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The Government of Canada's Response to the Law
Commission of Canada's Report *Restoring Dignity:
Responding to Child Abuse in Canadian Institutions*

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June 2001

FOREWORD

I am pleased to present the Government of Canada's Response to the Law Commission of Canada's report *Restoring Dignity: Responding to Child Abuse in Canadian Institutions*.

The well being of children and young people in Canada is a top priority for the Government. We are committed, as the January 2001 Speech from the Throne made clear, to ensuring that this country is a place where children can grow up in safety and where the laws, policies and programs that affect them are grounded in their best interests.

But this commitment also means that we must address the sad and disturbing issue of the physical and sexual abuse of children. Clearly, we need to do all we can to safeguard our children from those who would prey on their vulnerability. At the same time, we must also find responsible, fair and sensitive ways to deal with the past, particularly with the legacy of suffering and betrayal borne by those who were abused in government run, funded or sponsored institutions.

It was for this reason that, a little over three years ago, I called upon the Law Commission of Canada to study the question of how to redress the damage caused by institutional abuse. The Commission took on the task, and set out its findings in *Restoring Dignity*, a report that provides valuable insight into the complex issues that surround this subject and the search for effective solutions. The report's assessments of possible approaches to meeting the needs of survivors, and its recommendations will inform the Government in its continuing efforts to develop more effective policies and programs.

Our response describes the many ways that the Government of Canada is already working with governments at all levels, and in partnerships with communities, families and voluntary organizations who deal with children, to maintain and improve means to protect children from abuse in institutional care and elsewhere. It also outlines our continued commitment and ongoing efforts to work with survivors and the churches to find responsible, fair and sensitive ways to address the legacy of physical and sexual abuse in Indian residential schools. These initiatives reflect the same principles and concerns noted in the Commission's report, and I consider that an encouraging sign that we are on the right track.

Similarly, the Speech from the Throne indicated our intention to focus on crime prevention as much as punishment, and take measures to consider the needs of victims, ideas that are quite consistent with the Commission's recommendations.

Redressing the harm caused by institutional child abuse in the past and preventing its occurrence in the future is no small task. It will require cooperation and respectful sharing of roles and responsibilities across traditional jurisdictional lines, both within and outside of government, and a willingness to consider new ideas. I thank the members of the Law Commission of Canada for their important contribution, and hope that the report's recommendations and the federal government's response will provide the basis for all parties to work together for the sake of the children, today and tomorrow.

A handwritten signature in black ink, reading "A. Anne McLellan". The signature is fluid and cursive, with the first letters of each word being capitalized and prominent.

A. Anne McLellan
Minister of Justice and Attorney General of Canada

**THE GOVERNMENT OF CANADA'S RESPONSE TO
THE LAW COMMISSION OF CANADA'S REPORT
*RESTORING DIGNITY: RESPONDING TO CHILD ABUSE
IN CANADIAN INSTITUTIONS***

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SAFEGUARDING THE FUTURE AND HEALING THE PAST

THE GOVERNMENT OF CANADA'S RESPONSE TO THE LAW COMMISSION OF CANADA'S REPORT *RESTORING DIGNITY: RESPONDING TO CHILD ABUSE IN CANADIAN INSTITUTIONS*

INTRODUCTION

The Law Commission of Canada's report *Restoring Dignity: Responding to Child Abuse in Canadian Institutions* is an important contribution to our understanding of a complex and sensitive issue. In both its analysis and its recommendations, the report provides insights and suggestions that will be of great value to the Government of Canada in carrying out its commitment to the protection and well being of children. This commitment is fundamental to the Government, and is reflected in a great many programs and initiatives. But in putting it into practice, we are faced with continual challenges – and few are as difficult as resolving the damage done by the abuse of children in institutions run, funded, or sponsored by government.

In responding to the Law Commission's report, the Government has chosen to take a practical approach. We are in strong agreement with the principles and values identified by the Commission, and believe that these are fully consistent with the intentions underlying many of our policies and programs. This document is organized according to three themes that we believe reflect the key concerns of both the Commission and the Government:

- Protecting our children
- Making the criminal justice system more responsive to victims
- Responding to the legacy of Indian residential schools

Under each theme, we discuss the government's efforts to address these issues in the light of the report's findings, including efforts to work with partners to this end. In some cases this takes us beyond the scope of the Commission's report, but we believe it was important to provide a more complete picture. A major factor is that the Commission's recommendations cut across many jurisdictional boundaries and have implications not only for the federal government but also for provincial and territorial governments and non-governmental organizations such as law societies and bar associations. While this document naturally reflects a federal perspective, we have kept in mind throughout that there are many others with responsibilities and critical roles to play if the problems identified in the report are to be addressed effectively. Both the Minister and the

Deputy Minister of Justice have provided their provincial and territorial counterparts with copies of the report, and the Deputies had an opportunity to discuss it shortly after its release.

Background

Before moving into the three themes, it is important to set out the context, notably the background of the Commission's report and a brief overview of its contents. The full text of the report is available from the Commission on their Web site at www.lcc.gc.ca.

The Minister's Reference

In November 1997, the Minister of Justice, the Honourable A. Anne McLellan, asked the Law Commission of Canada to "undertake, pursuant to subsection 5(1)(b) of the *Law Commission of Canada Act*, a report addressing processes for dealing with institutional child physical and sexual abuse" in government-run, as well as government-funded and -sponsored institutions. Recognizing that civil and criminal trials are not ideal processes for dealing with child institutional abuse, the Commission was asked to consider processes that "would best address wrongdoing, while affording appropriate remedies, and promoting reconciliation, fairness and healing".

The Minister's request recognized the useful role that the newly created Law Commission could play given its mandate to adopt a multidisciplinary approach to its work, an approach that views the law and the legal system in a broad social and economic context. The Minister believed that the Commission was well suited to "provide governments, and Canadians generally, with an inventory and comparative assessment of approaches available". In keeping with the Minister's request, the Commission conducted its research and study in consultation with all interested parties and constituencies.

The Commission presented its report to the Minister of Justice in March 2000 and publicly released it shortly thereafter.

The Law Commission of Canada's Report

The report is in three parts. In Part I, the Commission sets the context for its analysis by examining why children were placed in institutions and the range of abuse issues which have been raised, including an examination of the history and legacy of the residential school system.

The Commission examines the needs of those who suffered from abuse as children in such institutions, the needs of their families and communities, and broader societal needs for prevention and public education. The Commission also discusses the specific needs of Aboriginal communities and persons that suffer from the legacy of the harms caused by residential schools.

Part II of the report assesses possible approaches to redress from the perspective of survivors of abuse and recommends changes to each process which the Commission believes would better meet survivors' needs. The processes considered are: criminal justice, civil actions, criminal injuries compensation programs, *ex gratia* payments, ombudsman offices, community initiatives, redress programs, children's advocates and commissions, truth commissions, and public inquiries.

The importance of preventing future occurrences of child abuse in out-of-home-care settings is discussed in Part III, along with preventive measures.

Finally, the Commission makes a series of general and specific recommendations.

The Law Commission of Canada's Recommendations

The Commission states that its general recommendations frame the way the specific recommendations are to be read. The general recommendations stress that any response to institutional child abuse should:

- take into account the needs of survivors, their families and their communities;
- address the unique needs of every survivor with respect, engagement, and informed choice; and
- avoid causing further harm to survivors, their families and their communities.

The general recommendations also stress the Commission's belief that:

- promoting community initiatives is a significant means of redressing institutional child abuse;
- redress programs negotiated with survivors and their communities are the best official response for addressing their needs; and
- establishing programs of public education, protocols and other strategies for prevention of further institutional child abuse are crucial.

The specific recommendations propose changes to existing redress processes, as well as steps to enhance public education and prevent child abuse in institutions.

PROTECTING OUR CHILDREN

At the heart of the Law Commission's report is a concern for the safety and well being of Canadian children, especially those who have suffered from institutional abuse as well as those who run a high risk of entering institutional care at some point during their vulnerable years. The Commission stresses the importance of preventing child victimization, and proposes

strategies such as public education programs and child-sensitive protocols that may help prevent future abuse of children. The Government of Canada fully shares this commitment.

A Strong Commitment to Canada's Children

The Government is committed to the well-being of Canada's children and youth. As a result, it has undertaken, often in partnership with provincial and territorial governments, a number of child- and family-oriented initiatives to work towards the goal of ensuring that children have the best opportunity to develop their potential. Many of these initiatives focus on the needs of children and families at risk, combining prevention measures with elements of intervention, education and information. Together, these initiatives help decrease the number of children who are at risk of entering institutional care later in life.

The values and principles at the heart of these prevention strategies affirm the developmental needs and well being of children, and make the best interests of the child their primary consideration. This child-centred approach is consistent with the Law Commission's recommendation that prevention strategies and frameworks should be built on the values and principles contained in the United Nations *Convention on the Rights of the Child*.

Moreover, the Government introduced in March 2001 Bill C-15, the *Criminal Law Amendment Act*, to better protect children from sexual exploitation. This legislation modernizes the existing child pornography *Criminal Code* offences to respond effectively to new technologies. People who prey on the vulnerabilities of children will not be allowed to hide in the anonymous forum of the Internet. These amendments also fulfill Canada's commitment to the United Nations to make it a crime to export child pornography.

Current Initiatives for Children and Youth

The Government of Canada shares the Law Commission's belief in the importance of public education programs, protocols and other strategies for the prevention of child abuse. Working with our provincial and territorial partners, we have put into place a number of initiatives that help achieve these objectives.

Healthy Development

The Government of Canada recognizes that the early years are critical for childhood development, that they lay the basis for a child's physical, emotional, social and intellectual health later in life. The Speech from the Throne reinforces this recognition by making a commitment to securing a good start in life for children, with a particular commitment made to helping secure a better future for Aboriginal children. The Government states its intention to work with First Nations to improve and expand the early childhood development programs and services available in their communities.

To date, the Government has taken a number of preventive measures to promote a healthy start that will help keep all children safe from potentially dangerous situations later on.

The *National Children's Agenda* (NCA) is a federal-provincial-territorial initiative with a central focus on early childhood development, based on the firm belief that a healthy start in the first years of childhood is a strong foundation for a better life. As a first step in the development of the NCA, the federal, territorial and provincial governments (with the exception of Quebec) articulated a shared vision for children, based on four goals: that children may be physically and emotionally healthy; successful at learning; socially engaged and responsible; and safe and secure. The NCA also promotes measures to improve protection from abuse, neglect, exploitation and dangerous environments which are key to ensuring the safety and security of children, with an emphasis on prevention.

On September 11, 2000, after identifying early childhood development as a priority under the NCA, federal, provincial and territorial governments concluded an *Early Childhood Development* agreement. With a total federal government investment of \$2.2 billion over five years, starting in 2001, provincial and territorial governments will use this increased funding to promote healthy pregnancy, birth and infancy; improve parenting and family supports; strengthen early childhood development, learning and care; and strengthen community supports. In this manner, we can help children achieve their fullest potential and families can support their children within strong communities.

Also part of the NCA initiative is the October 5, 2000, announcement by the Government of Canada of the creation of five *Centres of Excellence for Children's Well Being* (\$20 million over five years). As part of the federal contribution to the NCA, the centres' mandate is to enhance our understanding of, and responsiveness to, the physical and mental health needs of children and youth, and the critical factors for their healthy development. Each Centre of Excellence will address an issue of national significance (e.g. services delivered through the child welfare system) by identifying and linking together expertise, from parents, community groups, non-governmental organizations, service providers and researchers. The practical result of the Centres' work will be the production of information that can be used by all those who work with children.

Health Canada has implemented a number of initiatives aimed at, among other things, keeping children with their families, wherever appropriate, and out of institutional care. The services offered under the *Canada Prenatal Nutrition Program* community-based projects, funded by Health Canada (\$37.7 million per year) and co-managed with the provinces and territories, contribute to the healthy development of children and positive parenting skills. As well, young Aboriginal children and their families in urban and northern communities, including children living in First Nations communities on reserve, are provided with an early intervention program under the federally funded (\$47.5 million per year) *Aboriginal Head Start Program*. This

initiative provides critical development services to young Aboriginal children in their formative years by meeting their social, health, nutritional and psychological needs.

In the Speech from the Throne, the Government made a commitment to significantly expand the Aboriginal Head Start Program to better prepare more Aboriginal children for school and help those with special needs. The Government will also co-operate with Aboriginal communities, provinces and territories on the measures required to reduce the number of Aboriginal newborns affected by fetal alcohol syndrome.

The First Nations and Inuit component of the *Brighter Futures Initiative* (\$50 million per year) provides funds for mental health and child development initiatives. These include ongoing support and assistance in running children's programs that are based, designed and implemented in the community. The program incorporates elements that may help redress some of the damage caused by the legacy of residential schools. It also promotes optimal health and social development for young children by supporting early childhood development opportunities such as after-school reinforcement.

Health Canada's *Community Action Program for Children* (\$52.9 million per year) complements these initiatives by providing long-term funding to community groups to establish and deliver services that respond to the developmental needs of children from birth to six years of age who are living in conditions of risk, including those who are abused and neglected.

Dealing with Family Violence

The *Family Violence Initiative*, with the participation of 13 federal departments (\$7 million per year), strives to reduce the incidence of family violence, including child abuse. It stresses prevention based on better public education and awareness of the problem, as well as supporting research to identify effective community intervention. Overall, the Family Violence Initiative enables the Government of Canada to provide coordinated and strategic policies and programs on family violence issues that also include institutional child abuse.

The development of knowledge and the dissemination of information to professionals working in the health, social service, education and criminal justice systems are crucial to the task of identifying and preventing child abuse. The *National Clearinghouse on Family Violence*, which operates on behalf of all federal government departments participating in the family Violence Initiative and located within Health Canada, is a national resource centre that collects, synthesises and disseminates information about the nature of various forms of family violence, child abuse (including institutional child abuse) and best practices to prevent the problem. Its resources are made available to practitioners and the general public at www.hc-c.gc.ca/hppb/familyviolence.

As a member of the Family Violence Initiative, the Department of Justice funds projects on child sexual abuse and conducts research to acquire a better understanding of this issue. These activities help inform the development of Justice Canada's legislation, policy and programs. As well, the Department has produced publications such as *The Secret of the Silver Horse*, a storybook that encourages children to inform someone if they are being sexually abused.

Research and Information for Prevention

In addition to the research and education components contributing to the prevention goals of the above-mentioned initiatives, Human Resources Development Canada (HRDC) undertakes research and makes information available on the effectiveness of systemic responses to child abuse and neglect. Data analysis from this research will enable policy makers to develop more effective child welfare policies and programs.

Another HRDC initiative develops information products on child welfare. These products are meant to inform researchers, raise public awareness of child abuse, and assist service providers in program and policy development. They also provide public access to a centralised clearinghouse for information and statistics related to child protection services and programs. This information can be found at www.hrdc-drhc.gc.ca/socpol/home.shtml.

Acquiring a better understanding of the nature and extent of child abuse and neglect in Canada is a key goal of Health Canada's *Canadian Incidence Study of Reported Child Abuse and Neglect*. The main objectives of the study are to develop information on and monitor trends in the reporting of abuse and neglect, to improve our understanding of the forms and severity of abuse, to assist in the targeting of resources for children at risk of abuse, and to collect information to help develop programs and policies for these children. The information gathered from the study will be used to increase public awareness of the problem, to inform professionals working in the field, to strengthen understanding and knowledge of child abuse, and to help set priorities for prevention and intervention. It is important to note that the study is based on close working relationships with the federal, provincial, and territorial governments, including native and non-governmental organizations.

Youth at risk, including those who have been in the care of child welfare authorities, also receive support through the federal government's *Crime Prevention Partnership Program*. This program has helped the *National Youth in Care Network* develop "Tools for Change", a project that provides youths in and from child welfare care with the information and tools they need to make positive changes in their lives. This resource kit, developed by youths who have themselves been in the care of child welfare authorities, also provides useful information for volunteers and professionals in the field.

Addressing Crime and Victimization

The *National Strategy on Community Safety and Crime Prevention* initiative (\$32 million per year), under the auspices of the Department of Justice Canada and the Solicitor General of Canada, also contributes to the intervention and prevention of child abuse in institutional and domestic settings. It promotes a balanced approach to reducing crime and victimization by focusing primarily on crime prevention through social development and on the risk factors which contribute to crime and victimization, including child abuse and neglect. The Strategy's top four priorities are children, youth, women's personal security and Aboriginal communities.

The Strategy supports efforts to design and implement solutions to prevent crime and victimization. In this way, it can support Aboriginal communities to find community-driven approaches to prevent crime and victimization, for example, communities recovering from the legacy of residential schools that wish to implement preventive approaches. The National Crime Prevention Centre of Justice Canada, which is implementing the Strategy, actively explores opportunities to collaborate on these and other projects, seeking ways to help its partners prevent child abuse and neglect.

The *Kwanlin Dun First Nations Healthy Families Program* is a good example of projects that provide measures for protecting children and preventing harm, helping to prevent later involvement in the criminal justice system. This program was developed by the Kwanlin Dun First Nations community and focuses on children up to six years of age who have witnessed violence in the home. Parents participating in the program are provided with culturally appropriate support to reduce the incidence of child abuse or neglect, and domestic violence. The project emphasises the development of practical skills for parents, including primary infant care, access to information, referral to existing programs and services, and strengthening the network of support around the infant and the parents.

Screening of People Working with Children

Protecting our children obliges us to impose the highest standards on those who have contact with them through their work or through volunteer activities. Volunteer screening is an important tool in striving towards this goal. To this end, the Government of Canada supports the work of non-governmental organizations that work diligently and expertly to protect children.

In 1994, the Department of the Solicitor General developed and implemented a National Screening System in consultation with provincial and territorial governments and organizations responsible for the care and protection of children. This system screens prospective volunteers and employees who wish to work with children in positions of authority. It includes the use of criminal record checks conducted by the Canadian Police Information Centre (CPIC) and can also help organizations screen out known convicted sex offenders.

The protection of children from dangerous persons seeking to work with them was the focus of recent amendments to the *Criminal Records Act*. The new provisions, which came into force on August 1, 2000, enhance the ability of police to thoroughly explore the criminal background of such persons. Police can now flag the records of pardoned sex offenders on the CPIC registry to allow the unsealing of such records in regard to applications for child-sensitive positions. This makes the screening process more reliable and better protects communities from convicted sex offenders.

Voluntary organizations that carefully screen people in positions of trust can significantly reduce the possibility that harm will come to those in their care. The Departments of the Solicitor General and Justice have provided funding to *Volunteer Canada*, an organization devoted to promoting volunteerism, for its *National Education Campaign on Screening*. The campaign provides organizations with strategies on how to screen out sexual abusers from occupying staff positions of trust or authority over children.

The National Education Campaign also includes the *Safe Steps Volunteer Screening Program*. *Safe Steps* focuses on the development of screening resources and the creation of a network of trainers to deliver screening workshops across Canada. Materials such as handbooks, videos and training curricula are also available to the voluntary organizations.

Overall, the National Education Campaign on Screening promotes a proactive way to deal with the problem of violence against children and the vulnerable, as well as helping protect them from potential abuse. The Department of Justice and the Solicitor General will continue to provide support for the National Education Campaign on Screening for its public education initiative and to encourage screening at the provincial level.

International Action

The Government of Canada's efforts to prevent and protect children from sexual abuse and exploitation extend beyond our borders.

The protection of children was a key consideration when Canada signed the UN *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime*, in December 2000. The Protocol defines the offence of 'trafficking in persons' and requires State parties to criminalize this heinous activity. As well, it provides for international information exchange and co-operation among State parties concerning the problem, including a requirement to provide training for law enforcement personnel which takes into account child- and gender-sensitive issues. Finally, the Protocol contains provisions relating to victim and witness assistance and protection.

Canada is now actively involved in the planning of the United Nations General Assembly Special Session on Children which will take place between September 19-21, 2001 in New York to review the achievement of the goals of the 1990 World Summit for Children, as well as to agree on new commitments and a new "global agenda" for the next decade. Complex issues related to the survival, development and protection of children will be addressed.

We are also consulting with our provincial and territorial partners to review the *Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography*, adopted on May 25, 2000 by the United Nations General Assembly, with a view to enabling Canada to sign the instrument in the near future. Once ratified, the Optional Protocol will require parties to ensure that the offences of the sale of children, child prostitution and child pornography are addressed under domestic criminal or penal law. The Protocol further provides for protective rehabilitative measures for child victims, as well as public and professional information, education and training about these practices.

Our commitment to better protect children from sexual exploitation has recently been demonstrated by the introduction on March 14, 2001 of Bill C-15, the *Criminal Law Amendment Act*. Among other things, this legislation modernizes the existing child pornography *Criminal Code* offences to respond effectively to new technologies such as the Internet. Exporting child pornography using these means will no longer go unsanctioned.

With the introduction of Bill C-15, we have already taken steps to fulfill the child pornography obligations of the *Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography*. By adhering to the remaining standards of the Protocol, Canada will continue to clearly demonstrate its commitment towards children at the international level.

MAKING THE CRIMINAL JUSTICE SYSTEM MORE RESPONSIVE TO VICTIMS

The Law Commission's report emphasizes the unique needs of survivors of institutional child abuse, and recommends measures to make the criminal justice process more responsive to their needs. The Government of Canada shares the Commission's goal of making the criminal justice system more responsive to the needs of victims of institutional child abuse, and victims of crime generally.

Addressing the Needs of Victims of Abuse

Improving the experience of victims of crime in the criminal justice process is a continuing priority for the Government of Canada. As the Law Commission emphasizes, victims and survivors have unique needs characterized by their victimization, their gender, their relationship with the offender and with their community, and their own personal characteristics. Victims are

not a homogeneous group, and they do not speak with one voice in identifying needs and approaches. While there are many common strategies that can help victims who participate in the criminal justice system, no template for services and “rights” or national standards will meet all the various needs of victims of crime. A range of approaches and flexibility in justice system responses is required; but all must be grounded in dignity, courtesy and respect.

The Government recognizes that the impact of victimization is life-long and for many victims, life-changing. If the experience of victims in the criminal justice process is to be improved, there must be better understanding of the impact of victimization and of the need to treat victims of crime with courtesy, compassion, dignity, and sensitivity. There must be steady progress in raising awareness and expanding information services and assistance to victims of crime, but it is not fast enough for many. Attitudes about victims’ needs are changing among the police, the legal profession (Crown, defence and judge) and other system officials. But attitudes of victims of crime about their needs are changing as well. They will not accept being shut out of key decisions and kept uninformed, but they seek more accountability from, and more participation in, the criminal justice system.

Taking Responsibility

The responsibility for addressing the needs of victims of crime within the criminal justice system is shared by the federal, provincial and territorial governments. The federal government is responsible for enacting the criminal law, which is set out in the *Criminal Code* and applies throughout Canada. The provincial governments are responsible for the enforcement of the law and the administration of justice in the provinces. In the three territories, the federal Crown prosecutes offences and the Royal Canadian Mounted Police enforce the law. Other aspects of the administration of justice are the responsibility of the territories.

Protections for Victims in the Criminal Justice Process

The federal government has worked with the provinces and territories to make many victim-related reforms to the law in recent years. This section considers existing protections for victims in light of the Law Commission’s recommendations, and describes initiatives that are aimed at improving the experiences of victims in the criminal justice process.

Victims currently benefit from a number of protective measures within the criminal justice process. For example, the process of providing testimony has been made easier, victims’ safety is considered in bail decisions, and victims are allowed to submit victim impact statements at the time of sentencing. Other measures that consider the victim’s needs within the criminal process include providing them with better information about this process, and sensitizing the judiciary about the needs of victims.

Facilitating Participation

A range of *Criminal Code* provisions make it easier for young victims and witnesses and sexual-assault complainants to testify, and protect or limit their re-victimization in the criminal justice process. For example, the Code gives judges the discretion to

- exclude members of the public from the courtroom when necessary for the proper administration of justice;
- allow a victim or witness who is under 18 years of age or may have difficulty communicating the evidence by reason of mental or physical disability to testify outside of the courtroom or behind a screen or device that would prevent him or her from being viewed by the accused;
- allow the admission of videotaped testimony of a victim or witness who is under the age of eighteen in proceedings related to various types of child abuse and sexual assault; and
- permit a support person to accompany a witness or victim who has a physical or mental disability or who is under fourteen years of age, and restrict personal cross-examination of young sexual assault victims or victims of violence (under 18 years of age) by a self-represented accused.

As well, when requested, a judge must order a publication ban to protect the identity of all victims and witnesses of sexual offences who are less than eighteen years old, and may order a ban in other appropriate cases.

The Law Commission recommends extending the scope of some of these existing provisions to a broader range of victims who may require protection to provide their testimony. Justice Canada will monitor the application of these provisions to ensure that they maintain their objectives, and will consider the need for additional reforms in this area.

Many suggestions have been made for changes to the provisions of the Code that permit a support person to accompany a victim or witness who has a disability or who is under the age of fourteen years. This provision is currently under review as part of the Department of Justice's consultations on *Child Victims and the Criminal Justice System*. A consultation paper was released in the fall of 1999 and is available on the Department's website at www.justice.gc.ca. The suggestions from these consultations will be analyzed and options for improvements will be developed, likely resulting in legislative reform measures.

Making Victims' Safety a Primary Consideration in Bail Decisions

Recent amendments (December 1999) to the *Criminal Code* require the decision-maker, at various points in the criminal justice process, to ensure the safety and security of any victim of or witness to the offence. For example,

- the responsible judicial officer (officer-in-charge, justice of the peace or judge) will consider the safety and security of the victim in any decision about an accused's bail;

- where an accused is released pending trial, the judge will consider including as a condition to bail that the accused abstain from any direct or indirect communication with the victim and any other condition necessary to ensure the safety and security of the victim; and
- the particular concerns of the victim will be considered and highlighted in decisions on the imposition of special bail conditions, including firearms prohibitions and in criminal harassment offences.

Victims and Sentencing

One of the purposes of sentencing is to acknowledge the harm suffered by victims of crime. A number of provisions of the *Criminal Code* support this purpose.

Victim Impact Statements: While courts may consider evidence regarding the impact of sexual or other abuse for victims and society generally, a victim impact statement informs a court of the harm done to or loss suffered by the victim of a particular offence. The *Criminal Code* requires a court to consider a victim impact statement at the time of sentencing an offender.

A victim impact statement may be submitted by a person who fits the *Criminal Code's* definition: a person who has suffered physical or emotional loss as a result of the commission of the offence. Where a victim is incapable of making a statement (e.g. because of illness or injury) the spouse, relative or person responsible for the care of the direct victim, can prepare one. The Code also recognizes that there may be more than one victim; for example, a child who suffers sexual abuse is a victim, but the mother who suffers emotional loss as a result of the crime may be a victim as well.

Several recent *Criminal Code* reforms encourage victim participation by ensuring that victims are permitted to read their impact statement aloud at the time of sentencing if they so wish; requiring the judge to ask, before imposing sentence, whether the victim has been informed of the opportunity to prepare a victim impact statement; and authorizing adjournments to permit a victim to prepare a statement or to submit other evidence to the court about the impact of the crime. It should be noted as well that a victim can be cross-examined on his or her statement but judges have the authority to limit cross-examination.

A restorative approach to sentencing: The Government of Canada agrees with the Law Commission's recommendation that the sentencing process should be restorative and inclusive of the victim wherever possible. In this manner, the sentencing process can focus on addressing the harm done by the offender's behaviour to the victim and the community, rather than focusing solely on punishment.

As part of the comprehensive sentencing reforms, that came into force in September 1996 under Bill C-41, the *Criminal Code* contains a statement of the purpose and principles of sentencing. In addition to codifying long-established objectives of sentencing, such as denunciation (the

community's condemnation of the criminal behaviour), deterrence (prevention of repetitive criminal behaviour) and rehabilitation (reintegration of the offender into society), the Code has added two restorative objectives: to provide reparations for harm done to victims or to the community, and to promote a sense of responsibility in offenders, and acknowledgement of the harm done to victims and to the community.

When interpreting these new provisions in the *Gladue* decision, the Supreme Court of Canada referred to Bill C-41 as a "watershed marking the most significant reform to the law of sentencing in Canada's history". The court strongly endorsed the use of restorative approaches for all offenders, and particularly for Aboriginal offenders. The Court also showed considerable interest in sentencing circles, which are an important means of involving members of affected communities in sentencing hearings.

Healing circles, another restorative approach to doing justice, are particularly relevant in responding to institutional abuse. Under this approach, the community can support victims and offenders in their healing and reintegration into society. Healing circles can also provide restoration and closure to communities suffering the effects of historical abuse.

Restitution: The *Criminal Code* allows a court to order restitution to cover financial damages that can be readily ascertained, including those resulting from bodily injury (not pain and suffering). While limited in scope, restitution may have restorative effects when it is actually ordered and paid.

Victim Surcharge: A victim surcharge is an additional penalty imposed on offenders at the time of sentencing. It is collected by the provincial and territorial governments, and used to help fund programs, services and assistance to victims of crime within their jurisdiction. The surcharge is 15% of any fine imposed on the offender; if no fine is imposed, the surcharge is \$50 in the case of an offence punishable by summary conviction and \$100 in the case of an offence punishable by indictment. The surcharge may be increased, at the discretion of the judge, in appropriate circumstances or waived where the offender establishes undue hardship.

Protections for Victims of Sexual Assault

The Law Commission's report considers the impact of sexual abuse and the justice system's potential re-victimization of sexual offence complainants. Over the years, several reforms to the *Criminal Code* have been made to address the particular problems experienced by victims and survivors of sexual assault.

In 1983, fundamental changes were made to the *Criminal Code* provisions dealing with rape and indecent assault. These reforms addressed substantive, procedural and evidentiary aspects of the law. The offences of rape, attempted rape, sexual intercourse with the feeble minded, and indecent assault were repealed and replaced with three levels of gender-neutral sexual assault.

The 1983 reforms also abolished outdated rules of evidence for sexual offences. The requirement that rape must be reported immediately was removed as was that for corroboration.

As well, restrictions were placed on the admission of evidence of the complainant's sexual history and reputation.

The Commission maintains that the *Criminal Code* should be amended so that the protections made available to sexual offence victims by the 1983 reforms including subsequent evidentiary and procedural reforms are also available to victims of offences that occurred prior to 1983. The Commission's concern is based on the assumption that sexual offences committed before 1983 would be charged in accordance with the law that existed at that time.

In fact, current evidentiary provisions could apply to cases of historic abuse. Several Code provisions facilitating a victim's or witness's participation and protecting his or her privacy are applicable to cases of historical abuse. As well, the common law has evolved to address the inapplicability of antiquated gender-based myths and stereotypes in the law. In view of these developments, increasing the awareness among legal professionals about the current state of the common law would be most helpful. Crown attorneys might also consider appealing decisions that were based on a misinterpretation of the common law, where feasible.

Meeting Victims' Needs for Information

The Government of Canada agrees with the Law Commission that victims of institutional abuse, and victims generally, need to be fully informed from the outset about the workings of the criminal justice process as well as their role in it. Justice Canada seeks to meet these needs through its Public Legal Education and Information (PLEI) program.

The PLEI program aims to help Canadians to better understand and participate in the criminal justice system. It is particularly oriented towards the needs of those who are at a disadvantage in accessing the justice system, namely, women, Aboriginal persons, youths, seniors, members of visible minorities, persons with disabilities, and people with low incomes. The PLEI program funds organizations in all provinces, which respond to the specific needs of clients, including victims, in their jurisdiction through community partnerships and tailored approaches.

Educating the Judiciary About the Needs of Victims

Recognizing that the needs of victims within the criminal justice system require greater consideration, the *National Judicial Institute* (NJI) has undertaken education initiatives for the judiciary that deal with a variety of issues relevant to victims. The NJI's programs in this area help ensure that judges understand and take into account the needs of survivors of child abuse and the impact that the judicial process can have on them.

The NJI was established in 1988 in recognition of the need for a high calibre of continuing judicial education to ensure that our judiciary is of the highest possible quality. Education initiatives relevant to the needs of victims within the criminal justice system form an integral part of the NJI's curriculum. For example, since its inception, the NJI has strongly emphasized sensitization programs, in such areas as violence against women and children. This type of sensitivity training was expanded in 1997 when the NJI launched a three-year Social Context Education project. The program includes judicial education designed to improve the capacity of the judiciary to deal in an appropriately sensitive manner with issues such as violence against children that may arise in matters before the courts.

The NJI is now working on Phase 2 of the Social Context Education Project, which will focus on integration of social context issues into all the Institute's programs.

Current Initiatives

The Government of Canada has undertaken a number of initiatives that improve the protections that are already available to victims. These include legislative measures introduced in the House of Commons in March 2001, consultations on possible future legislative reforms, and the establishment of a federal Policy Centre for Victims Issues.

Strengthening Protections for Victims and Witnesses

The protection of victims and witnesses during criminal trials and the prevention, where possible, of repetitive examinations and abusive cross-examination have been express goals in all three phases of the Department of Justice's Criminal Procedure Reform Initiative. In the current third phase of this reform, the Government of Canada has recently introduced legislation to help address the issue of re-victimization by the justice system.

The new legislation will help protect witnesses from repetitive examinations and abusive cross-examinations at preliminary inquiries. For example,

- the *Criminal Code* will now require the justice presiding at the preliminary inquiry to prevent inappropriate questioning of witnesses;
- a new pre-preliminary hearing will be created for the judge and the parties to attempt to determine and limit the scope of the inquiry, on a consensual basis; and
- changes will be made to the rules of evidence applicable at the preliminary inquiry to allow the admission of evidence the justice considers credible or trustworthy.

Preventing the Sexual Exploitation of Children

As technology becomes increasingly sophisticated, our laws must respond more effectively to protect children from sexual exploitation by way of computer systems including the Internet. For this reason, the Government of Canada introduced Bill C-15, the *Criminal Law Amendment Act*, in March 2001 creating the new offence of Internet luring.

Research shows that predators are using the Internet, masking their identity and pretending to be children or young adults to lure children into a situation where they could be sexually abused. The new luring offence will, for example, make it illegal to communicate with a child for the purpose of committing a sexual offence against that child. It will carry a maximum penalty of five years imprisonment.

While the proposed legislation is an important step to better protect children, it is not the only answer to this growing problem. Parents, teachers and Internet service providers also have an important role in being vigilant so that children remain protected from dangers on the Internet. In this regard, the Government announced on February 15, 2001 the launch of the *Canadian Strategy to Promote Safe, Wise and Responsible Internet Use*, a new initiative that will equip teachers and parents with tools and resources to help protect children against the dangers of illegal and offensive Internet content.

Policy Centre for Victim Issues

In 1999, the Policy Centre for Victim Issues was established in the Department of Justice to coordinate all federal policy and legislation relating to victims of crime and to ensure that the victim's perspective is considered in the development of policy and legislation. Since its creation, the Policy Centre has developed basic information for victims, which is accessible on the Department of Justice Website. The Policy Centre will work in partnership with survivors of institutional abuse to determine the nature of information necessary and the appropriate delivery mechanisms.

Enhancing the Canadian Statement of Basic Principles of Justice for Victims of Crime

The *Canadian Statement of Basic Principles of Justice for Victims of Crime*, endorsed by federal, provincial and territorial Ministers of Justice in 1988, has been an important guide to the development of legislation and policies affecting victims of crime. Through legislation, policy and practice, the Statement has been implemented across Canada. Provinces and territories have enacted legislation to provide services, assistance, and, in some jurisdictions, compensation to victims. Provinces and territories have also implemented training programs for victim service providers and other professionals, and regularly share information about victims services and assistance. In addition, many jurisdictions have legislation that includes a statement of principles, goals or a preamble which reflect the principles of the Canadian Statement.

The federal government has supported efforts to implement the Statement. The federal Victims Fund provides contribution funding to all provinces and territories to help them implement victim-related legislation and the Canadian Statement.

The Government of Canada, together with provinces and territories, is currently reviewing the Canadian Statement to determine whether and how it should be revised and enhanced.

Corrections and Conditional Release Process

The Government of Canada has committed to an enhanced role for victims in the corrections and conditional release process. In May 2000, following a review of the *Corrections and Conditional Release Act*, the sub-committee of the Standing Committee on Justice and Human Rights made a number of recommendations on victims' rights. Action will be taken on all of these recommendations to provide additional and more timely information to victims as well as allowing victims to play a larger role in the process if they so desire. As a first step, the Government is undertaking consultations with victims of federal offenders to gain more input as to what is needed to make the corrections and conditional release process more responsive to victims' needs.

Consultations on Better Protection for Child Victims

Several recent high-profile cases have involved death and serious injury to children, and the media have focussed on the threat posed by sexual predators. This has resulted in a high degree of public concern that more effective measures have to be taken to ensure the safety of children in their communities.

In response to this concern, the Minister of Justice launched a public consultation on *Child Victims and the Criminal Justice System* in the fall of 1999. The consultation paper outlines a range of protective measures enacted by the Government since 1981 to better protect children from harm, and outlines suggestions on how the criminal law could be improved to better support provincial and territorial efforts to protect children. Although not specifically directed to institutional child abuse, the consultation examines some forty issues in three areas – creating further child-specific criminal offences, sentencing to protect children, and improving the experience of child witnesses and facilitating their testimony in criminal proceedings. The suggestions from the consultation will be analyzed, and options developed for improvements in the areas of concern raised, likely resulting in a package of legislative reforms.

HEALING THE PAST: ADDRESSING THE LEGACY OF PHYSICAL AND SEXUAL ABUSE IN INDIAN RESIDENTIAL SCHOOLS

The Commission's report provides valuable insights to all of those seeking effective and sensitive solutions to cases of abuse of children in institutions. The Commission's conclusions are helpful in regard to the Government of Canada's ongoing work with survivors and the churches, to find responsible, sensitive and fair ways to address the legacy of physical and sexual abuse in Indian residential schools. Redressing the wrongs that occurred in the schools is a necessary first step to healing and reconciliation for both individuals and their communities - a healing process that is essential to break the cycles of abuse and begin to build a strong and healthy foundation so that together we can deal with the challenges of the present and look to the opportunities of the future.

This section of the Government response briefly reviews the history of Canada's Indian residential schools, and reflects on our progress in addressing the legacy of abuse in the schools in light of the Commission's recommendations. Generally, the Commission's emphasis on redress programs negotiated with survivors and on community initiatives as the best means to redress institutional abuse is consistent with Canada's approach to resolving residential school claims.

Historical Overview

The residential school system operated in Canada from before Confederation until the latter part of the twentieth century. Over time, there were 130 Indian residential schools across Canada, located in every province and territory except Newfoundland, New Brunswick and Prince Edward Island. The residential school system grew, in part out of the missionary work of various Christian religious organisations. The Government of Canada began to play a role in the development and administration of the system as early as 1874, to meet its obligation under the *Indian Act* to provide an education to Aboriginal persons, as well as to further their integration into broader Canadian society. For much of their history, most residential schools were operated in partnership by various religious organizations and the federal government. In 1969, the Government assumed administrative responsibility for the school system, with religious organisations retaining a role in staffing and in the care of children for some years thereafter. Most residential schools had ceased to operate by the mid-1970s, with only seven remaining open into the 1980s. The last federally run residential school closed in Saskatchewan in 1996. Approximately 105,000 persons who attended the schools were counted at the time of the 1991 census (the only census to enquire about residential school attendance).

In recent years, many individuals have come forward with personal and painful stories of physical and sexual abuse in the residential schools. While it is not uncommon to hear some former students speak about positive experiences in these institutions, their stories must be seen in the context of disclosures of abuse, criminal convictions of perpetrators, the findings of

various studies such as the Royal Commission on Aboriginal Peoples, and now the Law Commission of Canada's report, which tell of the tragic legacy that the residential school system has left with many former students. They, and their communities, continue to deal with issues such as physical and sexual abuse, family violence, and drug and alcohol abuse.

Many Aboriginal people have decided to seek financial compensation for the harms they suffered in residential schools. As of March 2001, more than 7,200 individuals had filed civil claims for compensation against Canada and the various religious denominations that ran the schools. A number of class or representative claims have also been filed.

Coming to Terms with the Past

Over time, the Government of Canada and the churches which operated the schools have come to understand and begin to address the legacy of our past relationship with Aboriginal peoples, including the legacy of physical and sexual abuse at residential schools.

The Government of Canada is determined to work in partnership with churches and survivors to respond in a responsible, fair, and sensitive way to the growing number of claims relating to physical and sexual abuse suffered by Aboriginal persons in residential schools. Indeed, this was a key factor in the Minister of Justice's decision to ask the Law Commission to undertake its work on institutional abuse. Recognizing that, for many, lengthy civil and criminal trials are not ideal processes for responding to victims of physical and sexual abuse in government-funded institutions, the Minister asked the Commission for a report that would identify processes that could best address wrongdoing while affording appropriate remedies and promoting reconciliation, fairness, and healing.

A Framework for the Resolution of Residential Schools Claims

Finding the best way to meet the needs of survivors of institutional abuse in the context of a fair and accountable redress process is a key problem for those seeking effective and sensitive solutions to cases of abuse of children in institutions. By documenting and acknowledging the experiences and perspectives of survivors and their communities, the Commission's report makes an important contribution to the Government's work towards the resolution of residential schools claims. In the three years since the Commission began its examination of this issue, the Government of Canada has worked intensively with survivors and the churches to develop appropriate models for resolving claims concerning abuse at residential schools. A review of a number of the Commission's principal conclusions offers an opportunity to reflect on our progress.

Acknowledgement and Apology

The Commission stresses that survivors need an acknowledgement of what occurred from those responsible and an apology for the harms that they suffered.

The Government of Canada has acknowledged its particular responsibilities for the tragic physical and sexual abuse of Aboriginal children in many residential schools. In January 1998, as part of its response to the report of the Royal Commission on Aboriginal Peoples, the Government issued a *Statement of Reconciliation* that expressed profound regret to the Aboriginal community for its past mistakes and acknowledged the role the Government played in the development and administration of the residential school system. To those who suffered the tragedy of physical and sexual abuse while attending residential schools, the Government of Canada said it is deeply sorry.

The Statement of Reconciliation was part of a larger action plan announced by the Government of Canada in response to the report of the Royal Commission on Aboriginal Peoples. *Gathering Strength - Canada's Aboriginal Action Plan*, is a long-term, broad-based policy approach designed to increase the quality of life of Aboriginal peoples and to promote self-sufficiency. The vision captured by *Gathering Strength* includes building a new partnership among Aboriginal peoples and other Canadians to help us deal with the problems of the past and work together to build a better future.

The Government of Canada recognizes that acknowledgment and apology are also important to build the basis for healing and reconciliation at the individual and community levels. The Government also offers individual apologies to those who are affected by abuse that occurred in the schools. Offering an apology and acknowledgement of the wrongs of the past is an important first step to building the foundation for a new relationship with Canada's Aboriginal peoples, one founded on trust and respect.

Excerpt from the *Statement of Reconciliation*

...Sadly, our history with respect to the treatment of Aboriginal people is not something in which we can take pride. Attitudes of racial and cultural superiority led to a suppression of Aboriginal culture and values. As a country, we are burdened by past actions that resulted in weakening the identity of Aboriginal peoples, suppressing their languages and cultures and outlawing spiritual practices. We must recognise the impact of these actions on the once self-sustaining nations that were disaggregated, disrupted, limited or even destroyed by the dispossession of traditional territory, by the relocation of Aboriginal people, and by some provisions of the Indian Act. We must acknowledge that the result of these actions was the erosion of the political, economic, and social systems of Aboriginal people and nations.

Against the backdrop of these legacies, it is a remarkable tribute to the strength and endurance of Aboriginal peoples that they have maintained their historic diversity and identity. The Government of Canada today formally expresses to all Aboriginal people in Canada our profound regret for past actions of the federal government which have contributed to these difficult pages in the history of our relationship together.

One aspect of our relationship with Aboriginal people over this period that requires particular attention is the Residential Schools system. This system separated many children from their Families and communities and prevented them from speaking their own languages and from learning about their heritage and cultures. In the worst cases, it left legacies of personal pain and distress that continue to reverberate in Aboriginal communities to this day. Tragically, some children were the victims of physical and sexual abuse. The Government of Canada acknowledges the role it played in the development and administration of these schools. Particularly to those individuals who experienced the tragedy of sexual and physical abuse at residential schools, and who have carried this burden believing that in some way they must be responsible, we wish to emphasise that what you experienced was not your fault and should never have happened. To those of you who suffered this tragedy at residential schools, we are deeply sorry. In dealing with the legacies of the Residential School system, the Government of Canada proposes to work with First Nations, Inuit and Métis people, the Churches and other interested parties to resolve the longstanding issues that must be addressed. We need to work together on a healing strategy to assist individuals and communities in dealing with the consequences of this sad era of our history.

January 1998

Respect, Engagement and Informed Choice

The Commission stresses that approaches to provide redress for survivors have to take the needs of survivors, their families and their communities as a starting point, and be grounded in respect, engagement and informed choice.

The Government of Canada's work with residential schools survivors is based on these principles. In 1999, the Department of Justice and the Department of Indian Affairs and Northern Development (DIAND) facilitated a series of nine exploratory dialogues across the country with survivors of residential schools abuse, Aboriginal leaders and healers, and churches' representatives. The dialogues reflected principles of respect and engagement with those affected by residential school abuse, and helped to open lines of communication and assist all of those involved to understand the needs of survivors and their communities and develop options for addressing those needs. As a result of the dialogues, the Government agreed that DIAND

and the Department of Justice should explore, with residential schools survivors and the co-defendant churches, possible models for resolving residential schools abuse claims.

Redress Programs

The Commission recommends that redress programs negotiated with survivors and their communities are the best official response for addressing the full range of their needs while being responsive to concerns of fairness and accountability.

DIAND and the Department of Justice are currently working with residential schools survivors and, where possible, co-defendant churches, to build and implement models that will provide more appropriate responses to claims relating to abuse at residential schools. A number of dispute resolution pilot projects are under way. Because the framework for each project is negotiated directly with a group of survivors, each is unique, reflecting particular needs and priorities. At the same time, a number of common elements among the different projects protect the fairness and accountability of the process, and respond to survivors' needs:

- Compensation can be paid only for validated claims, within the framework of established Canadian law. Neutral fact-finders are given the responsibility to assess the validity of claims.
- Claims in the dispute resolution projects are subject to the same standard of proof as in civil court (the balance of probabilities).
- All the projects seek to ensure that former students' personal and sensitive stories can be told and considered in a safe environment. Counselling and support services are made available to survivors during the course of the dispute resolution project. This helps to build a safe and trusting climate for the process.

Overall, the dispute resolution projects aim to work with, and resource, groups of survivors so that the parties can find credible ways to resolve abuse claims that can help to bring about healing, provide closure to participants, and begin to build a new relationship between Aboriginal peoples and the Government of Canada.

One unresolved issue that has made it more difficult to resolve the claims of those who suffered abuse in residential schools is the financial concerns of some of the religious organizations that share responsibility for the development and administration of residential schools. Court decisions to date have found that the religious denominations that ran the schools shared responsibility for the abuse that took place, and therefore share responsibility for compensating those harmed by the abuse. Some churches that face these claims are concerned about their financial viability if they pay compensation to those who suffered abuse at the schools. The

Government of Canada recognizes the importance of religious institutions in our society, and is committed to their sustainability. At the same time, the churches and the Government of Canada share responsibility for the tragic legacy of the residential schools system, and the Government is working with the churches to discuss the appropriate resolution of claims.

Community Initiatives

The Commission recommends that community initiatives should be promoted as a significant means of redressing institutional child abuse.

The Government of Canada created a community healing fund as part of *Gathering Strength - Canada's Aboriginal Action Plan*, announced in January 1998. The Government committed \$350M to support community-based healing initiatives to address the legacy of physical and sexual abuse in residential schools. The fund is administered by the Aboriginal Healing Foundation, an Aboriginally-run corporation that operates at arm's length from the Government. The Foundation supports holistic and community-based healing initiatives that address the needs of Métis, Inuit, and First Nations peoples, including projects that incorporate traditional healing methods and other culturally appropriate approaches. The Foundation does not use funds to pay costs related to compensation of individuals or litigation respecting residential schools. More information about the Foundation's work can be found at www.ahf.ca.

Many Aboriginal persons consider the loss of the opportunity to experience and learn their own language and culture to be a particularly damaging aspect of the residential schools experience. The *Statement of Reconciliation* acknowledged that, as a country, we are burdened by past actions that resulted in weakening the identity of Aboriginal peoples, suppressing their languages and cultures. In the *Statement of Reconciliation*, the Government of Canada formally expressed regret to all Aboriginal peoples in Canada for past actions of the federal government which contributed to these difficult pages in the history of our relationship together. The Government of Canada recognizes the importance of community initiatives to support Aboriginal languages and culture.

The Government presently supports a broad spectrum of initiatives to preserve and advance Aboriginal languages and culture, including:

- the \$20M *Aboriginal Languages Initiative* which funds community and home-based activities in support of the revitalization, maintenance and growth of Aboriginal languages;
- providing more than \$17M over 5 years to the Governments of the Northwest Territories, the Yukon, and Nunavut to support community-based initiatives and other activities that foster the maintenance, revitalization, growth and protection of the six Aboriginal "official" languages in the NWT, eight Aboriginal languages of Yukon, and the Inuktitut language;

- \$7.9M annual funding for the *Northern Native Broadcast Access* program, which funds the production and distribution of Aboriginal radio and television programming. The 13 Aboriginal television and radio societies funded by the program broadcast to over 400 northern and remote communities (approximately 500,000 people) across Canada, in 17 Aboriginal languages in addition to English and French; and
- \$8.1M in annual funding to enable First Nations and Inuit peoples to establish and operate cultural/education centres which undertake a range of activities that help to increase First Nations and Inuit peoples' knowledge and use of their traditional languages, and traditional and contemporary cultural skills.

The Government of Canada recognizes the importance of examining and reassessing existing policies and programs to help Aboriginal peoples and communities to strengthen their language and culture.

Other community-based initiatives funded by the federal government can also play a role in helping communities to address the legacy of physical and sexual abuse at residential schools. These include the Aboriginal Justice Strategy, the National Strategy on Community Safety and Crime Prevention, the First Nations Policing Policy, the Aboriginal Community Corrections Initiative, and Health Canada's programs and services for Aboriginal peoples. DIAND and the Department of Justice are exploring ways to forge stronger links between residential schools dispute resolution projects and other federally-funded or provincial community-based programs.

For example, the *Aboriginal Justice Strategy*, a joint initiative between the Department of Justice, DIAND and the Solicitor General, supports Aboriginal community-based justice programs in addressing the social justice challenges of the over representation of Aboriginal people in the criminal justice system by increasing community participation and reflecting Aboriginal values in the mainstream justice system. Supporting Aboriginal communities to play a greater role in the administration of justice helps to advance the process of healing and reconciliation, and contribute to their long-term health and well being.

Similarly, Justice Canada's *Native Courtworker* program recognizes the unique needs and circumstances of Aboriginal peoples as they come into contact with the criminal justice system. The Native Courtworker program facilitates and enhances access to justice by helping Aboriginal persons accused of criminal offences to obtain fair, equitable and culturally sensitive treatment under the law. The program is available to both status and non-status Aboriginal persons. Courtworkers serve as a bridge between the criminal court system and Aboriginal communities. They strive to make the criminal justice process less alien to Aboriginal persons, whose concept of justice may be more rooted in principles of restoration, harmony and healing than in mainstream themes of punishment and retribution. Consistent with the Law Commission's recommendations, the Native Courtworker program ensures that accused persons, some of whom have been victims of child abuse, and their families are fully informed at the earliest possible

stage about how the criminal justice process works; helps combat false perceptions and misinformation and sensitizes criminal justice personnel to Aboriginal language, culture, traditions, values and socio-economic circumstances; and ensures peer, professional and practical support for the accused, including those who are survivors of child abuse, in the criminal justice process.

Solicitor General Canada's *Aboriginal Community Corrections Initiative* is another example of a federally funded community-based program which takes the residential schools experience into account, and so can play a role in addressing the legacy of the schools. This initiative is designed to explore new options and models of offender treatment by providing funding to a small number of Aboriginal communities to develop healing strategies that involve the offender and victim, the families of both and the community as a whole. Community healing initiatives involve the police, court, and community in a joint effort to address the needs of offenders with the goal of individual and collective wellness. To help ensure that the needs of survivors of sexual abuse are addressed in the context of these community projects, the Initiative has produced a number of reports, including *Responding to Sexual Abuse* and *At the Time of Disclosure*. The reports promote best practices in caring for survivors who have become both victims and perpetrators of child abuse. The report also focuses on community-based prevention and intervention strategies, many of which are relevant to abuse suffered in institutional settings such as residential schools. They have been widely distributed to Aboriginal communities, organizations and other partners. These documents are available from the Solicitor General Website at www.sgc.gc.ca.

A number of Health Canada programs that serve the needs of First Nations communities and families can play a role as well. The *Aboriginal Head Start Program*, for example, is a school-readiness and early-intervention program involving parents and communities to support the needs of children. The program emphasizes strong parental involvement and community support, and focuses on supporting Aboriginal language and culture. As well, the First Nations and Inuit component of Health Canada's *Brighter Futures* Initiative provides ongoing support and assistance to First Nations and Inuit communities to assist them in running children's programs that are based, designed and managed in the community. These programs promote early childhood development opportunities that can help to address inter-generational and cyclical dynamics of child physical and sexual abuse.

The Government of Canada is committed to working with survivors, their communities, the churches, and other partners to address the legacy of residential schools in a manner that is flexible and integrated.

CONCLUSION

The Law Commission has provided us with an informative and valuable report on the very important issue of child abuse in Canadian institutions. The report illustrates the Law

Commission's role as an independent advisor to the Government of Canada on legal issues. The Commission's analysis is also an important resource to all levels of government as well as other public and social institutions to understand the complex issues involved, and to find effective and sensitive solutions in ongoing efforts to address child abuse.

The Commission's report provides the Government of Canada with an opportunity to take stock of where we stand in light of its overall findings. It is encouraging that the values and concerns that emerge from this study are very much in line with those of the Government. Also, it is evident that many of our programs and efforts are being directed at the real problems, and there is reason to believe that progress is being made.

The Government of Canada shares the Commission's concerns about the incidents of child abuse in Canadian institutions and has declared the well being of all children to be a top priority. To this end, we are constantly working to make Canada a safer place for children to live and grow up in. We are striving to do this by ensuring that our policies, legislation and programs are in the best interests of children.

We have put into place a number of programs and measures that contribute to the prevention of child abuse, make the criminal justice system more responsive to victims, and address the legacy of physical and sexual abuse in Indian residential schools.

We share the Law Commission's commitment to the importance of protecting children and, for their better protection, we have implemented a variety of preventive measures. Collectively, these measures help lay the basis for their emotional, social and intellectual health later in life, raise public awareness of child abuse, provide better information and research on child abuse to policy makers, address crime and revictimization, improve the screening of people working with children, and increase children's awareness of potentially abusive situations. We have also introduced new legislation to combat the sexual exploitation of children at the national and international level.

A continuing priority of the Government is to improve the experience of victims of crime in the criminal justice process, also a key concern of the Commission. Over the years, we have put into place a variety of *Criminal Code* protections for victims that help facilitate their participation in giving testimony, make their safety a primary consideration in bail decisions, and allow them to participate in the sentencing process by submitting a victim impact statement. Recently, the Government has introduced legislation to protect victims at preliminary inquiries, undertaken consultations on better protections for children under the criminal law and in criminal proceedings, concluded an Early Childhood Development agreement with the provinces and territories, and amended the *Criminal Records Act* to enhance the ability of police to better explore the criminal backgrounds of dangerous persons seeking to work with children. A Policy Centre for Victim Issues has also been established to ensure that the victim's perspective is taken into account in policy development.

The insights in the Commission's report will also help to inform the Government of Canada's ongoing work with survivors and the churches to find responsible, sensitive and fair ways to address the legacy of physical and sexual abuse in Indian residential schools. Consistent with the Commission's recommendations, the Government is currently working with residential school survivors, and, where possible, co-defendant churches, to build models that can provide more appropriate responses to claims relating to abuse at residential schools. The Government is also working actively with the churches to find ways that we can work together to address our shared responsibilities for abuse that occurred in the schools.

The Government of Canada believes that the cumulative effect of our actions in support of children, often in partnership with the provinces and territories, will contribute to their overall safety and well being. Many of these actions try to address the root causes that place children at risk while others provide remedies for those who have been harmed. In all cases, it is our intention to maintain and put into place the strongest support we can to ensure that children lead healthy, productive and secure lives.