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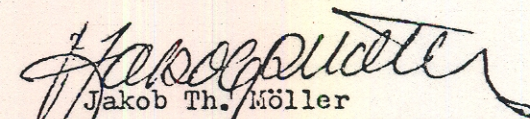
RÉF. N°:
(à rappeler dans la réponse) G/SO 215/51 CANA (8)
R.6/24

REGISTERED
1 December 1980

Dear Dr. Kinsella,
Dear Professor Fleming,

..... I have the honour to transmit to you herewith, for information, in your capacities as legal representatives of Sandra Lovelace, the text of the State party's replies, dated 22 November 1980, to the questions set out in the Human Rights Committee's decision of 31 July 1980 in respect of her case.

Yours sincerely,


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

Dr. Noel A. Kinsella
Chairman, Human Rights Commission
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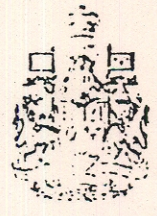
cc.: Professor Flemming

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HUMAN RIGHTS
COMMISSION

The Permanent Mission of Canada
to the United Nations



La Mission Permanente du Canada
aupres des Nations Unies

NOTE 94

The Permanent Mission of Canada to the Office of the United Nations at Geneva presents its compliments to the Secretary General of the United Nations and has the honour to refer to his Note No. G/SO/215/51 CANA(8) R.6/24 of 22 August 1980 which concerned questions asked by the Human Rights Committee with respect to the Communication submitted by Mrs. Sandra Lovelace under the provisions of the Optional Protocol to the International Covenant on Civil and Political Rights.

The replies of the Government of Canada to these questions are to be found in the appendix which is attached to this Note.

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

GENEVA, November 22, 1980.



(98)

APPENDIX

Replies provided by the Government of Canada to questions asked by the Human Rights Committee with respect to the Communication of Mrs. Sandra Lovelace

- A. How many Indian women marry non-Indian men on an average each year? Statistical data for the last twenty years should be provided.

We are not able to give figures for the twenty-year period requested, since no figures were compiled prior to 1965. For the period 1965-1978, the following statistics outline the situation.

Table 1

1965	1966	1967	1968	1969	1970	1971	1972	1973
450	523	524	520	580	597	614	440	538

1974	1975	1976	1977	1978	Ave
585	410	451	473	439	510

Of additional interest to the Committee might be a comparative set of statistics which show the total picture of Indian marriages, both men and women:

Table 2

	1965	1966	1967	1968	1969	1970
Marriages between:						
a. Indian women and Indian men of the same band			909	881	484	474
b. Indian women and Indian men of a different band					405	365
c. Indian women and non-Indian men	450	523	524	520	580	597
d. Indian men and non-Indian women	258	273	300	341	388	414

Marriages between:

- a. Indian women and Indian men of the same band
- b. Indian women and Indian men of a different band
- c. Indian women and non-Indian men
- d. Indian men and non-Indian women

	1971	1972	1973	1974	1975	1976
a.	575	536	582	512	471	592
b.	417	435	444	374	365	490
c.	614	440	538	585	410	451
d.	514	442	564	544	500	611

Marriages between:

- a. Indian women and Indian men of the same band
- b. Indian women and Indian men of a different band
- c. Indian women and non-Indian men
- d. Indian men and non-Indian women

	1977	1978	Ave
a.	575	485	590
b.	461	463	422
c.	473	439	510
d.	561	566	448

B. What is the legal basis of a prohibition to live on a reserve? Is it a direct result of the loss of Indian status or does it derive from a discretionary decision of the Council of the community concerned?

Section 2 of the Indian Act, R.S.C. 1970, c. I-6 defines a reserve as "a tract of land, the legal title to which is vested in Her Majesty, that has been set apart by Her Majesty for the use and benefit of a band". For the purpose of this definition, section 2 defines a band as meaning "a body of Indians for whose use and benefit in common, lands, the legal title to which is vested in Her Majesty, have been set apart before, on or after the 4th day of September 1951".

In order to be able to use and benefit from the land of a particular reserve, an individual must be an Indian who is a member of the band for which that land was allotted. Section 14 of the Indian Act provides that "(an Indian) woman who is a member of a band ceases to be a member of that band if she marries a person who is not a member of that band".(1) As such, she loses the right to the use and benefits, in common with other members of the band, of the land allotted to the band.(2) It should, however, be noted that "when (an Indian woman) marries a member of another band, she thereupon becomes a member of the band of which her husband is a member". As such, she is entitled to the use and benefit of lands allotted to her husband's band.

An Indian (including a woman) who ceases to be a member of a band ceases to be entitled to reside by right on a reserve. Nonetheless it is possible for an individual to reside on a reserve if his^{or her} presence thereon is tolerated by a band or its members. It should be noted that under section 30 of the Indian Act, any person who trespasses on a reserve is guilty of an offence. In addition, section 31

(1) Mrs. Lovelace married a non-Indian. As such, she ceased to be a member of the Tobique band. In addition, by the application of sub-paragraph 12(1)(b) of the Indian Act, she lost her Indian status.

(2) It should be noted that when an Indian ceases to be a member of a band, he is entitled, if he meets the conditions set out in sections 15 and 16 of the Indian Act, to compensation from Her Majesty for this loss of membership.

of the Act provides that an Indian or a band (and of course its agent, the Band Council,) may seek relief or remedy against any person, other than an Indian, who is or has been

- a) unlawfully in occupation or possession of,
 - b) claiming adversely the right to occupation or possession of, or
 - c) trespassing upon
- a reserve or part thereof.

C. What reasons are adduced to justify the denial of the right of abode on a reserve?

The provisions of the Indian Act which govern the right to reside on a reserve have been enacted to give effect to various treaty obligations reserving to the Indians exclusive use of certain lands.

An individual is not entitled to establish a residence on property owned by other persons. A similar situation exists in respect to reserve lands. These lands are held in trust for the Indians by the Crown. The only persons entitled to reside on these lands are the members of the band for which the reserve was set aside.

D. What legislative proposals are under consideration for ensuring full equality between the sexes with regard to Indian status? How would they affect the position of Mrs. Lovelace? How soon can it be expected that legislation will be introduced?

Legislative proposals are being considered which would ensure that no Indian person, male or female, would lose his or her status under any circumstances other than his or her own personal desire to renounce it.

In addition, changes to the present sections under which the status of the Indian woman and minor children is dependent upon the status of her spouse are also being considered.

Further recommendations are being considered which would give Band Councils powers to pass by-laws concerning membership in the band; such by-laws, however, would be required to be non-discriminatory in the areas of sex, religion and family affiliation.

In the case of Mrs. Lovelace, when such new legislation is enacted, she would then be entitled to be registered as an Indian.

Legislative recommendations are being prepared for presentation to Cabinet for approval and placement on the Parliamentary Calendar for introduction before the House by mid-1981.

E. What was Mrs. Lovelace's place of abode prior to her marriage? Was she at that time living with other members of her family? Was she denied the right to reside on a reserve in consequence of her marriage?

Prior to her marriage, Mrs. Lovelace lived on the reserve with her parents. She moved from the reserve to be with her husband when she married.

Since her marriage and following her divorce, Mrs. Lovelace has, from time to time, lived on the reserve in the home of her parents, and the Band Council has made no move to prevent her from doing so. However, Mrs. Lovelace wishes to live permanently on the reserve and to obtain a new house. To do so, she has to apply to the Band Council. Housing on reserves is provided with money set aside by Parliament for the benefit of registered Indians. The Council has not agreed to provide Mrs. Lovelace with a new house. It considers that in the provision of such housing, priority is to be given to registered Indians.

F. What other persisting effects of Mrs. Lovelace's loss of status are there which may be relevant to any of the rights protected by the Covenant?

When Mrs. Lovelace lost her Indian status through marriage to a non-Indian, she also lost access to federal government programs for Indian people in areas such as education, housing, social assistance, etc. At the same time, however, she and her children became eligible to receive similar benefits from programs the provincial government provides for all residents of the province.

Mrs. Lovelace is no longer a member of the Tobique band and no longer an Indian under the terms of the Indian Act. She however is enjoying all the rights recognized in the Covenant, in the same way as any other individual within the territory of Canada and subject to its jurisdiction.