

HUMAN RIGHTS COMMITTEE

Singer v. Canada

Communication No. 455/1991

26 July 1994

CCPR/C/51/D/455/1991*

VIEWS

Submitted by: Allan Singer

Victim: The author

State party: Canada

Date of communication: 30 January 1991 (initial submission)

Date of decision on admissibility: 8 April 1993

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

Meeting on 26 July 1994,

Having concluded its consideration of communication No. 455/1991 submitted to the Human Rights Committee by Mr. Allan Singer under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and the State party,

Adopts its

Views under article 5, paragraph 4, of the Optional Protocol

1. The author of the communication is Allan Singer, a Canadian citizen born in 1913 and resident of Montreal, Canada. He claims to be a victim of language discrimination by Canada, in violation of the International Covenant on Civil and Political Rights, without however specifically invoking

article 26 thereof.

The facts as presented by the author:

2.1 The author runs a stationery and printing business in Montreal. His clientele is predominantly but not exclusively anglophone. Starting in 1978, the author received numerous summons from the Quebec authorities, requesting him to replace commercial advertisements in English outside his store by advertisements in French. The author appealed against all these summons before the local courts, and contended that the Charter of the French Language (Bill No. 101) discriminated against him because it restricted the use of English for commercial purposes; in particular, Section 58 of Bill No. 101 prohibited the posting of commercial signs in English outside the author's store. In October 1978, the Court of Sessions of Montreal found against him. The Superior Court of Quebec, Montreal, did likewise on 26 March 1982, and so did the Court of Appeal of Quebec in December 1986.

2.2 The author then took his case to the Supreme Court of Canada which, on 15 December 1988, decided that an obligation to use French only in outdoor advertising was unconstitutional and struck down several provisions of the Quebec Charter of the French Language (Charte de la langue française). The Quebec legislature, however, passed another legislative measure, Bill No. 178, on 22 December 1988, whose express ratio legis was to override the judgment handed down by the Supreme Court of Canada one week earlier. With this, the author contends, he has exhausted available remedies.

The complaint:

3. The author contends that Bill No. 101, as amended by Bill No. 178, is discriminatory, in that it restricts the use of English to indoor advertising and places businesses which carry out their activities in English in a disadvantageous position vis-à-vis French businesses.

Legislative provisions:

4.1 The relevant original provisions of the Charter of the French Language, (Bill No. 101, S.Q. 1977, C-5) have been modified several times. In essence, however, they have remained substantially the same. In 1977, Section 58 read as follows:

"Except as may be provided in this Act or the regulations of the Office de la langue française, signs and posters and commercial advertising shall be solely in the official language."

4.2 The original wording of Section 58 was replaced in 1983 by Section 1 of the Act to amend the Charter of the French Language (S.Q. 1983, C-56) which read:

"58. Public signs and posters and commercial advertising shall be solely in the official language.

"Notwithstanding the foregoing, in the cases and under the conditions or circumstances prescribed by regulation of the Office de la langue française, public signs and posters and commercial advertising may be both in French and another language or solely in another language..."

4.3 The initial language legislation was struck down by the Supreme Court in *La Chaussure Brown's Inc. et al. v. the Attorney General of Quebec* (1989) 90 N.R. 84. Following this, Section 58 of the Charter was amended by Section 1 of Bill No. 178. While certain modifications were made relating to signs and posters inside business premises, the compulsory use of French in signs and posters outside remained.

4.4 Section 58 of the Charter, as modified in 1989 by Section 1 of Bill No. 178, read:

"58. Public signs and posters and commercial advertising, outside or intended for the public outside, shall be solely in French. Similarly, public signs and posters and commercial advertising shall be solely in French,

"1. Inside commercial centres and their access ways, except inside the establishments located there;

"2. Inside any public means of transport and its access ways;

"3. Inside the establishments of business firms contemplated in Section 136;

"4. Inside the establishments of business firms employing fewer than fifty but more than five persons, where such firms share, with two or more other business firms, the use of a trademark, a firm name or an appellation by which they are known to the public.

"The Government may, however, by regulation, prescribe the terms and conditions according to which public signs and posters and public advertising may be both in French and in another language, under the conditions set forth in the second paragraph of Section 58.1, inside the establishments of business firms contemplated in subparagraphs 3 and 4 of the second paragraph.

"The Government may, in such regulation, establish categories of business firms, prescribe terms and conditions which vary according to the category and reinforce the conditions set forth in the second paragraph of Section 58.1."

4.5 Section 6 of Bill No. 178 modified Section 68 of the Charter, which read:

"68. Except as otherwise provided in this Section, only the French version of a firm name may be used in Quebec. A firm name may be accompanied with a version in another language for use outside Quebec. That version may be used together with the French version of the firm name in the inscriptions referred to in Section 51, if the products in question are offered both in and outside Quebec.

"In printed documents, and in the documents contemplated in Section 57 if they are both in French and in another language, a version of the French firm name in another language may be used in conjunction with the French firm name.

"When texts or documents are drawn up in a language other than French, the firm name may appear in the other language without its French version.

"On public signs and posters and in commercial advertising,

"1. A firm name may be accompanied with a version in another language, if they are both in French and in another language;

"2. A firm name may appear solely in its version in another language, if they are solely in a language other than French."

4.6 Section 10 of Bill No. 178 contained a so-called "notwithstanding" clause, which provided that:

"The provisions of Section 58 and of the first paragraph of Section 68, brought into effect under Sections 1 and 6 respectively of the present Bill, shall operate irrespective of the provisions of Section 2, paragraph (b), and Section 15 of the Constitutional Act of 1982 ... and shall apply notwithstanding articles 3 and 10 of the Charter of Human Rights and Freedoms."

4.7 Another "notwithstanding" provision is incorporated into Section 33 of the Canadian Charter of Human Rights and Freedoms, which reads:

"1. Parliament or the legislature of a province may expressly declare in an act of Parliament or of the legislature, as the case may be, that the Act or a provision thereof shall operate notwithstanding a provision included in Section 2 or Sections 7 to 15 of this Charter.

"2. An Act or a provision of an Act in respect of which a declaration made under this Section is in effect shall have such operation as it would have but for the provision of this Charter referred to in the declaration.

"3. A declaration made under subsection (1) shall cease to have effect five years later it comes into force or on such earlier date as may be specified in the declaration."4. Parliament or the legislature of a province may re-enact a declaration made under subsection (1).

"5. Subsection (3) applies in respect of a re-enactment made under subsection (4)."

The State party's information and observations:

5.1 The communication was transmitted to the State party under rule 91 of the Committee's rules of procedure on 5 August 1991. In its submission of 6 March 1992 (which also related to communications Nos. 359/1989 and 385/1989¹), the State party noted that a number of litigants had challenged the validity of Bill No. 178 before the Quebec courts, and that hearings on the issue before the Court of Quebec were held on 14 January 1992. The proceedings continued, and lawyers for the provincial government of Quebec were scheduled to present the point of view of Quebec on 23 and 24 March 1992.

5.2 The State party contended that Quebec's Code of Civil Procedure entitles the author to apply for a declaratory judgment that Bill No. 178 is invalid, and that this option is open to him regardless of whether criminal charges had been instituted against him or not. It argued that consistent with the well-established principle that effective domestic remedies must be exhausted before the jurisdiction

of an international body is engaged, Canadian courts should have an opportunity to rule on the validity of Bill No. 178, before the issue is considered by the Human Rights Committee.

5.3 The State party further argued that the "notwithstanding" clause in Section 33 of the Canadian Charter of Rights and Freedoms is compatible with Canada's obligations under the Covenant, in particular with article 4 and with the obligation, under article 2, to provide its citizens with judicial remedies. It explained that, firstly, extraordinary conditions limit the use of Section 33. Secondly, Section 33 is said to reflect a balance between the roles of elected representatives and courts in interpreting rights: "A system in which the judiciary is given full and final say on all issues of rights adversely impacts on a key tenet of democracy - that is, participation of citizens in a forum of elected and publicly accountable legislatures on questions of social and political justice.... The 'notwithstanding' clause provides a limited legislative counterweight in a system which otherwise gives judges final say over rights issues".

5.4 Lastly, the Government affirmed that the existence of Section 33 per se is not contrary to article 4 of the Covenant, and that the invocation of Section 33 does not necessarily amount to an impermissible derogation under the Covenant: "Canada's obligation is to ensure that Section 33 is never invoked in circumstances which are contrary to international law. The Supreme Court of Canada has itself stated that 'Canada's international human rights obligations should [govern] ... the interpretation of the content of the rights guaranteed by the Charter.'" Thus, a legislative override could never be invoked to permit acts clearly prohibited by international law. Accordingly, the legislative override in Section 33 was said to be compatible with the Covenant.^{5.5} The State party therefore requested the Committee to declare the communication inadmissible.

6.1 In his comments, the author contended that his case is against Bill No. 101 and not against Bill No. 178, and that it is based upon the State party's perceived violations of the provisions of the Constitution Act of Canada 1867, and not on the Constitution Act of 1982. He argued that any challenge of the contested legislation would be futile, in the light of the Quebec government's decision to override the Supreme Court's judgment of 15 December 1988 by enactment of Bill No. 178 a week later.

6.2 The author claimed that the "notwithstanding" clause of Section 33 of the Canadian Charter of Rights and Freedoms does not apply to this case, as he had been charged for violating the Charter of the French Language in 1978, before Section 33 took effect. In this context, he argued that no Canadian Government can abrogate or supplant freedoms that were in existence before the Charter came into being, and that under the Canadian tradition of civil liberties, rights may be extended but cannot be curtailed.

6.3 Finally, the author asserted that the "notwithstanding" clause of Section 33 is a negation of the rights enshrined in the Charter, as it allows (provincial) legislatures to "attack minorities and suspend their rights for a period of five years".

The Committee's admissibility decision:

7.1 During its 47th session and after the Committee had adopted its Views in respect of communications Nos. 359/1989 and 385/1989¹ in which similar issues were raised, the Committee

considered the admissibility of the communication. It disagreed with the State party's contention that there were still effective remedies available to the author. In this context, it noted that in spite of repeated legislative changes protecting the visage linguistique of Quebec, and despite the fact that some of the relevant statutory provisions had been declared unconstitutional successively by the Superior, Appeal and Supreme Courts, the only effect of this had been the replacement of these provisions by ones that are the same in substance as those they replaced, but reinforced by the "notwithstanding" clause of Section 10 of Bill No. 178.

7.2 As to whether a declaratory judgment declaring Bill No. 178 invalid would provide the author with an effective remedy, the Committee noted that such a judgment would leave the Charter of the French Language operative and intact, and that the legislature of Quebec could still override any such judgment by replacing the provisions struck down by others substantially the same and by invoking the "notwithstanding" clause of the Quebec Charter of Rights and Freedoms.

7.3 The Committee considered that the author had made a reasonable effort to substantiate his allegations, for purposes of admissibility. Although the author had specifically challenged only Bill No. 101, which was amended by Bill No. 178 in 1988, the Committee found that it was not precluded from examining the compatibility of both laws with the Covenant, as the central issue, language-based discrimination in commercial outdoor advertising, remained the same.

7.4 On 8 April 1993, therefore, the Committee declared the communication admissible.

The State party's information and observations on the admissibility and on the merits of the communication, and the author's comments thereon:

8.1 Under cover of a note, dated 4 May 1994, the State party forwards a submission from the Government of Quebec, dated 21 February 1994, in which it submits that the author claims before the Committee violations of rights enjoyed by his company "Allan Singer Limited". It notes that, under article 1 of the Optional Protocol to the Covenant and paragraph (a) of rule 90 of the Committee's rules of procedure, only individuals may submit a communication to the Human Rights Committee. With reference to the Committee's jurisprudence², the Government of Quebec submits that a company incorporated under Quebec legislation has no standing before the Committee.

8.2 With regard to the author's claim under article 26 of the Covenant, reference is made to the Committee's findings in communications Nos. 359/1989 (Ballantyne/Davidson v. Canada) and 385/1989 (McIntyre v. Canada); the Committee concluded that Sections 1 and 6 of Bill No. 178 were compatible with article 26 of the Covenant.

9.1 The Government of Quebec further refers to the information provided pursuant to the Committee's request for relevant measures taken in connection with the Committee's Views in communications Nos. 359/1989 and 385/1989. It points out that Sections 58 and 68 of the Charter of the French Language, on which the present communication is based, have been amended by Bill No. 86, entitled An Act to amend the Charter of the French Language (Loi modifiant la Charte de la langue française) (L.Q. 1993, c.40; projet de loi 86), which was adopted on 18 June 1993 and entered into force on 22 December 1993. Section 58 of the Charter of the French Language, as modified by Section 18 of Bill No. 86, now reads:

"58. Public signs and posters and commercial advertising must be in French.

"They may also be both in French and in another language provided that French is markedly predominant.

"However, the Government may determine by regulation, the places, cases, conditions or circumstances where public signs and posters and commercial advertising must be in French only, where French need not be predominant or where such signs, posters and advertising may be in another language only."

9.2 The Quebec Regulations on the language of commerce and business (Réglement sur la langue du commerce et des affaires) entered into force on 22 December 1993; the exceptions mentioned in the third paragraph of Section 58 are spelled out in Sections 15 to 25 of the Regulations. It is submitted that only in two well-defined situations, the commercial advertising of a firm must be exclusively in French³. Furthermore, Sections 17 to 21 cover situations in which public signs and posters and commercial advertising may be displayed both in French and in another language provided that French appears at least as prominently⁴. Finally, Sections 22 to 25 provide for situations in which public signs and commercial advertising may be exclusively in a language other than French⁵.

9.3 Section 68 of the Charter of the French Language, as modified by Section 22 of Bill No. 86, now reads:

"68. A firm name may be accompanied with a version in a language other than French provided that, when it is used, the French version of the firm name appears at least as prominently.

"However, in public signs and posters and commercial advertising, the use of a version of a firm name in a language other than French is permitted to the extent that the other language may be used in such signs and posters or in such advertising pursuant to Section 58 and the regulations enacted under that Section.

"In addition, in texts or documents drafted only in a language other than French, a firm name may appear in the other language only".

9.4 The Quebec authorities point out that under the current Act and the corresponding Regulations, public signs and posters and commercial advertising may be displayed either in French or either both in French and another language. They further submit that, contrary to the situation that prevailed under the previous legislation, Sections 58 and 68 of the Charter of the French Language, as modified by Bill No. 86, are not protected by a derogation clause and their constitutional validity may thus be challenged before the domestic courts. From the above, the authorities deduce that the issues raised by Mr. Singer have become moot, and that his case should therefore be dismissed.

10.1 In his reply dated 9 June 1994, the author submits that the question of whether he or his company have been the victim of violations of Covenant rights is irrelevant. He explains that, for many years, he was the main shareholder, with over ninety percent of the shares, and that two members of his family held the remaining shares.

10.2 With regard to Bill No. 178 and Bill No. 86, the author points out that they were both adopted after the Supreme Court of Canada had heard his case in December 1988, and had struck down several provisions of the Charter of the French Language; he argues that the Quebec legislature can repeal Bill No. 86 and reimpose Bill No. 178 at any time.

Review of admissibility and examination of the merits:

11.1 The Committee has taken note of the parties' comments, made subsequent to the decision on admissibility, in respect of the admissibility and the merits of the communication.

11.2 The State party has contended that the author is claiming violations of rights of his company, and that a company has no standing under article 1 of the Optional Protocol. The Committee notes that the Covenant rights which are at issue in the present communication, and in particular the right of freedom of expression, are by their nature inalienably linked to the person. The author has the freedom to impart information concerning his business in the language of his choice. The Committee therefore considers that the author himself, and not only his company, has been personally affected by the contested provisions of Bills Nos. 101 and 178.

11.3 The Committee appreciates the State party's information on the measures taken in respect of the Committee's Views in communications Nos. 359/1989 and 385/1989. It does not, however, share the State party's opinion that, since the law in question has been amended and now provides for the possibility to use either French or either both French and another language in outdoor advertising, Mr. Singer's claims have become moot. The Committee notes that the court proceedings referred to in the case were based on the Charter of the French Language in its version then in force (Bill No. 101). The Committee further notes that, after the Supreme Court of Canada had, in 1988, found in Mr. Singer's favour, the contested provisions of Bill No. 101 were amended by those of Bill No. 178. Notwithstanding, the use of French in outdoor advertising remained compulsory. This situation was at the basis of Mr. Singer's complaint to the Committee. That Bill No. 178 was amended by Bill No. 86 after the Committee adopted its Views on communications Nos. 359/1989 and 385/1989 does not retroactively render his communication inadmissible.

11.4 In the light of the above, the Committee sees no reason to review its decision on admissibility of 8 April 1993.

12.1 As to the merits of the case, the Committee observes that its observations on communications Nos. 359/1989 (*Ballantyne/Davidson v. Canada*) and 385/1989 (*McIntyre v. Canada*) apply, *mutatis mutandis*, to the case of Mr. Singer.

12.2 Concerning the question whether Section 58 of Bill No. 101, as amended by Bill No. 178, Section 1, violated Mr. Singer's right, under article 19 of the Covenant, to freedom of expression, the Committee, having concluded that a State party to the Covenant may choose one or more official languages, but that it may not exclude, outside the spheres of public life, the freedom to express oneself in a language of one's choice, finds that there has been a violation of article 19, paragraph 2. In the light of this finding, the Committee need not address any issues that may arise under article 26.

13. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Right, is of the view that the facts before it reveal a violation of article 19, paragraph 2, of the Covenant.

14. The Committee notes that the contested provisions of the Quebec Charter of the French Language were amended by Bill No. 86 in June 1993, and that under the current legislation Mr. Singer has the right, albeit under specified conditions and with two exceptions, to display commercial advertisements outside his store in English. The Committee observes that it has not been called upon to consider whether the Charter of the French Language in its current version is compatible with the provisions of the Covenant. In the circumstances, it concludes that the State party has provided Mr. Singer with an effective remedy.

Notes

*/ Made public by decision of the Human Rights Committee.

1/ Communications Nos. 359/1989 (Ballantyne/Davidson v. Canada) and 385/1989 (McIntyre v. Canada); Views adopted on 31 March 1993, during the Committee's 47th session.

2/ Communication No. 361/1989 (A publication and printing company v. Trinidad and Tobago), declared inadmissible on 14 July 1989, during the Committee's 36th session, paragraph 3.2.

3/ Section 15 of the Regulations prescribes that: "A firm's commercial advertising, displayed on billboards, on signs or posters or on any other medium having an area of 16 square metres or more and visible from any public highway ..., must be exclusively in French unless the advertising is displayed on the very premises of an establishment of the firm". Section 16 provides that: "A firm's commercial advertising on or in any public means of transportation and on or in the accesses thereto, including bus shelters, must be exclusively in French".

4/ Section 17 relates to public signs and posters displayed on or in a vehicle regularly used to transport passengers or merchandise, both in and outside Quebec. Section 18 relates to public signs and posters concerning health or public safety. Section 19 relates to public signs and posters on the premises of a museum, botanical garden, zoo or cultural or scientific exhibition. Section 20 relates to an event intended for an international public or an event in which the majority of participants come from outside Quebec. Section 21 concerns the directions for the use of a device permanently installed in a public place.

5/ Section 22 states that: "Unless the vehicle used is a news medium which publishes or broadcasts in French, public signs and posters and commercial advertising concerning a cultural or educational product ..., a cultural or educational activity ..., or a news medium, may be exclusively in a language other than French, provide that the content of the cultural or educational product is in that other language, the activity is held in that other language or the news medium publishes or broadcasts in that other language, as the case may be". Section 23 states that: "Public signs and posters displayed by a natural person for non- professional and non-commercial purposes may be in the language of the person's choice". Section 24 provides that: "Public signs and posters and commercial advertising

concerning a convention, conference, fair or exhibition intended solely for a specialized or limited public may, during the event, be exclusively in a language other than French". Section 25 states that: "On public signs and posters and in commercial advertising, the following may appear exclusively in a language other than French: "1. the firm name of a firm established exclusively outside Quebec; "2. a name of origin, the denomination of an exotic product or foreign speciality, a heraldic motto or any other non-commercial motto; "3. a place name ..., a family name, a given name or the name of a personality or character or a distinctive name of a cultural nature; and "4. a recognized trade mark ..., unless a French version has been registered".

[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.]