Government of Canada
Permanent Mission of Canada
to the United Nations and the
Conference on Disarmament

Gouvernement du Canada
Mission permanente du Canada
auprès des Nations Unies et de
la Conférence du désarmement

Note No.: YTGR-513

Reference: Canada's response to the Joint Allegation Letter CAN 4/2013

The Permanent Mission of Canada to the Office of the United Nations at Geneva presents its compliments to the Office of the High Commissioner for Human Rights and has the honour to submit Canada's response to the joint allegation letter No. CAN 4/2013 of 7 November 2013, sent by the Special Rapporteur on the rights to freedom of peaceful assembly and of association, the Special Rapporteur on the situation of human rights defenders, and the Special Rapporteur on the rights of indigenous peoples.

The response consists of one main document and one annex.

The Permanent Mission of Canada to the Office of the United Nations at Geneva avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 10 January 2014.

RESPONSE OF THE GOVERNMENT OF CANADA
TO THE JOINT ALLEGATION LETTER OF 7 NOVEMBER 2013
BY THREE SPECIAL RAPPORTEURS,
CONCERNING THE SITUATION OF DR. CINDY BLACKSTOCK

9 January 2014

I. INTRODUCTION

1. On 7 November 2013, Canada received a joint allegation letter from 3 United Nations Special Rapporteurs: the Special Rapporteur on the rights to freedom of peaceful assembly and of association, the Special Rapporteur on the situation of human rights defenders, and the Special Rapporteur on the rights of indigenous peoples.

2. The letter brings to Canada's attention information that was received by the Special Rapporteurs concerning the situation of Dr. Cindy Blackstock, who is the Executive Director of the First Nations Child and Family Caring Society of Canada. The letter focuses on alleged incidents of monitoring and retaliation against Dr. Blackstock, allegedly as a result of her litigation and human rights advocacy work.

3. In relation to these allegations, the letter brings to Canada's attention Articles 1, 2, and 12 of the *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*,[1] as well as Article 22 of the *International Covenant on Civil and Political Rights*.

4. The letter requests, within sixty days, Canada's views on the allegations contained in the letter and any additional information deemed pertinent by Canada. In particular, the letter requests Canada's response to three questions, reproduced below in full:

   (i) Whether the Government, through Aboriginal Affairs and Northern Development Canada, the Department of Justice, or another Government entity is currently monitoring Ms. Blackstock's personal Facebook page and other activities and if so, the reason for such monitoring.

   (ii) The details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to the alleged monitoring of Ms. Blackstock. Have any disciplinary or administrative sanctions been imposed or will they be imposed in the case of a finding of wrongdoing?

   (iii) Please explain how the alleged actions undertaken by Government officials in this case regarding the monitoring of Ms. Blackstock are compatible with the international norms and standards referenced above.

5. In this response, Canada will explain that there has been no retaliation against Dr. Blackstock, or any violations of Canada's obligations under domestic law or under any international treaties to which it is a party. Canada will explain how the allegations at issue have been (and are still in the process of being) addressed by multiple domestic remedial mechanisms. Canada will also seek to clarify – and correct where appropriate – the factual allegations that have been received by the Special Rapporteurs. With respect to the allegations of "monitoring" in particular, Canada will emphasize its position that there was no wrong-doing in this matter. In order to prepare Canada's defence in domestic litigation, public officials review relevant, publicly available information, in accordance with all applicable legal standards.

[1] Adopted as an Annex to General Assembly resolution 53/144 (9 December 1998).

6. Canada's response will proceed as follows. In Section II, Canada will provide some background information on how the freedom of association and privacy rights of all Canadians are respected and protected. In Section III, Canada will provide its views on the allegations contained in the Special Rapporteurs' letter. In Section IV, Canada will provide its responses to the three questions that have been posed. In Section V, Canada will provide its concluding statements.

II. BACKGROUND INFORMATION: THE RELEVANT PROTECTIONS AND REMEDIES IN CANADIAN LAW

7. There is a robust framework of protections in Canadian law to ensure that public officials respect and protect individuals' privacy and freedom of association rights. Effective remedial mechanisms are available where a violation of such rights has been alleged. This section discusses four main elements of the framework at the federal level.

8. Most fundamentally, rights are guaranteed at the constitutional level in Canada by the *Canadian Charter of Rights and Freedoms* ("the *Charter*").[2] Section 2 guarantees the fundamental freedoms, including freedom of expression, freedom of peaceful assembly, and freedom of association. The *Charter* protects privacy rights through section 8, which guarantees that "everyone has the right to be secure against unreasonable search or seizure." The privacy rights under section 8 extend to reasonable informational privacy interests, including in the context of online activities.[3] Section 8 also restricts the sharing of individuals' private information between government officials.[4] In the event of a government action that unjustifiably violates the *Charter*, courts can order an appropriate and just remedy, including an injunction or an order of compensatory damages.

9. The federal *Privacy Act* sets out a code of fair practices for the collection, use and disclosure of personal information by federal government institutions.[5] It also provides those present in Canada with a right of access to their own personal information held by government institutions. An individual can complain to the Office of the Privacy Commissioner about a refusal to give access to requested personal information as well as with respect to any improper informational practices. The Privacy Commissioner has broad powers to investigate complaints, and issues a report of findings and non-binding recommendations.[6] As explained further below, Dr. Blackstock has used the *Privacy Act* on multiple occasions to access her personal information, and she has availed herself of the right to complain to the Office of the Privacy Commissioner.

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[2] Part I of the *Constitution Act, 1982*, online: http://laws.justice.gc.ca/eng/const/page-15.html.

[3] See e.g. *R. v. Morelli*, 2010 SCC 8, online: http://canlii.ca/t/28mrg; *R. v. Cole*, 2012 SCC 53, online: http://canlii.ca/t/ft969.

[4] See e.g. *R. v. Mills*, [1999] 3 S.C.R. 668 at para. 108 ("Privacy interests in modern society include the reasonable expectation that private information will remain confidential to the persons to whom and restricted to the purposes for which it was divulged."), online: http://canlii.ca/t/1fqkl.

[5] R.S.C. 1985, c. P-21, online: http://canlii.ca/t/524k6.

[6] If the individual still disputes the government institution's refusal of access after a report is issued by the Commissioner, either the individual or the Commissioner can seek judicial review of the refusal.

10. The federal *Access to Information Act* grants all those present in Canada a right of access to records under the control of federal government institutions.[7] An individual has a right to complain to the Office of the Information Commissioner in respect of a government institution's refusal to disclose requested records. The Information Commissioner has broad powers to investigate complaints and issues a report of findings and non-binding recommendations in respect thereof.[8]

11. Finally, the *Canadian Human Rights Act* ("CHRA") protects people in Canada from discrimination when they are employed by or receive services from the federal government, First Nations governments or companies that are regulated by the federal government.[9] People can turn to the CHRA to protect themselves against harassment or discrimination that is based on one or more of the prohibited grounds of discrimination, which include race, national or ethnic origin, and age. The Canadian Human Rights Tribunal ("CHRT") adjudicates complaints of discrimination under the CHRA. Where appropriate, the CHRT has the authority to order corrective measures, including a change in policies and compensatory damages.

12. In 2007, the First Nations Child and Family Caring Society of Canada ("the Caring Society") and the Assembly of First Nations filed a complaint alleging that the federal Government of Canada had violated the CHRA as a result of inequitable funding for the provision of child and family services on reserve. This will be referred to below as "the 2007 CHRA complaint". In her role as Executive Director of the Caring Society, Dr. Blackstock has been a prominent advocate in relation to this complaint, which is currently being heard by the CHRT.

13. The Special Rapporteurs' allegation letter focuses on alleged retaliation against Dr. Blackstock by the Government of Canada. Section 14.1 of the CHRA protects complainants – including the Caring Society and Dr. Blackstock – from retaliation. It provides that "[i]t is a discriminatory practice for a person against whom a complaint has been filed …, or any person acting on their behalf, to retaliate or threaten retaliation against the individual who filed the complaint or the alleged victim." The Caring Society has added to its original 2007 CHRA complaint a complaint that the Government of Canada engaged in retaliatory measures against the Caring Society and Dr. Blackstock. The ongoing proceedings in relation to the retaliation complaint are discussed in more detail below.

[7] R.S.C. 1985, c. A-1, online: http://canlii.ca/t/523lx.

[8] Once the report is issued by the Commissioner, if the individual still disputes the government institution's refusal to disclose, either the individual or the Commissioner can seek judicial review of the refusal.

[9] R.S.C. 1985, c. H-6, online: http://canlii.ca/t/51zdc.

III. CANADA'S VIEWS ON THE ALLEGATIONS CONTAINED IN THE SPECIAL RAPPORTEURS' JOINT ALLEGATION LETTER

14. The allegation letter sent by the Special Rapporteurs conveys a number of allegations that require either clarification or correction. Under the four sub-headings below, Canada will respond to seven key issues.

a. Funding levels for the provision of child and family services on reserve have increased subsequent to the filing of the 2007 CHRA complaint

15. First, the allegation letter conveys an allegation that "federal project funding for child welfare services" was reduced one month after the Caring Society's CHRA complaint was filed in February 2007. It is unclear to Canada precisely what kind of funding is being referred to in the letter, and Canada is not aware of any funding changes that would reasonably fit this description.

16. Project funding in the form of funding for non-service delivery activities and projects related to the provision of child and family services on reserve has actually increased since the filing of the CHRA complaint.[10] Furthermore, federal program funding to First Nations agencies for the provision of on reserve child and family services has also consistently increased in that time period. For the fiscal year 2006-07, Aboriginal Affairs and Northern Development Canada ("AANDC") provided over $449 million in funding for the provision of child and family services on reserve. In 2007-2008, this number rose to over $489 million; by 2012-13, funding had reached $627 million. The AANDC website provides further information on the increases in funding levels.[11]

b. Funding of the Caring Society was not changed as a result of the 2007 CHRA Complaint

17. Second, the Government of Canada did not make any changes to the funding provided to the Caring Society as a result of the 2007 CHRA complaint.

18. The Caring Society is a national non-profit organization that is engaged in advocacy, research, and policy development for Aboriginal children, youth and families in Canada. It does not provide direct child and family welfare services to First Nations children or

[10] In the fiscal year 2006-2007, the total funding of this nature was $270,000. Beginning in 2011-2012 and continuing into 2013-2014, the total annual funding level is $2,270,000. Such funding falls under two categories. First, funding made available specifically for capacity building which can be used for financial training, enhancing tripartite processes, and information management / information technology training. Second, funding made available for regional roundtables which is provided to a third party to help organize, prepare, facilitate, report and follow-up on regional meetings between First Nation, federal, and provincial or territorial officials.

[11] "Better Outcomes for First Nation Children: Aboriginal Affairs and Northern Development Canada's Role as a Funder in First Nation Child and Family Services" (updated May 2013), online: http://goo.gl/m1twF4.

families living on-reserve.[12] Beginning in late 1990s-early 2000, AANDC began providing funding to the Caring Society for the following initiatives:

- to support Dr. Blackstock's participation in a committee that provided analysis and recommendations on AANDC's First Nations Child and Family Services program as part of the Joint National Policy Review;
- to undertake a study of the voluntary sector resources available to children and families living on reserve as part of the Voluntary Sector Initiative Program; and
- to complete a comprehensive research project aimed at providing evidence-based recommendations to improve existing AANDC funding formulas for the provision of First Nations child and family services on-reserve. The three-phase project, known as the Wen:de report, identified three options for new funding formulas to support policy and practice in First Nations child and family service agencies.

19. By end of fiscal year 2005-2006, these projects had been funded to completion.

20. AANDC is not currently providing project funding to the Caring Society, but neither AANDC nor the Government of Canada more generally made changes to the funding provided to the Caring Society as retaliation for the 2007 CHRA complaint. As with any other organization or individual, the Caring Society can submit proposals for any projects open to public bid.

c. Public officials conducted themselves with reasonable prudence in light of the 2007 CHRA complaint, and there was no retaliation against Dr. Blackstock

21. Third, the letter states that shortly after the 2007 CHRA complaint was filed, "Ms. Blackstock also began to receive reports that Government officials were dissuading First Nations from meeting with Ms. Blackstock and the Caring Society". This allegation is vague and there is no indication in the letter that it is supported by objective evidence. Canada is not aware of any conduct by its officials that would reasonably fit this description.

22. The fourth issue relates to a meeting on the morning of 9 December 2009 at AANDC headquarters, between the AANDC Minister's then Senior Special Assistant (and subsequent Chief of Staff) and a select group from the Chiefs of Ontario. On this issue, the information received by the Special Rapporteurs appears to be incomplete. The meeting had been arranged on short notice the day before, in order to accommodate the schedule of the four Chiefs in attendance. On the morning of the meeting, one of the Chiefs invited Dr. Blackstock to attend as a technical advisor, such that AANDC officials did not have adequate notice. The Minister's Senior Special Assistant felt the need for additional preparation and briefing in order to responsibly participate in a meeting with Dr. Blackstock, out of a concern that a number of issues could arise and he would not be in a

[12] AANDC's First Nations Child and Family Services program provides funding to assist in ensuring the safety and well-being of First Nations children on reserve by supporting culturally appropriate prevention and protection services for First Nations children and their families. See online: http://goo.gl/P4e7AQ.

position to address them. These issues included the 2007 CHRA complaint as well as a new child and family services program that was being introduced by AANDC.

23. AANDC did not have an opportunity to provide the Minister's Senior Special Assistant with an appropriate briefing before the Chiefs and Dr. Blackstock arrived for the morning meeting. Once they arrived, the Minister's Senior Special Assistant stated in a firm but apologetic manner that he was willing to proceed with the meeting as planned, but that Dr. Blackstock could not attend the meeting. He explained the reason why, apologized, and said that he would be willing to meet with her in the future. He subsequently extended an invitation to such a meeting to Dr. Blackstock in a letter dated 29 January 2010. Dr. Blackstock did not act on this invitation.

24. The approach taken by the Minister's Senior Special Assistant – to not allow Dr. Blackstock to participate in that specific meeting, but to invite her to a subsequent meeting instead – was not a retaliatory measure against her. Rather, it was a reasonable and objectively applied measure that was consistent with the responsible and prudent approach that is generally taken by senior public officials who, in the course of their daily business, must be prepared for and attend many meetings on a variety of important and high profile issues for their respective departments and for the Government of Canada.

25. Once the meeting had begun, Dr. Blackstock was allowed to wait outside the meeting room in a reception area. As described in the allegation letter, a commissionaire (a departmental security official) remained in the reception area with her. This was certainly not intended to intimidate Dr. Blackstock; rather, it was an objective application of standard governmental security protocols on building access. Due to a misunderstanding on the part of a departmental official, proper security protocols had not been followed in admitting the group of meeting attendees into the building. As a result, Dr. Blackstock (and the others who had come for the meeting) had not been given the appropriate visitor's pass. Standard protocols therefore required Dr. Blackstock to have an escort while in the building. The commissionaire was acting in this role.

d. The allegations relating to the collection and use of Dr. Blackstock's personal information have been investigated and appropriately addressed

26. In 2011 and 2012, Dr. Blackstock received disclosure of a number of government records after exercising her right of access (under the *Privacy Act*) to personal information held by government institutions. The final three issues raised in the allegation letter arise from those documents.[13]

[13] It should be noted that all three of these issues are being considered in the ongoing CHRT retaliation proceedings. They were also the subject of a complaint by Dr. Blackstock to the Office of the Privacy Commissioner. The report of findings and recommendations in relation to the latter complaint was released on 28 May 2013: see **Annex 1,** Office of the Privacy Commissioner of Canada, "Report of Findings: Investigation into the personal information handling practices of the Department of Aboriginal Affairs and Northern Development Canada and the Department of Justice Canada, in respect of Dr. Cynthia Blackstock". Both the Office's report and the CHRT retaliation proceedings are discussed further below, in Canada's response to Question 2.

27. The fifth issue concerns allegations that Dr. Blackstock's Registered Indian Record ("RIR") was accessed for improper or illegal purposes by AANDC officials. These allegations are simply not true. RIRs are subject to rigorous security protocols in order to protect the significant privacy interests that they can implicate. Although the current Indian Registration System does not contain an audit trail or log, the litigation team does not have access to the Indian Registration System and they have confirmed that they did not review or request to review Dr. Blackstock's RIR. To Canada's knowledge, Dr. Blackstock's RIR has only been accessed on two occasions, for two specific and entirely appropriate purposes, since the filing of the 2007 CHRA complaint: initially, to disclose copies of that record to Dr. Blackstock, in response to her request for disclosure of personal information pursuant to the *Privacy Act*; and subsequently, to perform an internal review to determine whether Dr. Blackstock's RIR had been improperly accessed. Canada is not aware of any instances where Dr. Blackstock's RIR was accessed for improper or illegal purposes, including any related to the defence of the 2007 CHRA complaint. The Office of the Privacy Commissioner, in its report with respect to the same allegation, concluded that it was "not well-founded" as there was not "sufficient and objective evidence to support the complainant's allegations".[14]

28. Sixth, the Special Rapporteurs' letter describes allegations that public officials – from AANDC and the Department of Justice Canada – engaged in monitoring of Dr. Blackstock's Facebook page. Dr. Blackstock has used both traditional and social media, including Facebook, to address various issues that are relevant to the 2007 CHRA complaint and provide details on matters that have been raised in the course of the hearing. This included the posting of portions of confidential transcripts on her personal Facebook page.

29. Canada acknowledges that a limited number of AANDC and Department of Justice officials (who were involved in the litigation of the 2007 CHRA complaint) periodically viewed Dr. Blackstock's publicly accessible Facebook page during the period of February 2010 to approximately August 2011, for the purpose of responding to the Caring Society's 2007 CHRA complaint. Canada also acknowledges that from time to time in this period, information viewed on Dr. Blackstock's publicly accessible page was circulated among officials involved in the litigation – but only information that was considered relevant to the litigation. For example, in 2010 review of Dr. Blackstock's Facebook page determined that she was posting CHRT cross-examination transcripts that were not publically available on her Facebook page. This was brought to the attention of the CHRT, which determined that this was an inappropriate posting.

30. It must be kept in mind that it is entirely appropriate for parties engaged in litigation to find out information about each other, including motivation and reasons for pursuing the litigation as well as their views on issues raised during the course of litigation and on how the litigation is progressing overall. At no time was Dr. Blackstock's Facebook page accessed through subterfuge or the circumvention of privacy settings. The online information being viewed was publicly accessible information, being accessed by a public official who was using his or her own personal Facebook account. The page was only

[14] See **Annex 1**, *ibid.* at para. 106.

accessed in order to find information relating to the legal defence of the 2007 CHRA complaint. When Dr. Blackstock strengthened the privacy protections on her Facebook page, this significantly limited the information accessible to the general public and therefore public officials.

31. The Office of the Privacy Commissioner, in its report on these allegations, recognized that "in the context of ongoing litigation, the courts have held that a party initiating litigation provides implied consent to a certain amount of probing of their private affairs for the proper determination of the litigation."[15] However, the report concluded that certain pieces of information that had been incidentally accessed on Dr. Blackstock's personal page had not been sufficiently related to this legitimate purpose for information-gathering.[16] The report found that certain aspects of the Facebook accessing by AANDC and the Department of Justice had violated the *Privacy Act*.[17] The report's resulting recommendations will be discussed in further detail below, in response to Question 2 from the Special Rapporteurs.

32. Canada submits that the periodic accessing of Dr. Blackstock's Facebook page was not a retaliatory measure. It was done by public officials acting in good faith, seeking to enhance their litigation work. To the extent that these actions may have incidentally implicated Dr. Blackstock's privacy interests, it was certainly not intentional. Further, the information at issue had been openly publicized on a website that was publicly accessible.

33. Seventh, and finally, it has been alleged that "AANDC and Department of Justice officials were systematically monitoring Ms. Blackstock's professional meetings and presentations", and sent emails "containing disparaging remarks about Ms. Blackstock". It is a fundamental behavioural expectation of all Canadian public officials that they will treat all Canadians with respect, dignity, and fairness – both in public and in the course of intra-governmental dealings.[18]

34. With respect to the allegation of "systematic monitoring" of meetings attended by Dr. Blackstock and presentations given by her, Canada acknowledges that AANDC and Justice officials have attended some of Dr. Blackstock's public engagements and presentations in the course of their work. Canada also acknowledges that in some instances, these officials reported to their colleagues information that was relevant to the files on which they worked.

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[15] See **Annex 1**, *ibid.* at paras. 73-74, 76.

[16] See **Annex 1**, *ibid.* at para. 77 (in particular, "information related to the complainant's friends, personal views, skills, interests, and residency").

[17] See **Annex 1**, *ibid.* at paras. 82-83.

[18] See Treasury Board of Canada Secretariat, *Values and Ethics Code for the Public Sector* (2011), online: http://goo.gl/TYXS1P. ("Respect for People" is the second of five core behaviours expected of all federal public servants: "Treating all people with respect, dignity and fairness is fundamental to our relationship with the Canadian public and contributes to a safe and healthy work environment that promotes engagement, openness and transparency.").

35. When public officials attend such events they do so openly and in an official capacity. Canada submits that this is normal and appropriate behaviour for any policy official and any litigator who must stay informed on the issues that he or she works on. It could in no way be considered "systematic monitoring" – let alone "retaliation" against a human rights defender. Dr. Blackstock, as the Executive Director of the Caring Society, frequently appears as a speaker at public events and conferences open to the public, delivering remarks on issues relating to child welfare, the work being done by the Caring Society, and the 2007 CHRA complaint. It is to be expected that these events would draw the good faith interest of public officials in relation to the operations, programs, and litigation for which they are responsible. On the whole, the Canadian public is better served when its public servants hear the perspectives of non-governmental advocates. Although officials working on the 2007 CHRA complaint reported to each other from time to time on relevant information, including public remarks by Dr. Blackstock, there was no "systematic" effort to "monitor" Dr. Blackstock's public activities.

36. Canada notes that this position is supported by the report of the Office of the Privacy Commissioner, which concluded that the information presented by Dr. Blackstock at conferences and other events did not generally constitute "personal information"; rather, it was properly characterized as views and opinions that were presented for professional purposes on behalf of the Caring Society. Even in the few incidents when "personal information" was incidentally gathered in relation to Dr. Blackstock's public appearances, it was gathered for legitimate purposes flowing from government programs or activities.[19]

IV. ANSWERS TO THE SPECIAL RAPPORTEURS' QUESTIONS

a. Question 1

37. The Special Rapporteurs asked Canada "whether the Government, through Aboriginal Affairs and Northern Development Canada, the Department of Justice, or another Government entity is currently monitoring Ms. Blackstock's personal Facebook page and other activities and if so, the reason for such monitoring."

38. No member of the litigation team that is responsible for the 2007 CHRA complaint (and the related retaliation proceedings) is currently monitoring or otherwise accessing Dr. Blackstock's personal Facebook page. The accessing of Dr. Blackstock's Facebook page by the litigation team, which consists of officials from AANDC and the Department of Justice, ceased when she chose to strengthen her privacy settings so that information was no longer available to the general public.[20] Canada is not aware of any other public officials who are currently monitoring or otherwise accessing Dr. Blackstock's Facebook page.

39. As for Dr. Blackstock's other activities (for example, public speeches), the Government of Canada is not monitoring them. Dr. Blackstock's presentations or public appearances

[19] See **Annex 1**, *supra* note 13 at paras. 37-40.

[20] Dr. Blackstock has provided evidence in the context of the ongoing CHRT proceedings to the effect that she has strengthened her Facebook privacy settings, so that they are now set to the most restrictive level.

regularly occur at events where public and departmental officials have also been invited to attend because of the nature of the discussions. As discussed above, such attendance would be within the normal scope of those officials' duties. Canada has no systematic policy or practice of monitoring Dr. Blackstock's activities, and it never has.

b. Question 2

40. The Special Rapporteurs asked Canada to provide "the details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to the alleged monitoring of Ms. Blackstock. Have any disciplinary or administrative sanctions been imposed or will they be imposed in the case of a finding of wrongdoing?"

41. Following media reports of Dr. Blackstock's allegations that her RIR had been improperly accessed, AANDC conducted an internal review to determine whether there had been a breach of the *Privacy Act*. As stated above, AANDC determined that there was no evidence to support the allegation that Dr. Blackstock's RIR had been improperly accessed or that the *Privacy Act* had been breached.

42. In addition, most of the allegations contained in the Special Rapporteurs' letter have been the subject of two quasi-judicial processes that were initiated by Dr. Blackstock and / or the Caring Society.

43. First, Dr. Blackstock made a complaint to the Office of the Privacy Commissioner on 19 March 2012. Generally speaking, the complaint concerned the same set of allegations discussed in Section III(c), above, and was based on information gathered by Dr. Blackstock through multiple requests pursuant to the *Privacy Act* for disclosure of personal information. In conducting its investigations, the Office of the Privacy Commissioner appoints a neutral investigator to conduct a fact-finding process by meeting with the complainant and with the government entities implicated, and discussing the allegations with each party. Once the fact-finding is complete, the Office of the Privacy Commissioner issues a report with its findings and recommendations. The Office of the Privacy Commissioner's final report on Dr. Blackstock's complaint was released to the involved parties on 28 May 2013. A copy of the report can be found at **Annex 1** to this response.[21]

44. The findings and recommendations of the Office of the Privacy Commissioner can be summarized as follows:

- On the allegation that officials had monitored Dr. Blackstock's public speaking engagements, and then circulated reports to officials in AANDC and the Department of Justice: "the information in question did not constitute 'personal information' under the [*Privacy Act*], and as such, there could be no improper collection or dissemination of such information."[22] Even in the few incidents when "personal information" may have been gathered, it was gathered for

[21] The report was not made publicly available by the Commissioner or by the Government of Canada, but it is publicly available on the website of a Canadian broadcaster (APTN, the Aboriginal Peoples Television Network): http://goo.gl/Sp6g8S.

[22] **Annex 1**, *supra* note 13 at 29. See also paras. 26-38.

purposes related to government programs or activities.[23] Since there had been no violation of the *Privacy Act*, there were no recommendations made in relation to this allegation.

- The allegation that officials had repeatedly accessed and monitored the complainant's social media feeds (in particular her personal Facebook page) was found to be well-founded in certain limited ways, as explained above at paragraph 31.[24] Three recommendations were made: (a) that AANDC and the Department of Justice only access and view personal information posted to Dr. Blackstock's social media site where demonstrably necessary in relation to government programs or activities, something Canada submits was already being done; (b) that any personal information that had been collected by AANDC and the Department of Justice from social media sites be destroyed, to the extent permitted by law; and (c) that AANDC and the Department of Justice "develop and implement internal policies and guidelines governing employee access to social media sites for the collection of personal information".[25]
- The allegation that officials from AANDC repeatedly accessed Dr. Blackstock's RIR from the Government of Canada's Indian status registration database, where no issues relating to her Indian status existed, was found to be "not well-founded." Nevertheless, in order to enhance accountability for officials' access of such records, it was recommended "that AANDC implement, activate and monitor audit trails" for the database.[26]

45. AANDC accepted and is complying with the recommendations of the Office of the Privacy Commissioner. In addition, the Department of Justice has been taking steps that address the recommendations. The Department has an internal website with links to jurisprudence and scholarly articles, as a resource to inform counsel about collecting social media evidence for civil litigation purposes. The website includes guidance on related ethical and privacy issues. The Department is also preparing its own guidance materials for counsel on issues such as social media searches, and the gathering and storage of social media evidence for civil litigation.

46. The second domestic remedial process that has been initiated is the Caring Society's retaliation allegation under the CHRA. As explained above, the Caring Society has claimed that Canada violated section 14.1 of the CHRA by engaging in retaliatory measures against Dr. Blackstock. The proceedings in relation to those allegations are addressing four issues that were also raised in the Special Rapporteurs' letter: the December 2009 Chiefs of Ontario meeting at AANDC headquarters; the AANDC reporting on Dr. Blackstock's public speaking engagements; the periodic accessing of Dr. Blackstock's Facebook page; and the allegation that there had been improper accessing of Dr. Blackstock's RIR.

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[23] **Annex 1**, *ibid.* at paras. 39-40.

[24] **Annex 1**, *ibid.* at paras. 56-82.

[25] **Annex 1**, *ibid.* at para. 83.

[26] **Annex 1**, *ibid.* at para. 107.

47. The CHRT retaliation proceedings are still ongoing. Ten witnesses were heard on the retaliation allegations over 8 days of hearings in February, March and July of 2013. Dr. Blackstock was the first witness. Final written representations on the retaliation allegations were filed in early August by the Caring Society, the Attorney General of Canada, and the Canadian Human Rights Commission, which all made final oral submissions on August 7.[27] Canada now awaits the decision of the CHRT on the retaliation allegations, which will be released together with the decision on the original 2007 CHRA complaint. If the CHRT finds that there was retaliation in this case, the potential remedial orders include damages for Dr. Blackstock or the Caring Society, and / or appropriate training for officials involved.

48. As for whether any disciplinary or administrative sanctions have been or will be imposed, for the reasons stated above it is Canada's position that there was no individual wrong-doing in this matter. To the extent that Dr. Blackstock's privacy interests were impacted, it was incidental to a legitimate purpose for public officials acting in good faith. AANDC and the Department of Justice engaged fully with the Office of the Privacy Commissioner in addressing Dr. Blackstock's complaint, and where appropriate have been taking steps that address the recommendations. Canada awaits the decision of the CHRT on the retaliation allegations that have been made under the CHRA.

c. Question 3

49. The Special Rapporteurs asked Canada to "please explain how the alleged actions undertaken by Government officials in this case regarding the monitoring of Ms. Blackstock are compatible with the international norms and standards referenced above."

50. For the reasons explained above, Canada submits that there has been no retaliation against Dr. Blackstock. Canada has not attempted to intimidate Dr. Blackstock, or otherwise discourage her from engaging in advocacy work. The Canadian legal framework contains a number of mechanisms to ensure that the freedom of association and privacy rights of all Canadians are respected and protected. Canada has provided information above to explain why none of the allegations related in the Special Rapporteurs' letter (such as the allegations of "monitoring") are well-founded allegations of retaliation against Dr. Blackstock.

51. Indeed, the situation of Dr. Blackstock illustrates the robust nature of Canada's legal framework to protect the privacy and fundamental freedoms of all Canadians. As this response has made clear, Dr. Blackstock has availed herself of a number of domestic protections and remedies to hold the Government of Canada publicly accountable for its conduct. Dr. Blackstock has made a number of requests for disclosure of information under the *Privacy Act* and the *Access to Information Act*. The information disclosed to Dr. Blackstock by AANDC and the Department of Justice, in compliance with those requests,

[27] The Canadian Human Rights Commission's final written representation to the CHRT (dated 1 August 2013) submits that the periodic accessing of Dr. Blackstock's Facebook page did not constitute a *prima facie* case of retaliation contrary to the CHRA. The Commission only made submissions on the allegations related to Dr. Blackstock's Facebook page.

included voluminous correspondence between public officials on matters such as the 2007 CHRA complaint. When Dr. Blackstock took issue with certain aspects of the information disclosed, she freely took the matter public through the national broadcast media.

52. Dr. Blackstock also continues to avail herself of domestic remedial mechanisms – mechanisms that have been established by Canada in accordance with its obligations under international human rights law. The first mechanism, being her complaint to the Office of the Privacy Commissioner, was designed to address in full detail her concerns with government information-gathering practices. As described more fully above, AANDC and the Department of Justice engaged fully with the Office of the Privacy Commissioner in addressing Dr. Blackstock's complaint, and where appropriate have been taking steps that address the recommendations. The second mechanism, being the retaliation allegations under section 14.1 of the CHRA, was designed to directly address Dr. Blackstock's concern that she had suffered retaliation by virtue of her role as a human rights defender. Canada now awaits the decision of the CHRT on these allegations. Fair process, including rights to make submissions and (before the CHRT) call witnesses, has been observed in each domestic remedial process.

V. CONCLUSION

53. In sum, Canada submits that in relation to the situation of Dr. Blackstock, it has acted in full accordance with its domestic legal obligations and the treaties to which it is a party. Canada maintains a robust legal framework for the protection of basic rights that is consistent with its international treaty obligations. Canada's public officials have acted in accordance with that framework in relation to Dr. Blackstock. There has been no retaliation against Dr. Blackstock. The allegations conveyed by the Special Rapporteurs have been and are still in the process of being addressed by domestic remedial mechanisms. Canada has engaged fully with the domestic remedial processes initiated by Dr. Blackstock to address her concerns.

54. Canada would be pleased to provide additional information once the CHRT proceedings in this matter have concluded, should that be of interest to the Special Rapporteurs.

Ottawa
9 January 2014