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HUMAN RIGHTS COMMITTEE
Ninety-fourth session
13 -31 October 2008

DECISION

Communication No. 1506/2006

Submitted by:	Sucha Singh Shergill and 21 members of the Canadian Coloured Citizen Seniors Society (unrepresented)
Alleged victims:	The authors
State Party:	Canada
Date of communication:	28 July 2006 (initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 20 November 2006 (not issued in document form)
Date of adoption of decision:	30 October 2008

* Made public by decision of the Human Rights Committee.

Subject matter: Alleged discrimination in the granting of Old Age Benefits for Canadian citizens based on their colour and origin

Procedural issues: Exhaustion of domestic remedies - abuse of the right to submission– insufficient substantiation for purpose of admissibility

Substantive issues: Discrimination on the basis of colour and national origin

Articles of the Optional Protocol: 2; 3; and 5, paragraph 2(b)

Articles of the Covenant: 2 and 26

[ANNEX]

ANNEX

DECISION OF THE HUMAN RIGHTS COMMITTEE UNDER THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Ninety-fourth session

concerning

Communication No. 1506/2006[*]

Submitted by:	Sucha Singh Shergill and 21 members of the Canadian Coloured Citizen Seniors Society (unrepresented)
Alleged victim:	The authors
State Party:	Canada
Date of communication:	28 July 2006 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 30 October 2008,

Adopts the following:

DECISION ON ADMISSIBILITY

1.1 The authors of the communication, initially dated 28 July 2006, are Sucha Singh Shergill and 21 members of the Canadian Coloured Citizen Seniors Society. They claim to be victims of violations by Canada of article 2 and article 26 of the Covenant. They are not represented.

1.2 On 27 April 2007, the Human Rights Committee, through its Special Rapporteur on New Communications, decided to examine the question of admissibility of the communication separately from the merits.

[*] The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Yuji Iwasawa, Mr. Edwin Johnson, Ms. Helen Keller, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer and Ms. Ruth Wedgwood.

Factual background

2.1 The principal author of the communication is Sucha Singh Shergill, born on 2 February 1929 in India. He moved to Canada on 26 March 1996 when he was 67 years old and as an immigrant sponsored by his daughter, who agreed to provide for his essential needs for a period of ten years under the immigration regulations then in force. He became a Canadian citizen on 17 November 2000.

2.2 The principal author applied for his Old Age Security (OAS) pension successively in 1998, 2001 and 2006. His first two applications were denied by the Minister of Human Resources Development (Minister) because he had not resided in Canada for the minimum required period of at least 10 years. He started to receive an OAS pension in April 2006, having resided in Canada for 10 years.

2.4 Regarding exhaustion of domestic remedies, the principal author first applied for an OAS pension on 13 March 1998; this was denied by the Minister of Human Resources Development (Minister). He did not appeal this decision. He again applied for an OAS pension on 11 September 2001. That application was also denied by the Minister for the same reason. The Minister's decision was confirmed on 13 December 2001 after a request for reconsideration. The principal author appealed the Minister's decision to the Review Tribunal. The Review Tribunal decision, dated 6 November 2002, dismissed his appeal because it considered that the same issue had already been decided in the *Pawar* class action of which the author was a member.

2.5 On 6 June 2002, the principal author filed a Statement of Claim against Her Majesty the Queen in Right of Canada, challenging the constitutionality of the residence requirement of the Old Age Security Act. By order of a Prothonotary of the Federal Court, dated 7 November 2002, the Statement of Claim was struck out and the matter dismissed. The Prothonotary dismissed the claim after finding that the principle of estoppel applied to the issues raised and that "there is not a scintilla of a cause of action or an issue which can be litigated by way of an amendment to the present Statement of Claim". He further stated that indeed the action was "an attempt to re-litigate an issue in which the Plaintiff was directly involved and in which the Plaintiff received a final determination, on exactly the same issue, and therefore is clearly an abuse of process." The author appealed to the Federal Court – Trial Division, which also dismissed his appeal on 19 December 2002. The Federal Court noted that the *Pawar* decision had finally and conclusively disposed of the matter, and that the principal author was a member of the class who had given the plaintiff in *Pawar* his express written consent to act on his behalf. The principal author further appealed to the Federal Court of Appeal relying on a recent decision of the Supreme Court of Canada in the case of *Lavoie v. Canada*, where the Supreme Court had held that the Canadian citizenship requirement for Civil Service employment was discriminatory and contrary to section 15 of the *Canadian Charter of Rights and Freedoms*. The Federal Court of Appeal rejected his appeal on 4 December 2003. A panel of three judges of the Supreme Court of Canada refused leave to appeal against the decision of the Federal Court on 13 May 2004.

2.6 The other 21 authors are members of the Canadian Coloured Citizen Seniors Society, who were also born in India, immigrated to Canada and who were granted Canadian citizenship. No information is provided with regard to the exhaustion of domestic remedies in the case of these authors.

The complaint

3.1 The authorsallege that the State party has violated their rights under articles 2 and 26 of the Covenant insofar as they did not qualify for an Old Age Security (OAS) pension prior to April 2006. They claim they were discriminated against on the grounds of their skin color and their South Asian origin, and state that they should have been entitled to old age benefits on the same basis as any other Canadian citizens from the date they were granted Canadian citizenship.

3.2 The authors allege that the 10 year residency requirement imposed by section 3 of the OAS Act constitutes direct discrimination, because it denies benefits to some senior Canadian residents. They also allege indirect discrimination because such a residency requirement, although it seems to have a neutral face as being applicable to all, in fact prejudices senior Canadian residents born abroad and leaves unaffected senior Canadian residents born in Canada. They note that such a residency requirement is not applied to foreign nationals originating from the "State party's selected countries", i.e. countries with which Canada has a reciprocal benefits agreement and allege therefore that international social security agreements introduce direct discrimination between senior permanent residents born abroad in countries with and without reciprocal agreements with Canada.

3.3 They also claim that the 10 year residency requirement imposed as a condition of eligibility for OAS Act benefits constitutes a violation of the equality rights embodied in section 15 of the Canadian Charter of Rights and Freedoms which reads as follows: "Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental and physical disability"

State party's submissions on admissibility

4.1 By submission dated 2 April 2007, the State party provides its submission on the admissibility of the communication. As to the 21 authors, it contends that it is not in a position, based on the information provided in the communication, to determine whether the 21 other complainants' claims are similar to the ones emanating from the principal author. It argues that without legible full legal names, dates of birth and Social Insurance Numbers, it cannot confirm that they are indeed in a similar position to the author insofar as they 1) have applied for OAS pensions, 2) were at least 65 years of age at the time they made their applications. In addition, it is not clear if they have been denied OAS pensions because they have not resided in Canada for at least 10 years, or had not worked or resided in a country with which Canada has a reciprocal agreement. The State party requests that, should the Committee find this communication admissible, those 21 individuals should submit further and full particulars and evidence demonstrating that they are in a similar position to the principal authors that the State party may respond appropriately on the admissibility and merits of their allegations.

4.2 As to the principal author, the State party challenged the admissibility of the communication, arguing that the various aspects of the communication are inadmissible for several reasons, including abuse of the right of submission on account of delay and insufficient substantiation.

4.3 With regard to the facts, the State party explains that the Canada's Old Age Security (OAS) pension system provides income support to elderly persons who meet its legislative eligibility requirements. The OAS pension is a non-contributory benefit meant to give a measure of partial income security for senior Canadians, in recognition of their contribution to and participation in Canadian society. The core eligibility requirements for the OAS pension include the following: 1) making an application for the OAS pension, 2) having attained 65 years of age, and 3) satisfying the applicable residence requirement immediately prior to the approval of the OAS pension application. The current residence requirements require an applicant a) to have resided in Canada, after reaching age 18, for an aggregate period of 40 years to receive a full pension or b) to have resided in Canada for a minimum of 10 years to receive a partial pension, and c) having a legal resident status or Canadian citizenship on the day preceding the day on which the application is approved. The State party considers it reasonable to expect that persons live in Canada for a minimum period of time before being granted the right to a lifelong public benefit.

4.4 When an OAS pension applicant is a person who has emigrated from a country with which Canada has a reciprocal international social security agreement, that applicant's periods of residence and/or contributions in the other country can be added to his or her periods of residence in Canada in order to meet the minimum 10 year residence requirements for a partial OAS pension. The State party further explains that Canada has signed reciprocal international social security agreement with fifty countries and provides a detailed list of the objectives pursued by Canada when entering into these agreements. The State party summarizes the objectives it pursues in entering into these agreement as follows : 1) to reduce or eliminate restrictions, based on citizenship, which may prevent Canadians from receiving benefits under the social security laws of the other country, 2) to reduce or eliminate restrictions on the payment of pensions abroad, 3) to make it easier to become eligible for benefits by adding together periods of social security coverage under the programs of two or more countries, and 4) to permit continuity of social security coverage when a person works temporarily in another country and to prevent situations when a person would have to contribute to both countries' social security program for the same work. The State party notes that, in addition to the OAS pension the principal author has been receiving since April 2006, he also receives a non-taxable Guaranteed Income Supplement (GIS). GIS is payable to low-income pensioners whose incomes is below a certain threshold and which, in the author's case, brings his total OAS benefits to an amount equal to the OAS pension payable to a pensioner who is receiving his or her full OAS pension after 40 years of residence as of age 18.

4.5 The State party argues that the communication is an abuse of the right of submission pursuant to article 3 of the Optional Protocol. It notes that although no specific time-limit exists for the submission of a communication, the Committee has held that the late submission of a complaint can amount to such abuse in the absence of any justification and refers to the decision in *Gobin v. Mauritius*, where an unexplained delay of five years was considered an abuse of the right of submission. In the present case, the State party argues that the author has offered no explanation or justification for the delay in submission between the Supreme Court of Canada's decision dismissing the author's request for leave to appeal in May 2004 and the filing of his complaint before the Committee in July 2006. The State party further argues that in light of the numerous judicial challenges brought by the author, first through a class action introduced in 1996 and then by the author's own litigation started in 2002, the delay in submitting the complaint to the Committee should be considered excessive.

4.6 The State party further submits that the author has not substantiated his allegation of a violation of article 26, for purpose of admissibility. It also submits that the State party's jurisprudence defining and interpreting equality rights under the Canadian Charter of Rights and Freedoms closely resembles the equality protection in article 26 of the Covenant. It further argues that the author has received judicial consideration that respects rules of natural justice, the Canadian Constitution and the Covenant[1], as clearly evidenced by various judicial levels in Canada which consistently rejected his claims, presented either as a class action or by the author himself. The State party notes that in total, the author's claims have been rejected seven times by Canadian judicial instances.

4.7 The State party also submits that the residence requirement of the OAS Act and being from a country with which Canada has a reciprocal social security agreement are both neutral requirements that are not related to citizenship, color or national origin, and therefore do not discriminate in purpose or in effect. Length of residency is not a prohibited ground of discrimination and does not come within the meaning of "other status" within the scope of article 26 of the Covenant. The State party adds that being an immigrant from a country with which Canada does not have a reciprocal international social security agreement does not fall within the meaning of "other status" within the scope of article 26[2].

4.8 In the alternative, should the Committee consider that the length of residency, or being a immigrant from a country with which Canada does not have a reciprocal international social security agreement falls within the scope of the notion of "other status", the State party submits that the differential treatment clearly does not amount to discrimination within the meaning of article 26. It refers to a Committee decision which found that differential treatment is permitted only if the grounds therefore are reasonable and objective[3] and that not all differentiated treatment constitutes discrimination if it is based on objective and reasonable criteria and the purpose sought is legitimate under the Covenant[4]. The State party submits that the differential treatment experienced by the author based on the fact that he did not emigrate from a country with which Canada has a reciprocal social security agreement is both objective and reasonable in light of the nature of those agreements and the State party's objective in entering into them. With regard to the residency requirement, the State party submits that it is reasonable to establish a residency requirement for the purposes of receiving an OAS pension. It refers to the Committee's decision in *Oulajin and Kaiss v. the Netherlands,* where the Committee found no violation in the allocation of child benefits and considered that "the scope of article 26 of the Covenant does not extend to differences resulting from the equal participation of common rules

[1] See Communication No. 761/1997, *Singh v. Canada*, inadmissibility decision of 29 July 1997; Communication No. 886/1993*, Schedko v. Belarus*, inadmissibility decision of 3 April 2003; Communication No. 1097/2002, *Mercader et al. v. Spain*, inadmissibility decision of 21 July 2005; Communication No. 1138/2004, *Arenz et al. v. Germany*, inadmissibility decision of 24 March 2004.

[2] See Communication 988/2001, *Diaz v. Spain*, inadmissibility decision of 3 November 2004

[3] See Communication No. 395/1990, *Sprenger v. The Netherlands*, Views adopted on 31 March 1992, paragraph 7.4

[4] See Communication 932/2000, *Gillot et al v. France*, Views adopted on 15 July 2002, paragraph 13.5

in the allocation of benefits"[5]. Furthermore, the State party asserts that the length of the residency requirement is not arbitrary but consistent with the State party's role in balancing competing arrays of social and economic considerations. Lastly, the State party refers to the individual opinions in the case *Oulajin and Kaiss* in which it was stated that "with regard to the application of article 26 of the Covenant in the field of economic and social rights, it is evident that social security legislation, which is intended to achieve aims of social justice, necessarily must make distinctions. It is for the legislature of each country, which best knows the socio-economic needs of the society concerned, to try to achieve social justice in the concrete context. Unless the distinctions made are manifestly discriminatory or arbitrary, it is not for the Committee to re-evaluate the complex socio-economic data and substitute its judgments for that of the legislature of States parties"[6].

Authors' comments on the State party's submissions

5.1 By letter of 12 June 2007, 25 August 2007, 21 November 2007, 8 January 2008, 8 February 2008, 7 March 2008, 10 March 2008 and 7 April 2008, the author challenges the State party's submissions.

5.2 With regard to the 21 other authors, the principal author argues that they all belong to the same category and that in order to prove that they all suffered from the same discrimination, the author gave his own story as an example. He further argues that providing full details for each complainant would have involved baseless extra labor and that the signatures of the 19 authors on behalf of whom he was submitting the complaint were annexed to the initial submission.

5.3 With regard to the State party's allegation of lack of substantiation, the principal author reiterates that the 10 year residency requirement in the OAS Act, in addition to the requirement of being a Canadian citizen, is discriminatory and that the international social security agreements create a situation of discrimination towards Canadian citizens who come from countries not covered by such agreements. He also reiterates that the Canadian OAS system makes discriminatory distinctions based on social origin and place of birth and does not take into account health conditions as a basis for granting social benefits.

5.4 The principal author challenges the State party's contention that the question at issue is identical to that already decided in the *Pawar* case. He claims that he had objected to belonging to *the Pawar* class action and that as a result, he was dismissed from the primary membership of this class action.

5.5 The principal author further challenges the State party's interpretation of the Federal Court of Appeal decision of 4 December 2003. He alleges that this decision held that the denial of OAS benefits to Canadian Citizen Seniors was illegal and unjustified. He reiterates previous assertions according to which the residency requirement, although its application appears neutral, prejudices senior Canadians residents born abroad and leaves unaffected senior Canadians residents born in Canada. He therefore argues that the ground of distinction – born abroad – is

[5] See Communication 426/1990*, Oulajin and Kaiss v. the* Netherlands, Views adopted on 23 October 1992, at paragraph 7.5

[6] See Communication 426/1990*, Oulajin and Kaiss v. the* Netherlands, Views adopted on 23 October 1992, Appendix.

not an enumerated ground in section 15 of the Canadian Charter of Rights and Freedomsand does not fall under the "other status" ground enumerated in article 26 of the Covenant. As to the reason given by the State party to legitimize international social security agreements, the author argues that the ground of distinction –acquisition of credits under plans that exist in the countries where they have resided before coming to Canada – is not an enumerated ground and does not fall under the notion of "other status" in article 26 of the Covenant.

5.6 With regard to the State party's comment that the principal author's claim has been rejected by seven different instances, the principal author submits that there had been "frauds in connivance of the judiciary" and that he had submitted several affidavits dated 30 June 2004, 8 February 2005 and 15 December 2005 for "fraud, corruption, racism, partiality, inefficiency, incapability, fraudulent intentions, playing with the court records and lacking the knowledge of the justice system". He further alleges that both the Spouse Allowance Act and the Disability Act are discriminatory because they both require different residency requirements for citizens and non citizens.

Supplementary submissions of the State party

6.1 On 28 May 2008, the State party responded to the author's comments. It notes the serial nature of the author's submissions, with numerous repetitive and often unclear assertions and at times blatantly false claims and accusations. It further notes that the author demonstrated similar vexatious tendencies in his many instances of domestic litigation.

6.2 The State party submits that the author's various baseless allegations of judicial fraud and corruption and any additional allegations relating to his daughter's sponsorship undertaking and his ineligibility for a disability pension or the spousal allowance should be considered inadmissible by the Committee as the author has not exhausted domestic remedies in their regard, and, in any case, has failed to substantiate sufficiently such claims.

6.3 The State party reiterates that the author's claim is inadmissible, particularly because it is insufficiently substantiated. To the extent that the author has clarified his submissions to claim discrimination against Canadian citizens or a positive obligation on the State party to provide preferential Old Age Security pension treatment for Canadian citizens, the State party submits that these are primarily based on nonsensical interpretations of domestic law and jurisprudence that cannot substantiate any violation of the Covenant and, in any case, are mere variations on the original claim that are insufficiently substantiated for the same reasons.

Issues and Proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with article 93 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

7.2 The Committee first notes, as required by article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under any other international procedure of investigation or settlement.

7.3 The Committee notes that, apart from the principal author, the 21 other authorsfailed to provide any information about exhaustion of domestic remedies. It recalls that, pursuant to article 5, paragraph 1, of the Optional Protocol, it shall consider communications received "in light of all written information made available to it by the individual and the State Party concerned". It also recalls Rule 90 (1) (f) of its Rules of Procedure according to which applicants must sufficiently demonstrate in their communication that they have exhausted all domestic remedies. The Committee finds that it is not in a position to ascertain whether these 21 authors have exhausted all available domestic remedies and declares the communication inadmissible to the extent that it relates to them.

7.4 The Committee notes also the State party's argument that the communication should be considered inadmissible as constituting an abuse of the right to submit communications under article 3 of the Optional Protocol, in view of the delay in submitting the communication to the Committee. The State party recalls that the principal author waited for about 2 years and three months after the decision of the Canadian Supreme Court before submitting his complaint to the Committee. In the instant case, and having regard to the reasons given by the author, the Committee does not consider the delay to amount to an abuse of the right of submission.[7]

7.5 The Committee notes that the author does not provide any information in support of his claim of a violation of article 2. The Committee recalls that the provisions of article 2 of the Covenant, which lay down general obligations for State parties, cannot, in isolation, give rise to a claim in a communication under the Optional Protocol[8]. The Committee considers that the author's contentions in this regard are inadmissible under article 2 of the Optional Protocol.

7.6 With regard to the authors' claim that the fact that the State party applies a 10 year residency condition to become eligible for old age benefits to Canadian citizens originating from South Asia, whereas foreign nationals originating from countries with which Canada has a bilateral agreement are granted old age benefits from the day of the arrival constitutes a violation of article 26, the Committee notes that the author has not shown how this difference in treatment is based on the race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status of these category of persons. The Committee, therefore, concludes that the facts submitted by the author do not raise any issues under article 26 and thus declares it inadmissible under article 3 of the Optional Protocol.

8. The Human Rights Committee therefore decides:

a. that the communication is inadmissible under article 5, paragraph 2 (b), of the Optional Protocol with respect to the 21 other authors;

b. that the communication is inadmissible under article 2 and 3 of the Optional Protocol with regard to the principal author;

c. that this decision shall be communicated to the authors and the State party.

[7] See Communication No. 1445/2006, *Polacková and Polaced v. Czech Republic*, Views of 24 July 2007, para. 6.3, Communication No.1305/2004, *Victor Villamon Ventura v. Spain*, Views of 31 October 2006, para. 6.4.

[8] See, inter alia, C.E.A. v. Finland, Case No. 316/1988, decision of 10 July 1991, para. 6.2.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]
