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REF. N°: G/SO 215/51 CANA (8)
(à rappeler dans la réponse) R.6/24

REGISTERED

1 May 1980

Dear Mrs. Lovelace,

..... I have the honour to transmit to you herewith a copy of the State party's submission under article 4 (2) of the International Covenant on Civil and Political Rights, dated 4 April 1980, relating to communication No. R.6/24 which you have submitted to the Human Rights Committee under the Optional Protocol to the Covenant.

Any additional information or observations which you may wish to submit in this connexion, should reach the Human Rights Committee, in care of the Division of Human Rights, United Nations Office at Geneva, within six weeks of the date of this letter, that is not later than 12 June 1980.

Yours sincerely,

Jakob Th. Möller
Jakob Th. Möller
Chief, Communications Unit
Division of Human Rights

Mrs. Sandra Lovelace
c/o Human Rights Commission
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HUMAN RIGHTS
COMMISSION

COPY



No. 16

The Permanent Mission of Canada to the United Nations presents its compliments to the Secretary-General of the United Nations and has the honour to refer to his note G/SO 215/51 CANA R.6/24 of 5 October 1979 regarding a decision adopted by the Human Rights Committee on 14 August 1979 in the matter concerning Sandra Lovelace.

The Permanent Mission should be grateful to the Secretary-General if the attached reply of the Government of Canada could be brought to the attention of the Human Rights Committee.

The Permanent Mission of Canada avails itself of this opportunity to renew to the Secretary-General of the United Nations the assurances of its highest consideration.

Geneva, 4 April 1980



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RESPONSE OF THE GOVERNMENT OF CANADA TO
THE DECISION OF THE HUMAN RIGHTS COMMITTEE
CONTAINED IN DOCUMENT CCPR/C/DR(VII)R.6/24
DATED 19 SEPTEMBER 1979 IN THE MATTER
CONCERNING SANDRA LOVELACE

In a communication dated 29 December 1979, submitted under the Optional Protocol to the International Covenant on Civil and Political Rights Sandra Lovelace alleged that she was a Maliseet Indian living in Canada and that having married a non-Indian she had lost her rights and status as an Indian, by virtue of section 12(1)(b) of the Indian Act, Revised Statutes of Canada 1970, C.1-6. She alleged that as a result Canada violated articles 23(1) and (4), 26 and 27 of the International Covenant entered into force in Canada on 19 August 1976.

Although on the date of her communication to the Committee Mary Sandra Nicholas Lovelace was recorded in the Indian register under number 287 Tobique Band as a single person, under section 12(1)(b) of the Indian Act she had legally lost her entitlement to be registered on 23 May 1970, the date upon which she married a non-Indian. The registrar was required by the Act to remove her name from the Indian register when he learned of her marriage. The Secretary General of the United Nations in a note to the Government of Canada (number G/50 215/51 CANA) dated 20 September 1978, requested Canada to provide "information and observations relevant to the question of admissibility of the communication". The Committee decided on 14 August 1979 that in accordance with article 4(2) of the Optional Protocol, Canada

"shall be requested to submit to the Committee, within six months of the date of the transmittal to it of this decision, written explanation or statements clarifying the matter and the remedy, if any, that may have been taken by it".

~~(PCH.2 of R.6/24)~~

Nothing contained in this response or the earlier 19 September 1979 response of the Government of Canada should be considered as indicating that the Government of Canada

admits or concurs in any of the allegations or observations in the communications of Sandra Lovelace or that Canada breached any of the provisions of the International Covenant on Civil and Political Rights in relations to Sandra Lovelace.

The Government of Canada recognizes that many of the provisions of the present Indian Act, including section 12(1)(b), require serious reconsideration and reform. As evidence of this recognition, the Government has publicly declared that it intends to introduce into the Canadian Parliament proposed legislation that would amend section 12(1)(b) of the Act in a way that resolves as many as possible of the difficulties caused by this provision.

The Indian Act is in accordance with the aims sought to be achieved by article 27 of the International Covenant which provides:

"in those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

Indians are a minority in Canada and the Act enhances their ability and opportunity "to enjoy their own culture...(and) to use their own language". Needless to say, a domestic law such as this could not be effectively made in Canada unless there was also legislative authority to define who is and who is not an Indian and how Indian status is acquired and lost.

The first Indian Acts, which date from the early 19th century, were enacted to protect Indians and Indian lands from non-Indians. At the very outset, it became necessary to define who was an Indian in order to be as definite as possible about who had a right to occupy reserve lands that had been set aside for a specific band (in Canada, local groups of Indians are organized into bands).

In what was then a basically farming economy, it was considered that Indian reserve lands were more threatened by non-Indian men than by non-Indian women. This, together with the fact that patrilineal family relationships, rather than blood quantum (measure of Indian ancestry), were traditionally used as a basis for determining legal claims, led to the

introduction, in 1869, of the first legislative provisions dealing with the status of Indian women who married non-Indian men. An Indian woman who married a non-Indian man was no longer considered an Indian under the Indian Act and neither she nor her husband were allowed to reside on, or have any interest in, reserve land. Their children were also non-Indian and could not acquire an interest in reserve land. Also reflected in these predecessors of section 12(1) was the prevalent view held at the time by non-Indian society on the position of women and the family: that a man was responsible for providing for the family and protecting the family's interests.

As bands were subjected to increased cultural pressure and band populations grew, land became a more emotional issue not only because of the real threat to a limited land base but also because of what land came to symbolize. Government protection of Indian land was seen as an important indicator of the overall relationship between Indians and Government. As the Government was seen to protect Indian land, it was also seen as protecting Indian culture. These sentiments towards land have remained deep-rooted and the fear of losing reserve lands has been a pervasive one. That is why this issue has often been linked in the minds of Indians to band membership and the provisions of the Indian Act that define it. This all serves to explain why, until the last decade, there was little demand by Indian groups and no initiative by the Federal Government to have the status section of the Indian Act amended.

The Government's more recent commitment to have those provisions of the Indian Act dealing with the status of Indian women amended to accord more closely with contemporary attitudes towards women and their rights and status in society generally has met with different responses from within the Indian community.

The National Indian Brotherhood, an organization of Indian associations across Canada, has stated that Indian men and women should be treated equally, that the Government should compensate all those who have lost their status through section 12(1)(b), and that Indians alone should determine who is an Indian and who is not. However, that view is not shared by all Indian associations. Some maintain that because amendments to the status provisions of the Act may well increase the number of Indians and thereby place demands on Indian lands and reserve lands, there should be no such amendment without a correspond

increase in the resource base of Indians. Others oppose any changes because it is felt that the present legal situation protects the Indian cultures and land base from erosion by non-Indians. There is in addition the view to the effect that objective criteria for determining status should be included in the Act rather than Indian control of membership. These sometimes opposing viewpoints have been widely and consistently expressed, underlining the magnitude of the differences of opinion within the Indian community itself.

As a result of its commitment the Government of Canada has undertaken specific measures to remedy the current legal situation as it related to Indian women. Since mid-1976, the Governor-in-Council has refrained from issuing Orders-in-Council that enfranchise individual Indian women (under section 109(2) of the Indian Act) and whereby they cease any longer to be Indians (section 110). While it is true that such Orders-in-Council would have no legal effect on an Indian woman who, by marrying a non-Indian, loses her status as an Indian by virtue of section 12(1)(b) of the Indian Act, still the policy of not issuing such Orders-in-Council continues to serve as a clear reminder of the Government's intention to amend section 12(1)(b). Lending additional support to this intention is the fact that the Government of Canada has funded and continues to fund Indian Rights for Indian Women, an organization having as one of its stated objectives the amendment of section 12(1) of the Indian Act.

Further complicating the legislative amendment process is the fact that each of the many proposals for ending the policy embodied in the present provisions of section 12(1)(b) has far-reaching consequences for Indian bands and Indian families. Mixed marriages raise questions about not only the future status of individuals entering into such marriages, but also the legal and social consequences for the children and grandchildren of such marriages. The Government of Canada has an obligation to the Indian community and to Canadians as a whole to minimize the harm to Indian families and to the Indian community that any such change in present legislation might cause. This position of the Government of Canada is, it is submitted, in conformity with article 2(2) of the International Covenant which obligated Canada "to adopt such legislative or

other measures as may be necessary to give effect to the rights recognized in the present Covenant", including rights provided for in article 23(1), namely: .

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

To sum up, therefore, the Government of Canada remain committed to amend section 12(1)(b) of the Indian Act. However the desire for quick and immediate legislative action has been and must continue to be, balanced by an understanding and appreciation of the very basic way in which such changes in the law will affect Indian society. Great care must therefore be taken in formulating legislative proposals so that such changes are not imposed upon the Indian people of Canada but rather evolve by means of a Government-Indian partnership of views.

The Canadian Government will advise the Human Rights Committee of any changes to the Indian Act which have relevance to the communication submitted by Sandra Lovelace.