

COMMUNICATION

TO: Human Rights Committee

FROM: Sandra Lovelace et al

RE: Violation by Canada of Rights set forth in the  
International Covenant on Civil and Political Rights

INTRODUCTION

Pursuant to Article 2 of the Optional Protocol to the International Covenant on Civil and Political Rights which states:

"Article 2: Subject to the provisions of Article 1, individuals who claim that any of their rights enumerated in the Covenant have been violated and who have exhausted all domestic remedies may submit a written communication to the Committee for consideration."

I, Sandra Nicholas Lovelace herewith communicate in writing with the Human Rights Committee and state that I have not been able to enjoy certain rights enumerated in the International Covenant on Civil and Political Rights because of Canada's Indian Act (R.S.C. 1970, C.I-6).

I submit that all domestic remedies have been exhausted insofar as the jurisprudence rests on the decision of the Supreme Court of Canada.

FACTUM

I am a Maliseet Indian living in the Province of New Brunswick, Canada. Having married a non-Indian I lost my rights and status as an Indian. This occurred because of the following section in the Indian Act R.S.C. 1970, C.I-6,

12(1)(b):

R.S.C. 1970, C.I-6, 2(b):

"The following persons are not entitled to be registered, namely:

- b) a woman who married a person who is not an Indian, unless that woman is subsequently the wife or widow of a person described in section 11.

If a person is not entitled to "register", their name is either not allowed to be placed on, or else is deleted from, the Indian Register. When this occurs, the individual is either refused status as an Indian, or else she loses her status as an Indian, as the case may be. When people lose their Indian status, they lose all rights granted to them under the Indian Act."

It is submitted that because of the Indian Act, Canada has violated the rights concerning the family, the right to equal protection before the law, and the rights of minorities as provided for by the International Covenant.

Article 23(1) and (4) hold that:

"The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

States parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution."

Under this heading, it is submitted that an Indian woman who is forced to refrain from marrying the spouse of her choice in order to retain rights under the Indian Act for herself and her children (which she would have had had she married an Indian) violates the duty of the state to protect the family unit. The equality of rights as to marriage may also be violated in such a situation, especially when considering this Article in light of Article 3, which ensures the equal

right of men and women to the enjoyment of all civil rights.

Article 26 grants to all persons equality before the law and the right without any discrimination to equal protection before the law. Furthermore, it also guarantees that:

"In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

By virtue of this Article, it is submitted that a breach of the right to equal protection before the law exists in the case of Indians who choose to marry non-Indians because the law prescribes something different for men (they retain their rights under the Indian Act) than for women (they lose their rights under the Act).

Article 27 deals with the right of minorities, and establishes that in states where "ethnic, religious, or linguistic minorities exist, persons shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess their own religion, or to use their own language." On first glance, it might appear that this Article can be used as a defence against a charge of inequality; one might say, for example, that the loss of certain rights for women marrying outside their Indian culture is an attempt to protect both the Indian minority and its reservation lands from outsiders. The intent may be laudable, but one cannot condone the method of protection which has been devised in this instance

because, again, it is done in a discriminatory manner which is clearly in contradiction of Article 3 of the Covenant (equality of males and females). It is also a violation of Article 2(1) and, as previously mentioned, of Article 26.

In short, if the Indians, as a minority group, are to be protected, then the government must revise its method of protecting them. The Parliament of Canada must adopt a formula for their protection that does not involve discrimination between males and females.

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SANDRA LOVELACE  
COMPLAINANT

Witness:

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December 29, 1977