



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Ninety-sixth session
13 to 31 July 2009

DECISION

Communication No. 1871/2009

<u>Submitted by:</u>	Mr. Satnam Vaid (represented by counsel, Raven, Cameron, Ballantyne & Yazbeck Barristers and Solicitors)
<u>Alleged victim:</u>	The author
<u>State party:</u>	Canada
<u>Date of communication:</u>	4 November 2008 (initial submission)
<u>Date of adoption of decision:</u>	28 July 2009

* Made public by decision of the Human Rights Committee.

Subject matter: Alleged discrimination of civil servant of State party's Parliament.

Procedural issues: Adequate substantiation of claim.

Substantive issues: Discrimination; Right to an effective remedy.

Articles of the Covenant: article 2, paragraphs 1-3; article 26.

Article of the Optional Protocol: 2.

ANNEX

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

Ninety-sixth session

concerning

Communication No. 1871/2009*

<u>Submitted by:</u>	Mr. Satnam Vaid (represented by counsel, Raven, Cameron, Ballantyne & Yazbeck Barristers and Solicitors)
<u>Alleged victim:</u>	The author
<u>State party:</u>	Canada
<u>Date of communication:</u>	4 November 2008 (initial submission)

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

Meeting on 28 July 2009,

Adopts the following:

DECISION ON ADMISSIBILITY

1. The author of the communication is Mr. Satnam Vaid, a Canadian national of Indian origin born in 1942, who claims to be victim of violations by Canada of his rights under article 2, paragraphs 1-3; and article 26, of the Covenant. He is represented by counsel. The Optional Protocol entered into force for the State party on 19 August 1976.

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Mohammed Ayat, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Yuji Iwasawa, Ms. Helen Keller, Mr. Rajsoomer Lallah, 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 presented by the author

2.1 From 1984 to 1994, the author worked as driver for successive speakers of the Canadian House of Commons. In 1994, Mr. Gilbert Parent assumed the office of Speaker of the House. During his first meeting with the author, Mr. Parent asked him, inter alia, questions in connection to his ethnic origin, religion, and education. According to the author, the Speaker asked him in particular why a man with his (academic) education wanted to work as a driver. Later in 1994, Mr. Parent asked to meet the author and his wife and suggested him to consider other positions¹. The author was also asked to wash dishes in the Speaker's office. From March to September 1994, the author was told that he could not work as a driver, because he was wearing a cervical collar (due to an injury), despite a doctor's assessment that he could continue driving. In September 1994, when the author wanted to resume his duties, he was informed that he should look for a work in another department, which he refused. On 22 September 1994, he was told not to report to work any more, while his salary continued to be paid. In October 1994, the author wrote to the Speaker's Office, insisting to return to work. Instead, other positions were offered to him, which he declined.

2.2 On 11 January 1995, the author received a termination notice for failure to accept alternate employment. On 27 July 1995, the adjudicator of the Public Service Staff Regulations Board directed the Speaker to re-instate the author to his previous position. Upon his return to work however, the author was advised that there was a new bilingual requirement (English and French), although, according to the author, the person who acted as a driver at that time only spoke English. The author was offered and followed a French language training, but on 8 April 1997, following the Speaker's Office refusal to let him return to work, he addressed a complaint to his employer, claiming that the bilingual requirement had not been issued *bona fide* and was discriminatory. On 29 May 1997, the author was advised that the driver position was to be made redundant. The author recalls that the Speaker of the House continued to enjoy the services of a driver after 29 May 1997. Subsequently, the author was transferred to another position.

2.3 On 10 July 1997, the author filed two complaints under the Canadian Human Rights Act, alleging discriminatory treatment in the course of employment, one against the House of Commons, and a second against the Speaker. On 25 April 2001, the Human Rights Tribunal dismissed motions by the House of Commons and the Speaker (who were arguing that the Canadian Human Rights Act does not apply to employees of Parliament). Following an appeal, the Federal Court ruled, on 4 November 2002, that the complaint proceed to a hearing before the Human Rights Tribunal. On 28 November 2002, the Federal Court of Appeal confirmed this decision. The House of Commons and the Speaker appealed against this decision to the Supreme Court of Canada.

2.4 On 20 May 2005, the Supreme Court ruled that parliamentary employees enjoyed the protection of the Human Rights Act (CHRA). It ruled, however, that alleged violations under the CHRA by the House of Commons, as an employer, should be subject to the grievance procedure under the Parliamentary Employment and Staff Relations Act. On 21 June 2005, the author filed a complaint under the Parliamentary Employment and Staff Regulations Act. On 28 March 2007,

¹ According to the author, the Speaker had suggested that this would be better for « his home life ».

the adjudicator of the Public Service Labour Relations Board dismissed his complaint on ground of delay without reasonable explanation. In this connection, the author points out that in a similar case against the same employer, the Public Service Labour Relations Board granted an extension to the time to file a grievance (*Dupéré v. Canada (House of Commons)*, 2007 FCA 180, para. 20).

2.5 The author initiated an appeal before the Federal Court but later abandoned it, as he considered that it would be futile in his situation, in particular having regard to sections 62 and 63 of the Parliamentary Employment and Staff Relations Act, according to which a complaint will not be adjudicated if it does not involve termination of employment of disciplinary actions.

The complaint:

3.1 The author claims that the State party has failed to enact laws that provide him with effective protection from discrimination, as his status as an employee of Parliament precludes him from using the system for redress provided under the Canadian Human Rights Act. He claims thus to be victim of violations of his rights under article 2, paragraphs 2 and 3, of the Covenant².

3.2 The author further claims to be a victim of discrimination for which he did not have the possibility to receive redress under the State party's legal system. This is said to constitute a violation of his rights, by the State party, under both articles 2, paragraph 1; and 26, of the Covenant.

Issues and proceedings before the Committee

4.1 Pursuant to rule 93 of its rules of procedure, before considering any claim contained in a complaint, the Human Rights Committee must determine whether it is admissible under the Optional Protocol to the Covenant on Civil and Political Rights.

4.2 The Committee notes, first, that in the present case, the author claims a violation of his rights under article 2 of the Covenant, as he considers that the State party has failed to enact legislation that would provide him with effective protection from discrimination, as his status as an employee of Parliament precludes him from using the system for redress provided under the Canadian Human Rights Act. The Committee considers that the author has failed to sufficiently substantiate this particular claim, for purposes of admissibility, and declares this part of the communication inadmissible under article 2 of the Optional Protocol.

4.3 The Committee further notes that the author claims to be a victim of discrimination, in violation of his rights both under articles 2 and 26 of the Covenant, as he was unable to receive redress under the State party's legal system. In the circumstances of the present case, the

² In this respect, the author refers to the concluding observations on the State party's fifth periodic report (CCPR/C/CAN/CO/5, 28 October 2005), where the Committee expressed, *inter alia*, concern that human rights commissions still have the power to refuse referral of a human rights complaint for adjudication. He notes that the Committee has recommended to the State party to ensure that its relevant human rights legislation is amended (...) and its legal system enhanced, so that all victims of discrimination have full and effective access to a competent tribunal and to an effective remedy.

Committee considers that this part of the communication is incompatible *ratione materiae* with the provisions of the Covenant, and that it is therefore inadmissible under article 3 of the Optional Protocol. 5. The Human Rights Committee therefore decides:

- (a) That the communication is inadmissible under articles 2 and 3 of the Optional Protocol;
- (b) That the decision be transmitted 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.]
