

HUMAN RIGHTS COMMITTEE

Gauthier v. Canada

Communication N° 633/1995

7 April 1999

CCPR/C/65/D/633/1995

VIEWS

Submitted by: Robert W. Gauthier

Alleged victim: The author

State party: Canada

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

Meeting on 7 April 1999,

Having concluded its consideration of communication No.633/1995 submitted to the Human Rights Committee by Mr. Robert W. Gauthier 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 the following:

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

1. The author of the communication is Robert G. Gauthier, a Canadian citizen. He claims to be a victim of a violation by Canada of article 19 of the Covenant.

The facts as presented by the author

2.1 The author is publisher of the National Capital News, a newspaper founded in 1982. The author applied for membership in the Parliamentary Press Gallery, a private association that

administers the accreditation for access to the precincts of Parliament. He was provided with a temporary pass that gave only limited privileges. Repeated requests for equal access on the same terms as other reporters and publishers were denied.

2.2 The author points out that a temporary pass does not provide the same access as a permanent membership, since it denies inter alia listing on the membership roster of the Press Gallery, as well as access to a mailbox for the receipt of press communiques.

2.3 As regards the exhaustion of domestic remedies, the author explains that he has filed numerous requests, not only with the Press Gallery, but also with the Speaker of the House, all to no avail. According to the author, no reasons have been given for denying him full access. The author applied to the Federal Court for a review of the decision of the Press Gallery, but the Court decided that it did not have jurisdiction over decisions of the Press Gallery since it is not a department of the Government of Canada. A complaint filed with the Bureau of Competition Policy, arguing that the exclusion of the National Capital News from equal access constituted unfair competition was dismissed.

2.4 The author then initiated an action in the Provincial Court against the Speaker of the House of Commons, requesting a declaration by the court that the denial of access to the precincts of Parliament on the same terms as members of the Canadian Parliamentary Press Gallery infringed the author's right to freedom of the press as provided in the Canadian Charter of Rights and Freedoms. The Court ruled, on 30 November 1994, that the decision of the Speaker not to permit the author to have access to the facilities in the House of Commons that are used by members of the Press Gallery was made in the exercise of a parliamentary privilege and therefore not subject to the charter or to review by the Court.

2.5 The author points out that he has been trying to obtain equal access to press facilities in Parliament since 1982, and he argues therefore that the application of domestic remedies is unreasonably prolonged, within the meaning of article 5, paragraph 2(b), of the Optional Protocol. He also expresses doubts about the effectiveness of the appeal.

The complaint

3. The author claims that the denial of equal access to press facilities in Parliament constitutes a violation of his rights under article 19 of the Covenant.

State party's observations

4.1 By submission of 28 November 1995, the State party argues that the communication is inadmissible.

4.2 The State party recalls that the author runs an Ottawa based publication, the National Capital News, which is issued with varying degrees of regularity.

4.3 The Canadian Parliamentary Press Gallery is a private, independent, voluntary association formed for the purpose of bringing together media professionals whose principal

occupation is the reporting, interpreting and editing of news about Parliament and the federal Government.

4.4 The Speaker of the House of Commons is the guardian of the rights and privileges of the House and its members, and as such, by virtue of parliamentary privilege, has exclusive control over those parts of the Parliamentary precincts occupied by the House of Commons. One of his responsibilities in this regard is controlling access to these areas.

4.5 The State party explains that all Canadian citizens enjoy access to Parliament, which is obtained by means of a pass, of which there are different types. The press pass provides access to the media facilities of Parliament and is issued automatically to accredited members of the Press Gallery.

4.6 The State party explains that there is no formal, official or legal relationship between the Speaker and the Press Gallery. The Press Gallery has been accommodated by the Speaker by maintaining the media facilities of Parliament, such as working space, telephones, access to the Library and Restaurant and the provision of designated seating in the public galleries. The Speaker has no involvement with the day-to-day operations of these facilities, which are independently run by the Press Gallery.

4.7 The State party points out that most of the Press Gallery's facilities are located off Parliament Hill and thus outside the Parliament's precincts. The State party also notes that live television coverage of all proceedings in the House of Commons is available throughout Canada and many journalists thus seldom actually use the media facilities of Parliament.

4.8 The Press Gallery knows several categories of membership, the most relevant being the active and temporary membership. Active membership allows access to all media facilities of Parliament for as long as the member meets the criteria, that is for as long as he or she works for a regularly published newspaper and requires access to the media facilities as part of his or her primary occupation of reporting Parliamentary or federal Government news. To those who do not meet these criteria the Press Gallery grants temporary membership which is granted for a defined period and provides access to substantially all of the media facilities of Parliament, except for access to the Parliamentary Restaurant.

4.9 According to the State party, the author has applied several times for membership in the Press Gallery since founding the National Capital News in 1982. His requests for active membership have not been granted, because the Gallery has been unable to ascertain whether he satisfies the criteria. Temporary membership was given to him instead, which was renewed on several occasions. In this context, the State party points out that the author has been uncooperative in providing the Press Gallery information about the regularity of his newspaper. Without such information necessary to see whether the author fulfils the criteria for active membership, the Gallery cannot admit him as a full member.

4.10 The author has requested that the Speaker of the House of Commons intervene on his behalf. The position of the Speaker's office being one of strict non-interference with Press Gallery matters, the Speaker declined to intervene. The State party emphasizes that at all

times the author has enjoyed access to the precincts of Parliament, and access to the media facilities of Parliament during the periods of time when he had a temporary membership card of the Press Gallery.

4.11 The State party submits that the author has instituted several proceedings against the refusal of the Press Gallery to grant him active membership. In 1989, he filed a complaint with the Bureau of Competition Policy, which concluded that the Competition Act had not been contravened. In October 1991, the author's application for judicial review of this decision was denied by the Federal Court since the decision was not reviewable. In 1990, the Federal Court dismissed an application by the author for judicial review of the Press Gallery's decision not to grant him active membership, since the Court lacked jurisdiction.

4.12 An action against the Press Gallery in the Ontario Court (General Division) is still pending. In this action, the author seeks damages of \$ 5 million.

4.13 On 30 November 1994, the Ontario Court (General Division) struck out the action brought by the author against the Speaker of the House of Commons, in which he sought a declaration that "the denial of access to the precincts of Parliament on the same terms as members of the Canadian Parliamentary Press Gallery" infringed his right to freedom of the press as guaranteed in the Canadian Charter of Rights and Freedoms. The Court based itself on jurisprudence that the exercise of inherent privileges of a Canadian legislative body is not subject to Charter review. The author has filed a Notice of Appeal against this decision with the Ontario Court of Appeal, but has not as yet filed the required documentation in proper form.

4.14 The State party argues that the communication is inadmissible for non-exhaustion of domestic remedies. The State party notes that the focus of the author's communication, against the Speaker of the House of Commons, is misdirected since the Speaker's policy has been to administer access to the media facilities of Parliament based on the Press Gallery's determinations regarding membership. Determination of membership is entirely within the jurisdiction of the Press Gallery and lies outside the competence of the Speaker. According to the State party, the suggestion that the Speaker should override the Press Gallery's internal affairs would undermine freedom of the press. Since the source of the author's complaint is the Press Gallery's refusal to grant him active membership, the State party is of the opinion that the author has failed to exhaust the remedies available to him in this regard.

4.15 The State party submits that the author's failure to cooperate with the Press Gallery constitutes a clear failure to exhaust remedies available to him domestically. The State party further notes that legal proceedings against the Press Gallery are still ongoing in the Ontario Court (General Division) and that the author's appeal against the order of the Ontario Court (General Division) striking out his action against the Speaker of the House of Commons remains unresolved, pending his satisfaction of procedural requirements.

4.16 Moreover, the State party argues that the communication is inadmissible for failure to substantiate the allegation that the failure to grant the author full membership of the Press Gallery amounts to a denial of his rights under article 19 of the Covenant. In this context,

the State party recalls that the author has never been denied access to the Parliamentary precincts, and that he has had access to the media facilities of Parliament whenever he was in possession of a temporary press pass. The author has not shown any instance in which he has been frustrated in his ability to gain access to or disseminate information about Parliament.

The author's comments on the State party's submission

5.1 In a submission, dated 17 January 1996, the author informs the Committee that he has been prohibited access to the media facilities in Parliament (since he has no press pass). The author explains that while the visitors gallery is open to him, it is of little value to a professional journalist as one is not allowed to take notes when seated in the visitors gallery.

5.2 The author further states that the Press Gallery has obtained a Court order, dated 8 January 1996, that prohibits him from entering its premises. The author acknowledges that these premises are located off Parliament Hill, but states that the Government press releases and other material provided in the Press Gallery's premises are funded by the taxpayers of Canada and form part of the facilities and services provided by the Government for the media.

6.1 In his comments on the State party's submission, dated 5 February 1996, the author contends that the State party's reply consists of false or incomplete information and numerous misleading statements.

6.2 He submits that although no powers or authority have been legally transferred from Parliament or the Government of Canada to the Canadian parliamentary Press Gallery, the Gallery assumes powers to permit or deny access to the facilities and services provided by the Parliament and Government of Canada to the media. The author states that his numerous requests for access were presented to the Press Gallery without success, and that he made repeated applications to the Administrative Officials within the Parliament for access to the media facilities, also without success. His attempts to have the matter remedied by the Courts have also been unsuccessful.

6.3 The author submits that he has been trying to have a solution to his denial of access to the media facilities since 1982, when he founded his newspaper, and argues that the application of domestic remedies should be considered as unreasonably prolonged. In this context, the author points to "the history of deliberate and contrived delays, failure to reply to or even acknowledge reasonable requests for information and assistance, and the evidence that these delays will continue".

6.4 In addition, the author states that the possibility of achieving an effective remedy in Canada within the foreseeable future does not exist. In this context, he notes that the measures to prevent him from exercising his profession have only increased in the recent past, as is shown by the notice denying him access to the Press Gallery premises, the conviction against him for trespassing on the premises of the Press Gallery, the conviction against him for trespassing on Parliament Hill, and the Court order prohibiting him access

to the premises of the Press Gallery, that is to the "publicly subsidized facilities and services provided by the Government of Canada for the media".

6.5 The author also states that "the Canadian Parliamentary Press Gallery, while maintaining that it is bending over backwards to allow access to the facilities and services provided for the media by the Government of Canada continues to enforce the Court-ordered injunction prohibiting access for the Publisher of the National Capital News to any of these public facilities and services - now in addition to being denied access to information the author is also under the threat of contempt of Court should he attempt to even seek equal access as his competitors enjoy to information specifically and purposely provided for the media, domestic and foreign, by the Government and Parliament of Canada."

6.6 The author complains about the ridicule and trivializing to which he has been subjected. He refers to a Federal Court Justice who compared the author with "Don Quixote, tilting at windmills", a Provincial Court Justice who commented to him: "You seem to take offence at every slight", as well as the State party's reply to the Human Rights Committee, which according to him trivializes the matter brought before the Committee. In his opinion, this shows that he will never be able to obtain an effective remedy in Canada.

6.7 The author contests the State party's statement that live television coverage of all the activities in the House of Commons is available.

6.8 The author takes issue with the State party's suggestion that his conflict is with a private organization. He states that his complaint is that he has been denied access to the facilities and services provided for the media by the Parliament and Government of Canada, by Canadian officials and Courts. He adds that "the pretext that such access requires membership in conjunction with a group of self-anointed journalists calling themselves the Canadian Parliamentary Press Gallery is not material to this issue for the purposes of article 19(2) of the Covenant". He points out that the Press Gallery has been incorporated in 1987 in order to limit the personal liability of its members, and that in practice it controls access to the media facilities provided by Canada. However, in the author's opinion he is under no obligation to meet prior conditions established by the Press Gallery that limit his freedom of expression. The author also submits that the media facilities in Parliament are staffed by government employees and that the office equipment is owned by the government.

6.9 The author states that he publishes The National Capital News "with a regularity more than appropriate to satisfy the definition of what constitutes newspapers"¹. He claims that no proper application procedure for membership of the Gallery exists and that access is granted or withheld at whim. According to the author, the Press Gallery at no time seriously considered his application and did not review the information he provided. In this context, he claims that a list of the dates of publication of his newspapers was withheld from the members of the Press Gallery. He contests the State party's assertion that he failed to cooperate with the Press Gallery. He further claims that the Speaker of the House of Commons can intervene in situations involving journalists and has done so in the past.

6.10 Further, the author states that he was given daily passes in 1982-83, which were later

converted to weekly and then monthly passes. Only in 1990 was he granted a six month temporary membership. He states that he returned the temporary membership since it did not grant him equal access. The author states that temporary membership denied him the right to vote, to ask questions at press conferences, to have a mail slot for receiving all the information available to active members and a listing on the membership list. According to the author, as a result "there was no assurance that all the information would be provided to the author and any information that was sent individually by people to whom the membership list was circulated would not include the author".

6.11 The author states that on 4 January 1996, the Ontario Court dismissed his action against the Press Gallery. The author states that he will be appealing the judgment, but that the proceedings are unreasonably prolonged and thus no obstacle to the admissibility of his communication. Moreover, he states that his communication is directed against the State party, and that his action against the Press Gallery can thus not be a remedy to be exhausted for purposes of the Optional Protocol. The author adds that he has discontinued his appeal against the 30 November 1994 judgment of the Ontario Court concerning his claim against the Speaker of the House of Commons, since it is accurate that the Courts have no jurisdiction over Parliament.

6.12 As regards the State party's assertion that he has not made a prima facie case, the author states that the State party has prohibited him access to the premises of the Press Gallery in the Parliament Buildings, and that it has not intervened to allow access for the author to the Press Gallery premises outside the precincts of Parliament. According to the author it is evident that the State party "has no desire or intention to respect its responsibilities and obligations to abide by article 19(2)".

Further State party's submission

7.1 By submission of 25 October 1996, the State party provides some clarifications and acknowledges that the author was denied access to the Parliamentary precincts from 25 July 1995 until 4 August 1995, following an incident on 25 July after which he was charged with trespass for attempting to enter the Press Gallery in Parliament. He was convicted for trespassing on 26 April 1996 and on 9 July 1996 his appeal was dismissed.

7.2 The State party explains that although the author has access to the Parliamentary buildings, he does not have access to the premises of the Press Gallery located in the buildings of Parliament. However, there is no Court order prohibiting him this access; the Court order only relates to the premises of the Press Gallery located off Parliament Hill.

7.3 The State party provides a copy of the judgment by the Ontario Court (General Division) of 4 January 1996, in which it was decided that there was no genuine issue for trial in the author's action against the Press Gallery. The judge found, on the basis of uncontradicted affidavit evidence, that the privileges (access to the media facilities in Parliament) the author was seeking were administered by the Speaker of the House of Commons, not by the Press Gallery. As regards the issue of denial of membership, the Judge found that the Press Gallery had not failed to accord the author natural justice. The Judge noted that the author had been

given temporary membership on a number of occasions and that his failure to obtain active membership was attributable to his refusal to answer questions posed to him by the Board of Directors of the Press Gallery for the purposes of determining whether or not he fulfilled the requirements for active membership.

7.4 The State party reiterates that the author's failure to gain access to the Parliamentary Press Gallery is directly attributable to his failure to cooperate with the Press Gallery in the pursuit of his application for active membership. According to the State party, he has thus failed to exhaust the simplest and most direct domestic remedy available to him. The State party adds that the Speaker of the House of Commons has "good reason to expect individuals to follow the normal channels for obtaining access to the Parliamentary Press Gallery premises located on the Parliamentary precincts. In order to make access to Parliamentary precincts meaningful, the Speaker needs to ensure that access to any location on the precincts is controlled. For this purpose, in the particular case of the Parliamentary Press Gallery premises located in the Parliamentary precincts, the Speaker has chosen, as a matter of practice, to condition such access on membership of the Canadian Press Gallery." The State party submits that the Speaker's practice is reasonable and appropriate and consistent with the freedom of expression and of the press.

Author's further comments

8.1 In his comments on the State party's further submission, the author complains about the delays the State party is causing and submits that his complaint is well-founded and has merit, particularly in the light of the State party's demonstrated practice and intention to prolong a domestic resolution.

8.2 The author reiterates that the Government of Canada prevents him to seek and receive information and observe proceedings on behalf of his readers, and prohibits his access to facilities and services provided for the media. He emphasizes that favoured journalists benefit from special privileges, among others free phones, services of a Government staff of nine, access to Press Conferences, office space, access to press releases and to information about the itineraries of public officials, parking, access to the Library of Parliament.

8.3 The author submits that the Court has ruled that he cannot obtain the privileges he wants from the Press Gallery, since they fall under the control of the Speaker of the House of Commons. At the same time, the Speaker refuses to intervene in what he sees as internal matters of the Press Gallery. The author states that he tried to comply with the Press Gallery's requirements. He states that in one year he published an average of three issues a month., but that there is no appeal available against their decisions. He contests that the temporary pass does not restrict the freedom of expression, as it denied full access to all facilities and services provided for the press.

8.4 The author acknowledges that the Press Gallery may have some merit in screening applicants who request access to the facilities and services provided for the media, but argues that there should be a recourse available of any decision that is unfair or in violation of fundamental human rights. He states that Canada clearly is unwilling to provide such a

recourse, as shown by the refusals of the Speaker of the House to address the matter as well as by its reply to the Committee, and argues that all available and effective domestic remedies have thus been exhausted.

The Committee's decision on admissibility

9.1 At its 60th session, the Committee considered the admissibility of the communication.

9.2 The Committee noted that the State party had argued that the communication was inadmissible for failure to exhaust domestic remedies. The Committee carefully examined the remedies listed by the State party and came to the conclusion that no effective remedies were available to the author. In this context, the Committee noted that it appeared from the Court decisions in the case that the access the author was seeking, fell within the competence of the Speaker of the House of Commons, and that decisions of the Speaker in this matter were not reviewable by the Courts. The State party's argument that the author could find a solution by cooperating in the determination of his qualifications for membership in the Canadian Parliamentary Press Gallery did not address the issue raised by the author's communication, whether or not the limitation of access to the press facilities in Parliament to members of the Press Gallery violated his right under article 19 of the Covenant.

9.3 The State party had further argued that the author had failed to present a prima facie case and that the communication was thus inadmissible for non-substantiation of a violation. The Committee noted that it appeared from the information before it that the author had been denied access to the press facilities of Parliament, because he was not a member of the Canadian Parliamentary Press Gallery. The Committee further noted that without such access, the author was not allowed to take notes during debates in Parliament. The Committee found that this might raise an issue under article 19, paragraph 2, of the Covenant, which should be considered on its merits.

9.4 The Committee further considered that the question whether the State party can require membership in a private organization as a condition for the enjoyment of the freedom to seek and receive information, should be examined on its merits, as it might raise issues not only under article 19, but also under articles 22 and 26 of the Covenant.

10. Accordingly, on 10 July 1997, the Human Rights Committee decided that the communication was admissible.

State party's submission on the merits

11.1 By submission of 14 July 1998, the State party provides a response on the merits of the communication. It reiterates its earlier observations and explains that the Speaker of the House of Commons, by virtue of Parliamentary privilege, has control of the accommodation and services in those parts of the Parliamentary precincts that are occupied by or on behalf of the House of Commons. One of the Speaker's duties in this regard is controlling access to these areas. The State party emphasizes that the absolute authority of Parliament over its own proceedings is a crucial and fundamental principle of Canada's general constitutional

framework.

11.2 With regard to the relationship between the Speaker and the Press Gallery, the State party explains that this relationship is not formal, official or legal. While the Speaker has ultimate authority over the physical access to the media facilities in Parliament, he is not involved in the general operations of these facilities which are administered and run entirely by the Press Gallery.

11.3 Press passes granting access to the media facilities of Parliament are issued to Gallery members only. The State party reiterates that the determination of membership in the Press Gallery is an internal matter and that the Speaker has always taken a position of strict non-interference. It submits that as a member of the public, the author has access to the Parliament buildings open to the public and that he can attend the public hearings of the House of Commons.

11.4 In this connection, the State party reiterates that the proceedings of the House of Commons are broadcasted on television and that any journalist can report effectively on the proceedings in the House of Commons without using the media facilities of Parliament. The State party adds that the transcripts of the House debates can be found on Internet the following day. Speeches and press releases of the Prime Minister are deposited in a lobby open to the public, and are also posted on Internet. Government reports and press releases are likewise posted on Internet.

11.5 The State party argues that the author has not been deprived of his freedom to receive and impart information. Although as a member of the public, he may not take notes while sitting in the Public Gallery of the House of Commons, he may observe the proceedings in the House and report on them. The State party explains that "Note-taking has traditionally been prohibited in the public galleries of the House of Commons as a matter of order and decorum and for security reasons (e.g. the throwing of objects at the members of Parliament from the gallery above)". Moreover, the information he seeks is available through live broadcasting and Internet.

11.6 Alternatively, the State party argues that any restriction on the author's ability to receive and impart information that may result from the prohibition on note-taking in the public gallery in the House of Commons is minimal and is justified to achieve a balance between the right to freedom of expression and the need to ensure both the effective and dignified operation of Parliament and the safety and security of its members. According to the State party, states should be accorded a broad flexibility in determining issues of effective governance and security since they are in the best position to assess the risks and needs.

11.7 The State party also denies that a violation of article 26 has occurred in the author's case. The State party acknowledges that a difference in treatment exists between journalists who are members of the Press Gallery and those who do not satisfy the criteria for membership, but submits that this has not lead to any significant disadvantage for the author. The State party also refers to the Committee's jurisprudence that not every differentiation can be deemed to be discriminatory and submits that the distinction made is compatible with

the provisions of the Covenant and based on objective criteria. In this context, the State party emphasizes that access to press facilities in Parliament must necessarily be limited since the facilities can only accommodate a limited number of people. It is reasonable to limit such access to journalists who report regularly on the proceedings in Parliament. The Speaker is aware of the criteria for membership in the Press Gallery and relies on these criteria as an appropriate standard for determining who should or should not have access to the media facilities of Parliament. It is submitted that these criteria, which the Speaker has by implication adopted and endorsed, are specific, fair and reasonable, and cannot be deemed arbitrary or unreasonable.

11.8 With regard to article 22 of the Covenant, the State party observes that the author is not being forced by the Government to join any association. He is free not to associate with the Press Gallery, nor is his ability to practice the profession of journalism conditioned in any way upon his membership of the Press Gallery.

The author's comments on the State party's submission

12.1 In his comments, dated 25 September 1998, the author refers to his earlier submissions. He emphasizes that he is without remedy because of the refusal of the Speaker to intervene on his behalf and to grant him access to the press facilities or even hear him. The author emphasizes that no powers have been transferred from the Speaker to the Press Gallery, nor has the Speaker the authority to delegate his responsibilities to an individual group without accountability to the Members of Parliament. According to the author, the Parliamentary privileges are of no force or effect when they infringe fundamental rights such as those contained in the Covenant. The author argues that the State party is allowing a private organization to restrict access to news and information.

12.2 The author also gives examples of how Speakers have intervened in the past and given access to the media facilities in Parliament to individual journalists who had been denied membership by the Press Gallery. He rejects the State party's argument that the Speaker would be interfering with the freedom of the press if he were to intervene, on the contrary, he argues that the Speaker has a duty to intervene in order to protect the freedom of expression.

12.3 The author reiterates that as a journalist he requires equal access to the media facilities of Parliament. The author refers to the 1992 Annual Meeting of the Press Gallery, during which members stated that they had a fundamental right to be at the Parliament facilities in order to have access to information.. He states that, although it can be seen as reasonable for the Speaker to have the accreditation of journalists handled by the staff assigned to the Press Gallery, things got out of control and the Press Gallery began using favouritism on the one hand and coercion and blackmail on the other, and as a result the author was denied access and has no recourse. He emphasizes that he meets all the requirements for accreditation. In any event, he argues that the Gallery's by-laws can never affect his fundamental rights under article 19, paragraph 2, to have access to information. He adds that the Gallery's by-laws are arbitrary, inconsistent, tyrannical and in violation not only of the Covenant but also of the State party's own constitution. The author submits that if a group of journalists wishes to

form their own association, they should feel free to do so. This private, voluntary organization should in no way be given authority or supervision over any publicly-financed activities and services as it has today, especially since no possibility of appeal from its decisions is provided. He rejects membership in this association as a prerequisite to enjoying his fundamental right to freedom of expression and submits that he should not be forced to belong to the Press Gallery in order to receive information that is made available by the House of Commons.

12.4 With regard to the State party's argument that live coverage of all proceedings in the House of Commons is available, the author submits that the Cable Public Affairs Channel which broadcasts the House of Commons proceedings, is a news service in competition with the author. He states that it is of very little use as a journalist, since one has to watch whatever they decide to broadcast. The author moreover contests that live coverage of all proceedings in the House of Commons is available, since very often debates are broadcasted as replays, and most Committee meetings are not televised. The author also argues that there is much more to reporting on the activities of Parliament than observe the sessions that take place in the House of Commons. In addition, being recognized in the eyes of the Government community as part of the accepted media is essential to the process of networking within that community. The author therefore maintains that the restrictions by not having access to the media facilities in Parliament seriously impede if not render impossible his ability to seek and obtain information about the activities of the Parliament and Government of Canada.

12.5 The author rejects the State party's argument that his being allowed to do his work along with the other 300 accredited journalists would encroach on the effective and dignified operation of Parliament and the safety and security of its members. With regard to article 26 of the Covenant, the author denies that the difference in treatment between him and journalists members of the Press Gallery is reasonable and reiterates that he has been arbitrarily denied equal access to media facilities. Although he accepts that the State party may limit access to press facilities in Parliament, he submits that such limits must not be unduly restraining, must be administered fairly, must not infringe on any person's right to freedom of expression and the right to seek and receive information, and must be subject to review. According to the author, the absence of an avenue of appeal of a decision by the Press Gallery constitutes a violation of equal protection of the law. The author does not accept that limited space means that he cannot be allowed to use the press facilities, since other new journalists have been admitted and since there would be other possibilities of solving this, such as limiting the number of accredited journalists who work for the same news organization².

12.6 Finally, the author submits that the exclusion from access to essential services and facilities provided by the House of Commons for the press of those journalists who are not a member of the Canadian Press Gallery constitutes a violation of the right to freedom of association, since no one should be forced to join an association in order to enjoy a fundamental right such as freedom to obtain information.

Committee's examination of the merits

13.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol.

13.2 With regard to the author's claims under articles 22 and 26 of the Covenant, the Committee has reviewed, under article 93 (4) of its Rules of Procedure, its decision of admissibility taken at its 60th session and considers that the author had not substantiated, for purposes of admissibility, his claim under the said articles. Nor has he further substantiated it, for the same purposes, with his further submissions. In these circumstances, the Committee concludes that the author's communication is inadmissible under article 2 of the Optional Protocol, as far as it relates to articles 22 and 26 of the Covenant. In this regard, the admissibility decision is therefore repealed.

13.3 The issue before the Committee is thus whether the restriction of the author's access to the press facilities in Parliament amounts to a violation of his right under article 19 of the Covenant, to seek, receive and impart information.

13.4 In this connection, the Committee also refers to the right to take part in the conduct of public affairs, as laid down in article 25 of the Covenant, and in particular to General Comment No. 25 (57) which reads in part: "In order to ensure the full enjoyment of rights protected by article 25, the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion."³ Read together with article 19, this implies that citizens, in particular through the media, should have wide access to information and the opportunity to disseminate information and opinions about the activities of elected bodies and their members. The Committee recognizes, however, that such access should not interfere with or obstruct the carrying out of the functions of elected bodies, and that a State party is thus entitled to limit access. However, any restrictions imposed by the State party must be compatible with the provisions of the Covenant.

13.5 In the present case, the State party has restricted the right to enjoy the publicly funded media facilities of Parliament, including the right to take notes when observing meetings of Parliament, to those media representatives who are members of a private organisation, the Canadian Press Gallery. The author has been denied active (i.e. full) membership of the Press Gallery. On occasion he has held temporary membership which has given him access to some but not all facilities of the organisation. When he does not hold at least temporary membership he does not have access to the media facilities nor can he take notes of Parliamentary proceedings. The Committee notes that the State party has claimed that the author does not suffer any significant disadvantage because of technological advances which make information about Parliamentary proceedings readily available to the public. The State party argues that he can report on proceedings by relying on broadcasting services, or by observing the proceedings. In view of the importance of access to information about the democratic process, however, the Committee does not accept the State party's argument and is of the opinion that the author's exclusion constitutes a restriction of his right guaranteed under paragraph 2 of article 19 to have access to information. The question is whether or not

this restriction is justified under paragraph 3 of article 19. The restriction is, arguably, imposed by law, in that the exclusion of persons from the precinct of Parliament or any part thereof, under the authority of the Speaker, follows from the law of parliamentary privilege.

13.6 The State party argues that the restrictions are justified to achieve a balance between the right to freedom of expression and the need to ensure both the effective and dignified operation of Parliament and the safety and security of its members, and that the State party is in the best position to assess the risks and needs involved. As indicated above, the Committee agrees that the protection of Parliamentary procedure can be seen as a legitimate goal of public order and an accreditation system can thus be a justified means of achieving this goal. However, since the accreditation system operates as a restriction of article 19 rights, its operation and application must be shown as necessary and proportionate to the goal in question and not arbitrary. The Committee does not accept that this is a matter exclusively for the State to determine. The relevant criteria for the accreditation scheme should be specific, fair and reasonable, and their application should be transparent. In the instant case, the State party has allowed a private organization to control access to the Parliamentary press facilities, without intervention. The scheme does not ensure that there will be no arbitrary exclusion from access to the Parliamentary media facilities. In the circumstances, the Committee is of the opinion that the accreditation system has not been shown to be a necessary and proportionate restriction of rights within the meaning of article 19, paragraph 3, of the Covenant, in order to ensure the effective operation of Parliament and the safety of its members. The denial of access to the author to the press facilities of Parliament for not being a member of the Canadian Press Gallery Association constitutes therefore a violation of article 19 (2) of the Covenant.

13.7 In this connection, the Committee notes that there is no possibility of recourse, either to the Courts or to Parliament, to determine the legality of the exclusion or its necessity for the purposes spelled out in article 19 of the Covenant. The Committee recalls that under article 2, paragraph 3 of the Covenant, States parties have undertaken to ensure that any person whose rights are violated shall have an effective remedy, and that any person claiming such a remedy shall have his right thereto determined by competent authorities. Accordingly, whenever a right recognized by the Covenant is affected by the action of a State agent there must be a procedure established by the State allowing the person whose right has been affected to claim before a competent body that there has been a violation of his rights.

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

15. Under article 2, paragraph 3(a), of the Covenant, the State party is under the obligation to provide Mr. Gauthier with an effective remedy including an independent review of his application to have access to the press facilities in Parliament. The State party is under an obligation to take measures to prevent similar violations in the future.

16. Bearing in mind that, by becoming a State party to the Optional Protocol, the State party

has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within ninety days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the Committee's Views.

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra N. Bhagwati, Ms. Christine Chanet, Lord Colville, Ms. Elizabeth Evatt, Ms. Pilar Gaitán de Pombo, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Rajsoomer Lallah, Ms. Cecilia Medina Quiroga, Mr. Fausto Pocar, Mr. Martin Scheinin, Mr. Hipólito Solari Yrigoyen, Mr. Roman Wieruszewski, and Mr. Abdallah Zakhia.

** Pursuant to rule 85 of the Committee's rules of procedure, Mr. Maxwell Yalden did not participate in the examination of the case.

*** The text of four individual opinions signed by seven Committee members is appended to the present document.

1/ From the 26 October 1992 issue of the National Capital News, provided by the author, it appears that the newspaper was "founded in 1982 to become a daily newspaper".

2/ The author refers to the State-owned CBC, which according to him has 105 members in the Press Gallery.

3/ General comment No. 25, paragraph 25, adopted by the Committee on 12 July 1996.

[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.]

Appendix

Individual opinion by members Lord Colville, Elizabeth Evatt, Ms. Cecilia Medina Quiroga and Mr. Hipólito Solari Yrigoyen (partly dissenting)

In regard to paragraph 13.2 of the Committee's Views, our opinion is that the claims of the author under articles 22 and 26 of the Covenant have been sufficiently substantiated and that

there is no basis to revise the decision on admissibility.

Article 26 of the Covenant stipulates that all persons are equal before the law. Equality implies that the application of laws and regulations as well as administrative decisions by Government officials should not be arbitrary but should be based on clear coherent grounds, ensuring equality of treatment. To deny the author, who is a journalist and seeks to report on parliamentary proceedings, access to the Parliamentary press facilities without specifically identifying the reasons, was arbitrary. Furthermore, there was no procedure for review. In the circumstances, we are of the opinion that the principle of equality before the law protected by article 26 of the Covenant was violated in the author's case.

In regard to article 22, the author's claim is that requiring membership in the Press Gallery Association as a condition of access to the Parliamentary press facilities violated his rights under article 22. The right to freedom of association implies that in general no one may be forced by the State to join an association. When membership of an association is a requirement to engage in a particular profession or calling, or when sanctions exist on the failure to be a member of an association, the State party should be called on to show that compulsory membership is necessary in a democratic society in pursuit of an interest authorised by the Covenant. In this matter, the Committee's deliberations in paragraph 13.6 of the Views make it clear that the State party has failed to show that the requirement to be a member of a particular organisation is a necessary restriction under paragraph 2 of article 22 in order to limit access to the press gallery in Parliament for the purposes mentioned. The restrictions imposed on the author are therefore in violation of article 22 of the Covenant.

Lord Colville [signed]

Ms. Elizabeth Evatt [signed]

Ms. Cecilia Medina Quiroga [signed]

Mr. Hipólito Solari Yrigoyen [signed]

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

Individual opinion by Committee member Prafullachandra N. Bhagwati
(partly dissenting)

In regard to paragraph 13.2 of the Committee's Views, my opinion is that the claims of the author under articles 22 and 26 of the Covenant have been sufficiently substantiated and that there is no basis to revise the decision on admissibility.

Article 26 of the Covenant stipulates that all persons are equal before the law. Equality implies that the application of laws and regulations as well as administrative decisions by

Government officials should not be arbitrary but should be based on clear coherent grounds, ensuring equality of treatment. To deny the author, who is a journalist and seeks to report on parliamentary proceedings, access to the Parliamentary press facilities was arbitrary. The only reason why the author was denied access was that he was not a member of the Press Gallery Association. What article 26 strikes at is arbitrariness in treatment. Here the basis of differentiation between a journalist like the author who was denied access, and the journalists who were given access was membership of a private organization, viz the Press Gallery Association which basis did not bear any rational relation or relevance to the object of accreditation. The requirement of membership of the Press Gallery Association was therefore clearly arbitrary. Furthermore, there was no procedure for review. In the circumstances, I am of the opinion that the principle of equality before the law protected by article 26 of the Covenant was violated in the author's case.

In regard to article 22, the author's claim is that requiring membership in the Press Gallery Association as a condition of access to the Parliamentary press facilities violated his rights under article 22 read with article 19. The right to freedom of association implies that in general no one may be forced by the State to join an association. When membership of an association is a requirement to engage in a particular profession or calling, or when sanctions exist on the failure to be a member of an association, the State party should be called on to show that compulsory membership is necessary in a democratic society in pursuit of an interest authorised by the Covenant. In this matter, the Committee's deliberations in paragraph 13.6 of the Views make it clear that the State party has failed to show that the requirement to be a member of a particular organization was a necessary restriction under paragraph 2 of article 22 in order to limit access to the press gallery in Parliament for the purposes mentioned. The restrictions imposed on the author are therefore in violation of article 22 of the Covenant.

Prafullachandra N. Bhagwati [signed]

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

Individual opinion by Committee member David Kretzmer (partly dissenting)

I join the opinion of my colleagues Mr. Solari Yrigoyen and Ms. Elizabeth Evatt, in the view that there was a violation of article 22 in the present case. However, I do not share their view that a violation of article 26 has also been substantiated. In my mind, it is not sufficient, in order to substantiate a violation of article 26, merely to state that no reasons were given for a decision. Furthermore, it seems to me that the author's claim under article 26 is in essence a restatement of his claim under article 19. It amounts to the argument that while others were allowed access to the Press Gallery, the author was denied access. Accepting that this constitutes a violation of article 26 would seem to imply that in almost every case in which one individual's rights under other articles of the Covenant are violated, there will also be

a violation of article 26. I therefore join the Committee in the view that the author's claim of a violation of article 26 has not been substantiated. The Committee's decision on admissibility should be revised and the claim under article 26 be held inadmissible.

David Kretzmer [signed]

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

Individual opinion by Committee member Rajsoomer Lallah (partly dissenting)

The Committee is of the view that the claims of the author in relation to articles 22 and 26 of the Covenant have not been sufficiently substantiated for purposes of admissibility and has revised its previous favourable decision on admissibility.

It seems to me that articles 22 and 26 are, in the particular circumstances of this communication, particularly relevant in deciding whether there has been a violation of the author's right under article 19 (2) of the Covenant to seek, receive and impart information, in relation to Parliamentary proceedings which are matters of interest to the general public. It is to be noted that access to parliamentary press facilities in this regard is given exclusively to members of an association which has so to say a monopoly over access to those facilities.

Freedom of association under article 22 inherently includes freedom not to associate. To impose membership of an association on the author as a condition precedent to access to Parliamentary press facilities in effect means that the author is compelled to seek membership of the association, which may or may not accept the author as a member, unless he decides to forego the full enjoyment of his rights under article 19 (2) of the Covenant.

The rights of the author, in respect of equality of treatment guaranteed under article 26, have been violated in the sense that the State party has, in effect, delegated its control over the provision of equal press facilities within public premises to a private association which may, for reasons of its own and not open to judicial control, admit or not admit a journalist like the author as a member. The delegation of this control by the State party exclusively to a private association generates inequality of treatment as between members of the association and other journalists who are not members.

I conclude, therefore, that the author has been a victim of a violation of his rights under article 19 (2) by the State party's recourse to measures, designed to provide access to journalists reporting on Parliamentary proceedings, which are themselves violative of articles 22 and 26 of the Covenant and which cannot be justified by the restrictions permissible under article 19 (3) of the Covenant.

Rajsoomer Lallah [signed]

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