

## CANADA

### Special Decisions or Action Taken Re: Reporting

**CESCR E/1997/22**

#### Chapter VI

Review of Methods of Work of the Committee

#### B. Decisions adopted by the Committee at its fifteenth session

...

#### Matters for special attention

391. The Committee took note of a wide range of correspondence, documentation and other materials provided to it by various sources in relation to its work and decided that letters should be sent by its Chairperson to the Governments of Canada... in relation to those matters identified by the Committee as warranting special attention.

**CESCR E/1998/22**

Annex VIII

Letter addressed by the Chargé d'affaires a.i., Permanent Mission of Canada to the United Nations Office at Geneva, to Mr. Philip Alston, Chairperson of the Committee on Economic, Social and Cultural Rights

13 October 1997

Dear Mr. Alston,

I am writing further to your letter of 27 May 1997, regarding Canada's third periodic report to the Committee on Economic, Social and Cultural Rights.

In your letter you indicated that the Committee intends to consider Canada's third periodic report at its eighteenth session, in the spring of 1998. However, it has been brought to my attention that under the normal, established procedures this report would be considered no earlier than 1999.

After a careful review of the situation, Canada has concluded that there are no special circumstances which might necessitate early consideration of Canada's report by the Committee. Given this, and taking into account our other reporting obligations at this time, I must inform you that Canada is not prepared to appear before the Committee at its eighteenth session. Naturally, we will be happy to present our report at a time consistent with the regular, established procedures of the Committee.

Yours sincerely,

Andrew McAlister  
Chargé d'affaires a.i.  
Permanent Mission of Canada  
to the United Nations Office at Geneva

## Annex IX

### Letter addressed by the Chairperson of the Committee on Economic, Social and Cultural Rights to Mr. Andrew McAlister, Chargé d'affaires a.i., Permanent Mission of Canada to the United Nations Office at Geneva

29 October 1997

Dear Mr. McAlister,

I am responding to your letter of 13 October 1997 regarding the timing of the presentation of Canada's third periodic report to the Committee on Economic, Social and Cultural Rights. There would seem to be several misunderstandings and I would like to clarify these in the hope that we can agree to maintain the existing timetable set by the Committee.

The letter suggests that, in scheduling Canada's report for consideration in the spring of 1998, the Committee has failed to follow its "normal, established procedures". The letter does not elaborate on this point but I can assure you that it is not correct. On a number of occasions the Committee has made adjustments to its scheduling, in response to a variety of factors. To my knowledge no State party has challenged the appropriateness of the Committee using such a flexible and rational approach. In the case of Canada, as well as in other cases, including several which are currently pending, the Committee has explicitly indicated that it will adjust the scheduling of consideration of the report in the light of all the relevant circumstances. I would venture to add that, even if such precedents were not already clearly established, the Committee would not feel bound to maintain an anachronistic and counterproductive approach which it considered to be clearly suboptimal both from the perspective of the State party and from that of the Committee. Ultimately any treaty body must retain control over its own procedures and, in this case, there can be no doubt that the Committee has acted in accordance with those procedures. It is also of relevance in this respect that the Committee's approach conforms entirely with the practice of the Human Rights Committee, which has shown major flexibility in timing and has been prepared to take account of a wide variety of considerations.

The letter states that "Canada has concluded that there are no special circumstances which might necessitate early consideration of Canada's report by the Committee". As indicated above, this is hardly an assessment which is to be made by the reporting State. In this case, the self-assessment would appear to overlook entirely the lengthy and very particular circumstances of the situation. The matter has been under consideration for a very long time and the Committee has made clear in a series of communications to the Government of Canada that it is anxious to move ahead and examine the situation. Thus, for example, the Committee's letter of 5 December 1996 recalled its earlier letter of 4 May 1995 in which it had indicated that it would welcome the Government's observations on that issue in the context of Canada's third periodic report, which was due in 1995. The Committee observed that it had "received no reply to that letter, nor has the overdue report been received". It attached copies of various submissions received in the meantime from groups representing a diverse range of non-governmental organizations in Canada and noted that, in view

of

“the gravity of the concerns that have been raised, the Committee would greatly appreciate an urgent indication as to when the third periodic report will be submitted. If the timing of the submission of the report is not likely to be such as to provide the Committee with a timely opportunity to review the matters in question, consideration will need to be given to an alternative means by which the Committee might give effect to its responsibilities under the Covenant.”

As early as 1994, discussions were held with representatives of your Government in which it was agreed that the Committee would not seek to proceed in the absence of a report but would rather wait until a report was submitted, provided that this was done in reasonable time. It was always clear that the Committee would then wish to move as rapidly as possible to examining the report in question.

The precedent which would be set if the Committee were to abdicate to every State party the right to determine when its report was considered, or if the Committee were to be strictly bound by the chronological order which is determined entirely by the timeliness or otherwise of the State party's submission of the report, would have potentially very adverse consequences for the work of the Committee and for the monitoring system as a whole. The Committee has been praised by States parties generally for its willingness to adopt procedures designed to improve the functioning of the system, and it has done so even in relation to the situation in which Governments have persistently failed to report. It would be both sad and ironic if Canada, which has so strongly supported these developments and the evolution of the treaty monitoring system generally, were to see itself as being able unilaterally to stand aside from the application of approaches which it has been happy to see applied and developed in relation to other countries and by other treaty bodies.

There is, in my view, also a question of good faith. After repeated indications that the issues first raised by the Committee some four years ago (and with two federal elections having occurred in Canada since the Committee last considered an already overdue report) would be dealt with expeditiously, it is hardly appropriate for the State party to announce at the last moment that it is unwilling to cooperate with the Committee unless it can choose its own timing.

The position suggested in your letter would result in a situation in which, after making repeated requests for a report to be submitted as soon as possible (a procedure which has been applied sparingly, but nevertheless in a significant number of cases) and asking that matters which have given rise to particular concern on the part of the Committee be addressed, the Committee then let the report sit and become out of date for a further one or two years. Indeed, it is not easy to comprehend why any Government would seek to insist on delaying the examination of its report until such time as it was clearly out of date. That would make a mockery of the Committee and its procedures and would privilege formalistic considerations at the expense of efforts to protect human rights and to ensure that the objectives established by the Covenant are pursued by all appropriate means.

In conclusion, I very much hope that the Government of Canada will reconsider its position in the light of the clarifications offered in this letter and will accept the timing which has been determined by the Committee in accordance with its rules of procedure and which accurately reflects the

legitimate expectations that have been generated at every step of this already rather drawn out process. I would be grateful for your early advice so that I can know whether or not to circulate this correspondence to all members of the Committee in advance of the next session and to schedule the matter for urgent consideration.

Yours sincerely,

Philip Alston  
Chairperson, Committee on  
Economic, Social and Cultural Rights