
13. [Employment Equity Act](#), S.C. 1995, c. 44.
14. 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.”
15. 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, 24 November 2008.
16. 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<sup>o</sup> 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 due to any particular importance in international human rights law.
17. Canadian Heritage, “[Organization of American States treaties](#),” *Human Rights Program*; Canadian Heritage, “[International Labour Organization treaties](#),” *Human Rights Program*; Website of the [The International Criminal Court](#); Canadian Heritage, “[United Nations treaties](#),” *Human Rights Program*.
18. Canadian Heritage, “[Humanitarian law](#),” *Human Rights Program*.
19. See [Baker v. Canada \(Minister of Citizenship and Immigration\)](#), [1999] 2 S.C.R. 817.

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20. 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.”
21. 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 telecommunication undertaking).
22. Canadian Human Rights Commission, “[Resolving Disputes](#),” *Overview*.
23. Canadian Human Rights Commission, “[Publications](#),” *Resources*.
24. Canadian Human Rights Commission, “[Human Rights Maturity Model](#),” *Overview*.
25. Canadian Heritage, “[Human Rights](#).”
26. Canadian Heritage, “[How Canada Works with the United Nations](#),” *Human Rights Program*.
27. *Department of Justice Act*, R.S.C., 1985, c. J-2, s. 4.1.
28. For further discussion of the duty of the minister to report on inconsistencies in bills and regulations with the Charter, see Grant Huscroft, “[Reconciling Duty and Discretion: The Attorney General in the Charter Era](#),” *Queen’s Law Journal*, Vol. 34, 2009, pp. 773–811; and Janet L. Hiebert, “Rights-Vetting in New Zealand and Canada: Similar Idea, Different Outcomes,” *New Zealand Journal of Public and International Law*, Vol. 3, No. 1, 2005, pp. 63–103.
29. *Crimes Against Humanity and War Crimes Act*, S.C. 2000, c. 24.
30. United Nations, Office of Legal Affairs, *The Rome Statute of the International Criminal Court*, U.N. Doc. A/CONF.183/9\*.
31. Aboriginal Affairs and Northern Development Canada, “[Human Rights](#).”
32. Public Health Agency of Canada, “[Table 10–B – Children: The Silenced Citizens](#),” *2007–2008 Departmental Performance Report (DPR)*.
33. Department of Justice Canada, “[Canada’s Crimes Against Humanity and War Crimes Program](#).”
34. Human Resources and Skills Development Canada, “[The Racism-Free Workplace Strategy](#).”
35. Canadian Heritage, “[Canada’s Action Plan Against Racism](#),” 2005.
36. Canadian Human Rights Commission, “[About Employment Equity](#),” *Frequently Asked Questions*.
37. The chief human resources officer, located within the Treasury Board of Canada Secretariat, represents the Government of Canada as the employer with regard to human resources issues, including the implementation of the *Employment Equity Act* within the federal public service.
38. Human Resources and Skill Development Canada, “[Employment Equity Act Annual Reports](#).”
39. Commission for Public Complaints Against the RCMP, “[Make a Complaint](#).”

## APPENDIX A – REPORTING TO THE UNITED NATIONS HUMAN RIGHTS COUNCIL

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Canada's most comprehensive human rights report to an international body is the Universal Periodic Review (UPR) before the United Nations (UN) Human Rights Council.<sup>1</sup> This includes a full review of the broad human rights record of each member of the UN every four years. Canada had its first UPR review in 2009.<sup>2</sup> An interdepartmental committee was created specifically for the UPR process, and it continues to meet regularly. Before being sent to the council, Canada's UPR reports are approved by the Cabinet of the Government of Canada.

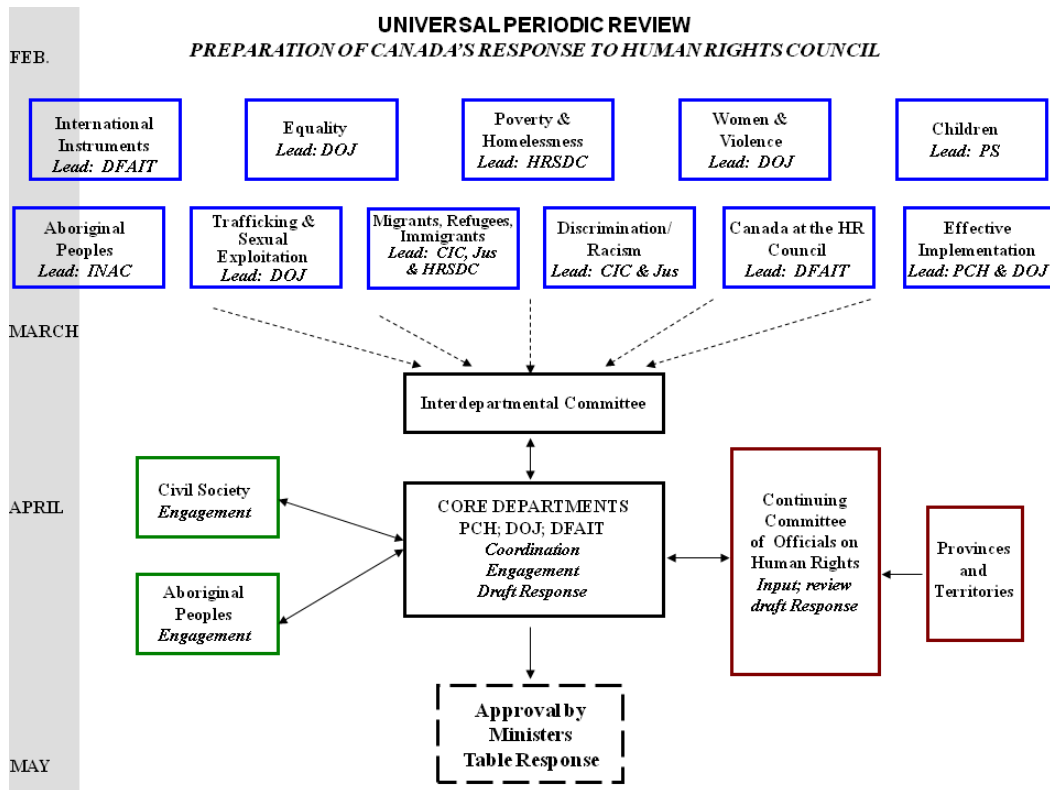
Canada's actual presentation of its UPR report to the UN Human Rights Council also requires the coordination of many departments. Canada's delegation to the UPR in February 2009 was headed by the deputy minister of the Department of Justice Canada and consisted of representatives of the Department of Justice Canada, Aboriginal Affairs and Northern Development Canada, the Human Resources and Skills Development Canada, Foreign Affairs and International Trade Canada, Canadian Heritage, the Office of the Attorney General in the Province of Saskatchewan, the Province of Quebec's ministry for foreign affairs (le Ministère des Relations Internationales), the Canadian Mission in Beijing, and the Permanent Mission of Canada to the United Nations Office at Geneva.<sup>3</sup>

The chart shown in Figure A.1 was provided by government representatives to both the Standing Senate Committee on Human Rights on 30 March 2009 and to the House of Commons Standing Committee on Foreign Affairs and International Development's Subcommittee on International Human Rights on 26 May 2009.<sup>4</sup> The chart illustrates the organizational flow and coordination among various departments and stakeholders over the course of four months when Canada's submissions for its first UPR were being prepared. It shows the roles performed by different government departments and the entities responsible for particular groupings of human rights themes and issues.

An interdepartmental committee was created specifically for the UPR process. The Continuing Committee of Officials on Human Rights assisted with the coordination between different levels of government. The three core departments shared the responsibility of integrating the information provided by other federal departments and the provincial and territorial governments, as well as from groups outside of government, such as non-government organizations and Aboriginal peoples' organizations.



Figure A.1 – Government of Canada Chart: Universal Periodic Review



**Legend**

DOJ/Jus: Department of Justice Canada  
 DFAIT: Foreign Affairs and International Trade Canada  
 HRSDC: Human Resources and Skills Development Canada  
 PCH: Canadian Heritage  
 PS: Public Safety Canada  
 INAC: Aboriginal Affairs and Northern Development Canada  
 CIC: Citizenship and Immigration Canada

**NOTES**

1. [UN Human Rights Council.](#)
2. Canadian Heritage, [Canada's Universal Periodic Review](#) (held before the United Nations Human Rights Council's Universal Periodic Review [UPR] Working Group session on 3 February 2009).
3. United Nations, Office of the High Commissioner for Human Rights, [Human Rights Council – Universal Periodic Review](#), 3 February 2009.
4. Senate, Standing Committee on Human Rights, [Canada and the United Nations Human Rights Council: Charting a New Course](#), Ottawa, June 2010, pp. 57 and 89; House of Commons, Standing Committee on Foreign Affairs and International Development, Subcommittee on International Human Rights, [Canada's Universal Periodic Review and Beyond – Upholding Canada's International Reputation as a Global Leader in the Field of Human Rights](#), Ottawa, November 2010, Appendix A.