United Nations

CCPR

International covenant on civil and political rights

Distr.
RESTRICTED*

CCPR/C/95/D/1529/2006
28 April 2009

Original: ENGLISH

HUMAN RIGHTS COMMITTEE
Ninety-fifth session
16 March – 3 April 2009

DECISION

Communication No. 1529/2006

Submitted by:	Ms. Josephine Lovey Cridge (not represented by counsel)
Alleged victim:	The author
State party:	Canada
Date of communication:	1 June 2006 (initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 27 November 2006 (not issued in document form)
Date of decision:	27 March 2009

* Made public by decision of the Human Rights Committee.

Subject matter: Alleged judicial bias and denial of a fair hearing by an independent and impartial tribunal; attacks on honour and reputation;

Procedural issues: Lack of substantiation of claims, incompatibility with the provisions of the Covenant; exhaustion of domestic remedies;

Substantive issues: Right to a fair trial, right to equal protection of the law, right not to be subjected to unlawful attacks on honour and reputation;

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

Articles of the Covenant: 14, paragraph 1; 17; 26.

[ANNEX]

ANNEX

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

Ninety-fifth session

concerning

Communication No. 1529/2006[**]

Submitted by:	Ms. Josephine Lovey Cridge (not represented by counsel)
Alleged victim:	The author
State party:	Canada
Date of communication:	1 June 2006 (initial submission)

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

Meeting on 27 March 2008

Adopts the following:

DECISION ON ADMISSIBILITY

1.1 The author of the communication is Ms. Josephine Lovey Cridge, a Canadian national born on 9 July 1933. She claims to be a victim of violations by Canada of her rights under articles 14, 17 and 26 of the International Covenant on Civil and Political Rights. The author is not represented by counsel.

1.2 On 7 February 2007 the Committee, acting through its Special Rapporteur on New Communications and Interim Measures, decided to examine the 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. Ahmad Amin Fathalla, Mr. Yuji Iwasawa, Ms. Helen Keller, Mr. Lazhari Bouzid, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli, Mr. Krister Thelin and Ms. Ruth Wedgwood.

The facts as submitted by the author

2.1 In 1962, the author and her husband, now diseased, hired a lawyer, William Moresby, to assist with a real estate transaction between themselves and another party (the Riches). According to the author, the transaction did not proceed smoothly and in November 1963 legal action was initiated (civil action no 1) by the other party to the transaction. The author retained a new counsel, Marney Stevenson, on the recommendation of Mr Moresby. On 6 August 1964, a decision was rendered by the Supreme Court of British Columbia against the author and her husband. Ms Stevenson filed an appeal with the British Columbia Court of Appeal, which was dismissed on 23 April 1965. The author and her husband were financially destroyed by the result of the civil claim and considered that Ms Stevenson was responsible for having lost the case.

2.2 The author decided to sue Ms Stevenson for negligence (civil action no 2). Frustrated in her attempt to find a counsel willing to deal with the case, she sought the advice of the Law Society of British Columbia and was referred to Harper Gilmour Grey (now Harper Grey Easton) law firm. Harper Grey Easton initiated a lawsuit on behalf of the author and her husband. During the 18 years Harper Grey Easton conducted the author's civil claim against Ms Stevenson, the author and her family suffered emotional distress as a result of the financial burden they endured resulting from the lawsuit initiated by the Riches. The author and her husband got divorced, and the ex-husband later died. In 1986, the author discovered that Harper Grey Easton had been lying to her and had failed in its duty to prosecute her civil claim against Ms Stevenson in a professional and diligent manner. The author then dismissed Harper Grey Easton, and asked for a return of her files, but Harper Grey Easton returned only a portion of those files and concealed from her incriminating documents that were finally disclosed at a later trial against Harper Grey Easton.

2.3 From 1992 to 1994, the author retained a series of lawyers with other law firms in British Columbia to assist her with her lawsuit against Ms Stevenson. According to the author, these other lawyers continued the pattern of "professional delay, procrastination and neglect" that had been adopted by Harper Grey Easton.

2.4 In 1994, when the author was unrepresented by legal counsel, the Supreme Court of British Columbia, at the request of Ms Stevenson, dismissed the claim of the author for want of prosecution. The author then, without counsel, sued Harper Grey Easton for negligence (civil action no 3). The author was unrepresented by legal counsel because no lawyer would act for her. The trial was heard before a judge who had been a member of the Law Society of British Columbia during a part of the period during which the misconduct of Harper Grey Easton has occurred.

2.5 The Supreme Court of British Columbia rendered a decision in favour of the author on 27 January 2004 and awarded her nominal damages of CAD 100, but failed to award proper and suitable compensatory damages. The trial judge made comments, which in the author's view indicated that the judgment was neither based in logic or reason.

2.6 The author appealed, claiming damages for lost opportunities, aggravated distress and punitive damages. The respondents filed a cross appeal for legal costs. Prior to the trial, Harper Grey Easton made an offer of settlement, which the author rejected. On 20 January 2005, the

Court of Appeal for British Columbia dismissed the appeal and allowed the cross appeal, awarding legal costs to the author assessed until the date of the Harper Grey Easton settlement offer, and holding the author liable for the legal cost of Harper Grey Easton from that point onward. According to the author, the reasons given by the Court of Appeal had no legal basis. Furthermore, the author alleges that the judges made unnecessary and ungentlemanly attacks on the character of the author, thereby undermining her honour and reputation.

2.7 The author then appealed to the Supreme Court of Canada, claiming institutional bias on the part of the judicial apparatus and the legal profession of Canada. This appeal was rejected in August 2005, without providing any reasons.

The complaint

3.1 The author claims to be a victim of a violation of article 14, as the judicial system to which she applied for remedy lacked independence and impartiality, and articles 14 and 26 with regard to equality before the courts. The author also claims a violation of article 17 in that the court attacked her reputation and dignity by being too dismissive of her claim. Finally, the author claims a violation of her right to own property under article 17 of the Universal Declaration of Human Rights.

3.2 The author alleges that as her claims were directed against a prominent law firm with close linkages to the political, legal and judicial elites of Canada, she could not obtain a hearing of her civil claim before an independent, impartial and competent tribunal in Canada, she was denied her right to equality before the law and the courts, was deprived arbitrarily of her property and was subject to inappropriate attacks upon her honour and reputation.

3.3 The author claims that her failure to obtain a resolution according to Canadian law in the Canadian civil dispute resolution system is a result of institutional and/or organizational bias, where a self-insured legal profession has been granted a semi-exclusive monopoly on the provision of legal services for real estate transactions and an exclusive monopoly on the provision of advocacy services and the positions of judges in the Canadian courts.

3.4 The author claims that her problems were exacerbated by the fact that the self-insurance fund of the legal profession in British Columbia was technically insolvent at the time her case was before the courts in British Columbia. Accordingly, both the judiciary and the legal profession had a financial self-interest in assuring that she lost her claim.

State party's observations

4.1 On 30 January 2007, the State party challenged the admissibility of the communication.

4.2 The State party claims that the author's allegations with respect to violations of her right to own property are inadmissible *ratione materiae,* as the right to own property is not a right protected in the Covenant. The loss of the author's property and the initial litigation involving that loss occurred before 19 August 1976, the date on which the Covenant entered into force for Canada and before 23 August 1976, the date on which the Optional protocol entered into force. This allegation is therefore also inadmissible *ratione temporis.* Furthermore, the allegations with

respect to the loss of property relate to errors on the part of legal counsel representing the author at the time. The allegations of negligence on the part of the author's privately retained legal counsel cannot be ascribed to Canada.

4.3 The State party submits that the author has failed to exhaust domestic remedies. The communication does not disclose any actions taken by the author since Canada has been a party to the Covenant in which the author has raised in domestic proceedings issues of judicial bias or any other failure to ensure her a fair hearing, or allegations of unwarranted attacks on her honour or reputation on allegations of discrimination or unequal treatment before a tribunal or court. No domestic court, tribunal or other body has been afforded an opportunity to rectify any perceived violation of the author's rights under the Covenant.

4.4 The State party submits that the civil action at the heart of this communication is civil action no 3. At the trial level in civil action no 3, the author did not seek to have the trial judge exclude herself on grounds of bias or lack of impartiality. Civil action no 3 did not allege any violation of applicable human rights legislation. In her appeal in civil action no 3, the author did not raise any of the allegations that form the basis for this communication. Her failure to raise issues at trial cannot now be turned into allegations of bias against Canadian courts for the purposes of a complaint under the Covenant. The issues raised by the author on appeal in civil action no 3 were as follows (Decision of the Court of Appeal for British Columbia dated 20 January, 2005, paragraph 10): "Ms Cridge advances three grounds for her appeal. She contends that the judge erred in failing to assess damages for a lost opportunity, in failing to award general or aggravated damages for distress, and in failing to award punitive damages."

4.5 The State party submits that the author's allegations that non-lawyers seeking justice for alleged wrongs done by lawyers cannot find justice in Canadian courts because Canadian judges are all former lawyers, do not remove her obligation to at least attempt to seek redress for violations of Covenant rights in domestic fora.

4.6 The State party further submits that the communication contains sweeping allegations of judicial bias which are not substantiated to any degree that would render them worthy of consideration as possible violations of rights protected by the Covenant. This constitutes an abuse of the right to submission pursuant to article 3, and the allegations in respect of article 14, paragraph 1, should be declared inadmissible pursuant to article 3 of the Optional Protocol and Rule 90 (c) of the Committee's Rules of Procedure.

4.7 With regard to attacks on the author's honour or reputation, the State party submits that the reasons for judgment contain no unwarranted attacks on the character or honour of the author. Neither the trial decision nor the decision of the Court of Appeal disclose anything that could be characterized as a violation of article 17, and the allegations in respect of article 17 should be declared inadmissible pursuant to article 3 of the Optional Protocol and Rule 90 (c) of the Committee's Rules of Procedure.

4.8 The State party submits that the author's reliance on article 26 is inadmissible *ratione materiae*, as there is no evidence that demonstrates that the author was discriminated against. The facts contained in the communication do not demonstrate that the author's alleged

differential treatment is attributable to her belonging to any identifiable group or category of persons which could be exposed to discrimination.

Authors' comments on the State party's observations

5.1 By letter received 20 November 2007, the author challenged the State party submission. The author explains that she referred to her loss of property rights in 1962 as background information to give the Committee an understanding of why she sought relief from Canada's civil dispute resolution system.

5.2 The author submits that although her lawyers were privately retained, private lawyers are, under Canadian law, officers of the court, an arm of the state, and the lawyers are ministers of justice – a state function.

5.3 The author submits that she exhausted domestic remedies when she made application for leave to appeal to the Supreme Court of Canada and her application was refused without reason. She is unaware of any domestic forum where she can pursue her grievance against the members of the judiciary. There are no remedies available in Canada in a case where a party encountered judicial bias at trial, except through the appeal process which she exhausted. She set out detailed evidence of institutional bias by the judiciary and legal profession in British Columbia in her application for leave to the Supreme Court of Canada.

5.4 The author submits that in her initial submission she provided corroborating evidence supporting her allegation that the civil dispute resolution system in Canada is not independent in cases where a person is suing a lawyer.

5.5 With regards to the non-substantiation of the allegations of judicial bias, the author claims that some of these are observations concerning the nature of Canada's dispute resolution system, and its members are notorious in the global legal jurisprudence where a frequent recurring criticism of the Anglo-American common law system of dispute resolution is its reliance on lawyers and the sub-group of lawyers who occupy the judicial function. The author claims that she also set out specific instances of conduct by the trial judge that substantiate her allegations of judicial bias.

5.6 With reference to the State party's submission that there has been no attack on her honour and reputation, the author claims that the judges at trial and at the Court of Appeal attacked her credibility and, falsely, and found fault with her rather than the lawyers who failed her at every level.

5.7 Finally, the author submits that her allegations are not as "sweeping and general" as the State party suggests, but are narrowly focused on the issue of bias that arises in a case where a party is suing a lawyer in a court system managed and operated by the legal profession.

Issues and proceedings before the Committee

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

6.2 As it is obliged to do pursuant to article 5, paragraph 2 (a), of the Optional Protocol, the Committee ascertained that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 With regard to the author's claim concerning her loss of property, this right is not protected by the Covenant. Thus, since the Committee is only competent to consider allegations of violations of any of the rights protected under the Covenant, the author's allegations with regard to the loss of property are inadmissible *ratione materiae*, under article 3 of the Optional Protocol, as incompatible with the provisions of the Covenant.

6.4 With regard to the author's claim under article 17 of the Covenant, the Committee observes that the communication discloses no effort by the author to bring this issue before one of the State party's courts to seek redress of her situation. This claim is therefore inadmissible for non-exhaustion under article 5, paragraph 2 (b) of the Optional Protocol.

6.5 With regard to the alleged violation of article 14, paragraph 1, and article 26, the Committee considers that the allegations relate in substance to the assessment of facts and evidence made by Canadian courts. The Committee recalls its jurisprudence[1] and reiterates that it is generally for the courts of States parties to review or to evaluate facts and evidence, unless it can be ascertained that the conduct of the trial or the evaluation of facts and evidence was manifestly arbitrary or amounted to a denial of justice. The Committee considers that the author has not sufficiently substantiated her complaint to be able to state that such denial of justice existed in the present case, and consequently believes that this claim must be found inadmissible under article 2 of the Optional Protocol.

7. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under articles 2, 3 and 5, paragraph 2(b), of the Optional Protocol;

(b) That the present decision shall be communicated to the State party and to the author.

[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.]

---

[1] See, inter alia, Communication No. 541/1993, Errol Simms v Jamaica, inadmissibility decision of 3 April 1995