XVII

(106)

REPLY OF SANDRA LOVELACE

TO THE OBSERVATIONS MADE AND QUESTIONS POSED

BY THE 31 JULY 1980 INTERIM DECISION

OF THE HUMAN RIGHTS COMMITTEE

U.N. DOCUMENT CCPR/C/DR(X)/R.6/24

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A. INTRODUCTION

On 29 December 1977, Sandra Lovelace forwarded to the Human Rights Committee a Communication[1] under the terms of the Optional Protocol to the United Nations International Covenant on Civil and Political Rights. That Communication alleges that, by virtue of Section 12(1)(b) of the Indian Act[2] the Government of Canada had violated, and continues to violate, a number of her human rights which are enumerated in the United Nation's International Covenant on Civil and Political Rights and that she has suffered, and continues to suffer, as a result of the violations.

The text of the 31 July 1980 Interim Decision adopted by the Human Rights Committee[3] contains an outline of the consideration which the Committee has accorded her Communication and it contains a précis of the statements made and information provided by Sandra Lovelace and the Government of Canada. In addition to the material mentioned above, the Interim Decision contains a number of considerations and questions to which the Committee has requested the parties, where appropriate, reply. The text which follows constitutes the reply of Sandra Lovelace to the observations made and questions posed in the Interim Decision.

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[1] Communication R.6/24. Hereinafter referred to as the Communication.

[2] R.S.C. 1970, C. I-6. Hereinafter referred to as the Indian Act. A copy of the Act was sent by Sandra Lovelace to the Human Rights Commission on 17 April 1978.

[3] 31 July 1980 Interim Decision re: Communication R.6/24. Human Rights Committee, Tenth Session U.N. document CCPR/C/DR(X)/R.6/24 of 4 August 1980. Hereinafter referred to as the Interim Decision.

B. ON THE MATTER OF CERTAIN FINDINGS BY THE HUMAN RIGHTS COMMITTEE

Before addressing the more substantive issues raised and questions posed in the Interim Decision, it is necessary to comment on certain findings which appear in paragraphs 1 through 6 of that document.

1. REFERENCE TO THE CITIZENSHIP OF SANDRA LOVELACE

Sandra Lovelace was born on 15 April 1948.[4] Her parents were born and registered as Maliseet Indians who lived on the Tobique Indian Reserve in the Province of New Brunswick. Upon her birth, Sandra Lovelace was recorded in the Indian Register under #287 Tobique Band.[5]

As she was born in Canada, Sandra Lovelace is technically a Canadian citizen under Canadian law (Citizenship Act).[6] However, a large number of North American Indians who were born either in the Dominion of Canada or the Republic of the United States of America refuse to accept the citizenship designation of either country. The reason for their refusal is based upon an interpretation of various treaties which either Canada, the United Kingdom or the United States of America entered into with a number of North American Indian tribes. Indian people argue that, as their original

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[4] A copy of her birth certificate was sent by Sandra Lovelace to the Human Rights Committee on 29 November 1979.

[5] The Reply of the Government of Canada of 4 April 1980 to the Human Rights Committee, at p. 1.

[6] R.S.C. 1970, C. C-19, s.4(5).

territories were not bound by the present national borders which divide Canada and the United States of America, and as their many treaty agreements granted them various rights and privileges, their status is one which permits them to move freely between the American/Canadian border unencumbered by the limitations which might be placed by either of those nations upon citizens seeking access or egress from one of those countries to the other. Many Indians believe that they need not be considered citizens per se of either state. Accordingly, Sandra Lovelace did not declare, in her Communication, that she was a Canadian citizen. Instead, she stated that she was "Maliseet Indian living in the Province of New Brunswick, Canada".[7] In addition, neither has the Government of Canada alluded to the citizenship of Sandra Lovelace in its submissions to the Human Rights Committee. The reply of the Government of Canada of 26 September 1979 refers only to "...Indians in Canada..."[8] and "...the Indian Community in Canada..."[9]. Further, in its reply of 4 April 1980, the Government of Canada again, did not refer to the citizenship of Sandra Lovelace or, indeed, to the citizenship of Indians living in Canada. It referred only to the allegation by Sandra Lovelace that she was "a Maliseet Indian living in Canada"[10] and to the

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[7] Communication at p. 1.

[8] At p. 3.

[9] Ibid.

[10] At p. 1.

fact that "Indians are a minority in Canada".[11]

As the Optional Protocol to the United Nations International Covenant on Civil and Political Rights does not refer to the necessity of citizenship,[12] as the question of admissibility of the Communication is not an issue,[13] as neither the complainant nor the State Party to the present matter has referred to the issue of citizenship, and as questions respecting the citizenship of Native Peoples of North America might well become an issue for determination at a future time, counsel for Sandra Lovelace requests that the Committee refer to her as "a Maliseet Indian born and living in Canada". For the purpose of the present Communication, there appears to be no need to refer to the citizenship of Sandra Lovelace.

. EXHAUSTION OF LOCAL REMEDIES

A number of the observations made and questions presented by the Interim Decision have been considered by the Canadian courts. In order to present the complaint by Sandra Lovelace in its entirety, and in order to answer fully the questions raised by the Human Rights Committee, it is necessary to examine briefly what can and has been decided on this matter by way of internal legal solution.

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[11] At p. 2.

[12] Article 2 refers not to "citizens' but to "individuals". Further, the Preamble to the Optional Protocol refers not to "citizens" but to "individuals".

[13] Decision on Admissibility of the Human Rights Committee of 17 August 1979 (CCPR/C/DR(VII)/R.6/24) and the two Replies of the Government of Canada (26 September 1979 and 4 April 1980).

The most effective and concise method of outlining the local remedies which are available is to examine them within the framework of four (4) distinct periods of time. These periods coincide with the promulgation of certain legislation and with certain decisions by the Supreme Court of Canada.

(a) Pre-1960

Before 1960, no individual could question the validity of a Canadian statutory provision duly passed by an act of Parliament and brought into force as law. This was based upon the theory of parliamentary sovereignty. Very briefly, the theory of parliamentary sovereignty states that there is no more superior body than the elected parliament of a country, that parliament can pass any form of legislation it so pleases without restriction, and that no parliament is bound by any previous statutory provisions created by another parliament. This form of constitution is an inheritance from the United Kingdom.

There is a basic difference between the British constitution and its offspring, the Canadian one. The difference lies in the fact that Canada is a federation and as such it has more than one legislative body which possesses sovereign rights. When legislation passed by one legislative body in Canada might infringe upon the powers of another legislative body, the Courts are called upon to determine whether the legislative body which passed a particular law has the constitutional power to do so. As a result, while in the United Kingdom there is no judicial remedy for defeating legislation duly passed by Parliament, in Canada a potential judicial remedy does exist. One can attempt to convince the

Courts that one government of the Canadian Federation (either the Federal or Provincial Government) violated the terms of the Canadian constitution by infringing upon the legislative authority of the other government. If such is found to be the case, the Courts would rule that the offending legislation is invalid.

Canadian constitutional cases deal primarily with Sections 91 and 92 of the British North America Act,[14] which is the written portion of the Canadian constitution. The two sections mentioned are the sources of the vast majority of constitutional litigation because they list the distribution of legislative powers of the Federal Parliament and the various Provincial Legislatures of Canada. Unfortunately, Indians are not able to make use of the judicial remedy provided by the constitutional division of powers in order to validate any federal legislation which may be repugnant to their interests. This is because the British North America Act, Section 91(24) lists "Indians, and Lands Reserved for the Indian" as being exclusively within the legislative authority of the Federal Parliament of Canada. Since the power to legislate over Indians and Indian lands is given exclusively to the Federal Parliament, there was no way to challenge the legal validity of any law which affected Indians - however detrimentally - which was promulgated by the Federal Parliament.

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[14] 30 and 31 Victoria C.3. Attached as Appendix A.

(b) 1960-1974

In 1960, the Federal Parliament enacted the Canadian Bill of Rights.[15] Even though it was merely a federal statute and not a constitutional amendment, many human rights advocates chose to believe that it would ensure the guarantee in Canada of fundamental human rights concerning issues which related to matters over which the Federal Parliament had jurisdiction. This belief was reinforced in 1970 when the Supreme Court of Canada delivered its judgment in The Queen v. Drybones.[16] In that case, the Court held that the Canadian Bill of Rights rendered inoperative a section of the Indian Act which made it an offence for Indians to be intoxicated off reserve lands. The Court found that, by virtue of that section of the Indian Act, Indians (because of their race) were denied "equality before the law"[17] as outlined in the Bill. They were denied that right, the Court found, because the offence created was one which applied only to Indians and not to other persons.

(c) 1974-1976

The faith which was placed in the Canadian Bill of Rights and which was reinforced by the decision in the Drybones case was destroyed four (4) years later when the Supreme Court of Canada

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[15] 1960 (Can.), C.44. Attached as Appendix B and referred to hereinafter as the Canadian Bill of Rights.

[16] [1970] S.C.R. 282. Attached as Appendix C.

[17] Id. at p. 297.

held that the Bill had no affect upon certain federal legislation which violated human rights. The Court made this pronouncement in a judgment which constituted the final verdict in two (2) cases: The Attorney General of Canada v. Lavell and Isaac et al. v. Bédard.[18]

(i) The Lavell & Bédard Decision:

As the Human Rights Committee is now well aware, these cases dealt with the very issue which is now before the Committee; whether Section 12(1)(b) of the Indian Act violates the human rights of certain Indian women. In the Lavell and Bédard cases, the Supreme Court of Canada held, by a bare majority of five judges (four of the nine judges dissented), that the Canadian Bill of Rights does not apply to Section 12(1)(b) of the Indian Act.

The Interim Decision stated that the Supreme Court of Canada in the Lavell and Bédard cases held that Section 12(1)(b) of the Indian Act did "not contravene"[19] the Canadian Bill of Rights. A greater familiarity with the complexities of that case and with the individual judgments in it will reveal that the Court did not make such a finding. Instead, a bare majority of the judges (five of nine) held that Section 12(1)(b) of the Indian Act did, indeed, create discrimination by reason of sex.[20]

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[18] [1974] S.C.R. 1349. A copy of this judgment was sent by Sandra Lovelace to the Human Rights Committee on 17 April 1978.

[19] At p. 1, para. 1.

[20] Refer to the judgment of Hall, Spence and Laskin, J.J. (delivered by Laskin, J.), especially at pp. 1375, 1386 and 1388. Abbott, J. also concurred with Laskin, J. on this point (pp. 1373-1374) as did Pigeon, J. (p. 1390) even though the latter sided with Ritchie, J. in the final result.

Unfortunately, the bare majority of the Court also decided in favour of the judgment of Ritchie, J. who, among other things, concluded:

> That the Bill of Rights is not effective to render inoperative legislation, such as s. 12(1)(b) of the Indian Act, passed by the Parliament of Canada in discharge of its constitutional function under s.91(24) of the B.N.A. Act, to specify how and by whom Crown lands reserved for Indians are to be used;[21]

The distinction between what the Human Rights Committee has stated to be the decision in the Lavell and Bédard cases and what the judgments of the case reveal, is of importance. Because the majority of the Court found that there was discrimination by reason of sex, the Court would have held that Section 12(1)(b) of the Indian Act did contravene the Canadian Bill of Rights and, therefore, was a violation of the human rights which the Government of Canada in that Bill had guaranteed to each individual within its territory. Unfortunately, a bare majority of Court also held that the Bill had no effect upon the portions of the Indian Act which were "passed by the Parliament of Canada in discharge of its constitutional function" to legislate with respect to Indians and Indian lands.[22]

The major reason for refusing to apply the Canadian Bill of Rights to Section 12(1)(b) of the Indian Act seems to

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[21] Lavell and Bédard cases at p. 1372.

[22] Ibid.

have been a fear by the Court that the Bill might well render Parliament incapable of carrying out its constitutional obligations to govern Indians and Indian lands. Ritchie, J., for example, ruled that:

> In my opinion the exclusive legislative authority vested in Parliament under s.91(24) could not have been effectively exercised without enacting laws establishing the qualifications required to entitle persons to status as Indians and to the use and benefit of Crown "lands reserved for Indians". The legislation enacted to this end was, in my view, necessary for the implementation of the authority so vested in Parliament under the constitution.
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> To suggest that the provisions of the Bill of Rights have the effect of making the whole Indian Act inoperative as discriminatory is to assert that the Bill has rendered Parliament powerless to exercise the authority entrusted to it under the constitution of enacting legislation which treats Indians living on Reserves differently from other Canadians in relation to their property and civil rights.[23]

Further, Pigeon, J. stated that:

> I agree in the result with Ritchie, J. I certainly cannot disagree with the view I did express in The Queen v. Drybones (at p. 304) that the enactment of the Canadian Bill of Rights was not intended to effect a virtual suppression of federal legislation over Indians. My difficulty is Laskin, J.'s strongly reasoned opinion that, unless we are to depart from what was said by the majority in Drybones, these appeals should be dismissed because, if discrimination by reason of race makes certain statutory provisions inoperative, the same result must follow as to statutory provisions which exhibit discrimination by reason of sex. In the end, it appears to me that, in the circumstances, I need not reach a firm conclusion on that point.

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[3] Lavell and Bédard at p. 1359.

> Assuming the situation in [sic] such as Laskin, J. says, it cannot be improper for me to adhere to what was my dissenting view, when a majority of those who did not agree with it in respect of a particular section of the Indian Act, now adopt it for the main body of this important statute.[24]

Laskin, J. and the three other judges who concurred with him did not share the fears of Pigeon, J. and of Ritchie, J. and his followers. From a legal standpoint, Laskin, J. argued against the proposition that the Canadian Bill of Rights, if allowed to take effect, would suppress federal legislative power over Indians:

> In my opinion, the appellants' contentions gain no additional force because the Indian Act including the challenged s.12(1)(b) thereof, is a fruit of the exercise of Parliament's exclusive legislative power in relation to "Indians, and lands reserved for the Indians" under s.91(24) of the British North America Act. Discriminatory treatment on the basis of race or colour or sex does not inhere in that grant of legislative power. The fact that its exercise may be attended by forms of discrimination prohibited by the Canadian Bill of Rights is no more a justification for a breach of the Canadian Bill of Rights than there would be in the case of the exercise of any other head of federal legislative power involving provisions offensive to the Canadian Bill of Rights. The majority opinion in the Drybones case dispels any attempt to rely on the grant of legislative power as a ground for escaping from the force of the Canadian Bill of Rights. The latter does not differentiate among the various heads of legislative power; it embraces all exercises under whatever head or heads they arise. Section 3 which directs the Minister of Justice to scrutinize every Bill to ascertain whether any of its provisions are inconsistent with ss. 1 and 2 is simply an affirmation of this fact which is evident enough from ss. 1 and 2.[25]

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[24] Id. at p. 1390.

[25] Id. at pp. 1388-1389.

From a purely practical standpoint as well, it is clear that the application of the Canadian Bill of Rights to s.12(1)(b) of the Indian Act would not remove federal legislative power over Indians. At most, it would merely prevent Parliament from controlling Indians and lands reserved for them in a manner which violated the human rights of anyone affected by the controlling legislation. In the issue which was before the Supreme Court of Canada in the Lavell and Bédard cases (and the one which is presently before the Human Rights Committee) a favourable ruling by the Court would only have meant that the determination of Indian status could not be based upon discrimination on account of sex. Another fairer, more effective, and rational method of determining status would merely have had to replace it.

(ii) Effect of the Lavell and Bédard Decision:

The decision in the Lavell and Bédard cases detrimentally affected human rights in a number of ways:

- On Indian Women Marrying Non-Indian Men;

As the highest judicial tribunal in the nation had ruled that Section 12(1)(b) of the Indian Act was a section of legislation which it would not disturb, the judgment meant, that for all intents and purposes, no legal recourse remained for anyone to challenge that particular section of the federal legislation. A woman such as Sandra Lovelace, for example, would most likely have her initial application to challenge that section of the Indian Act in a Canadian Court refused on

the grounds that the matter had already been adjudicated upon by the Supreme Court of Canada. As a result, in place of stating (as has the Interim Decision)[26] that "she was not required to exhaust local remedies", it would be more accurate to state that "all domestic remedies have been exhausted."[27]

- On Indians;

On a broader basis, the decision in the Lavell and Bédard cases holds that Indians cannot challenge, in Canadian Courts, any legislation which relates to the "internal administration of the life of Indians on Reserves and their entitlement to the use and benefit of Crown Lands situate thereon...".[28] This was the essence of the majority judgment as outlined by Ritchie, J. in the Lavell and Bédard cases.[29]

- On Any Group;

Furthermore, the decision in the Lavell and Bédard cases provide the Federal Government with legal justification for violating the human rights of any individuals over whom it has the constitutional authority to pass laws. The justification so to act stems from a view which the bare majority of the Court adopted, ostensibly in order to insulate certain portions of the

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[26] At p.1, paragraph 1.

[27] Communication at p. 1.

[28] Lavell and Bédard at p. 1360.

[29] Supra at p. 10. Refer to the quotation from the judgment of Ritchie, J. quoted on that page.

Indian Act from the application of the Canadian Bill of Rights. The view is stated at length in the judgment of Ritchie, J.[30] He interpreted the phrase "equality before the law" (which appears in the Bill as a right to be protected) in a most unorthodox fashion by ruling, in essence, that "equality before the law" merely refers to the right of everyone within a specific group to be treated in a similar manner.

In order to rationalize his belief that the Canadian Bill of Rights should not apply to certain portions of the Indian Act, and to interpret the right of equality before the law in such a restrictive manner, Ritchie, J. had to distinguish the ruling of the Supreme Court of Canada in the Drybones case.[31] He did so by holding that, in Drybones, the Canadian Bill of Rights was effective in rendering inoperative a section of the Indian Act because that section created an offence which applied only to Indians and not to any other person. That case, he argued, was one wherin there was a denial of equality before the law because some individuals (Indians), in certain circumstances, could be guilty of an offence for which other individuals, in the same circumstances, could not be found guilty. Further, he ruled that the rationale in the Drybones case was not applicable in the situation concerning Indian women who married non-Indian men and thereby lost their Indian status. His reasons for the distinction were that:

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[30] Lavell and Bédard at pp. 1365-1372.

[31] Supra, footnote 16.

(1) the Federal Government had a constitutional obligation to control Indians and lands reserved for them and that it should be free to carry out that function, and

(2) as the same law applied to Indians who lived on land reserved for them, they enjoyed the right to "equality before the law".

What Mr. Justice Ritchie failed to note was that, even in the restricted circumstances of the Lavell and Bédard cases, the law - even for Indians living on reserves - was not applied equally. The law protected the right of Indian men to marry non-Indians and still retain their Indian status and denied (or removed) the corresponding right from Indian women.

In the broader perspective, it is plain that the restricted definition of "equality before the law" adopted by Ritchie, J. and concurred in by those judges who agreed with him is offensive to the whole concept of human rights. By its reasoning, a legislative body would be free to create, by definition, a group, and within that group, impose laws which would not apply to any other person. For example, if one were to accept the definition of the right to "equality before the law" as defined by Ritchie, J., the Federal Parliament of Canada (provided that it was legislating within the scope of its constitutional powers as defined in s.91 of the British North America Act) could promulgate and have enforced laws which discriminate against all women, provided that it discriminated equally against every woman.

(d) 1976 - Present

The decision in the Lavell and Bédard cases caused the issue of human rights in Canada to suffer a considerable setback. As the majority of the Supreme Court of Canada was reluctant to assume the role of protector of human rights in Federal matters which the Canadian Bill of Rights offered to it, another avenue for their protection had to be created.

(i) The Canadian Human Rights Act and the Canada Human Rights Commission.

On 14 July 1977 the Canadian Human Rights Act[32] received Royal Assent. In the following month, the part of the Act establishing the Canadian Human Rights Commission was promulgated. An avenue for the protection of certain human rights came into being. Unfortunately, the Indian Act is specifically exempted from the application of the Canadian Human Rights Act.[33] As a result, status Indians can receive no protection from the Canadian Human Rights Commission.

(ii) The United Nations International Covenant on Civil and Political Rights and Its Optional Protocol

On 19 August 1976 the Covenant on Civil and Political Rights entered into force in respect of Canada. This provided for Canadians another avenue of redress for violations of their human rights by the Federal Government of Canada. At the present

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[32] 25-26 Elizabeth II C.33.

[33] Id. at s.63(2) which states:
"Nothing in this Act affects any provision of the Indian Act or any provision made under or pursuant to that Act."

time, there is no other method of appeal for many Canadians. Status Indians are among them. Hence, the Communication by Sandra Lovelace to the Human Rights Committee.

3. GOVERNMENT OF CANADA SUBMISSIONS OF 26 SEPTEMBER 1979 AND 4 APRIL 1980.

The Interim Decision[34] implies that only the reply by the Government of Canada of 4 April 1980 is a submission under Article 2(4) of the Optional Protocol. This would appear to place the submission of 26 September 1980 of the Government of Canada in a subordinate light. An examination of both submissions will demonstrate that they address themselves to precisely the same issue and that they are "written explanations or statements clarifying the matter and the remedy" which have been submitted by the "receiving State...to the Committee."[35] As such, both replies are - and should be looked upon as being - submissions under Article 4(2) of the Optional Protocol.

The two submissions are of importance, for the earlier one demonstrates an intention to change the Indian Act in order to accord with the international obligations Canada has assumed by ratifying the Covenant on Civil and Political Rights and its Optional Protocol while the later one exhibits a tendancy to retract from those promises.[36] If the Human Rights Committee looks upon the later submission by the Government of Canada as

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[34] At p. 2, paragraphs 4 and 5.

[35] Article 4(2) of the Optional Protocol.

[36] Refer to the 20 June 1980 "Additional Information and Observations Drafted on Behalf of Sandra Lovelace" at pp. 2-6, for an outline of the discrepancies between the two Replies of the Government of Canada.

being of more significance than the first submission, it is tantamount to holding that certain obligations and admissions once made can later be retracted without reason and for no good purpose.

4. PROTECTION OF "FARMING SOCIETIES"

The Interim Decision appears to accept the contention of the Government of Canada[37] that the historical purpose of what is now s.12(1)(b) of the Indian Act was promulgated to protect "farming societies". That contention by the Government of Canada is not a correct one, for not all Indian tribes or their lands were farming societies. A large number of them were societies based upon hunting, and there is evidence that such was the case with most Maritime Indian tribes, including the Maliseet Indians of the Tobique reserve.[38]

5. THREAT TO INDIAN COMMUNITIES

The Government of Canada has also argued that altering s.12(1)(b) of the Indian Act would constitute a threat to the Indian community, and this statement has been reflected in the

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[37] 4 April 1980 Submission of the Government of Canada at p.2, which appears in the Interim Decision at p. 2, paragraph 5.

[38] A recent text by G.P. Gould and A. J. Semple, Our Land: The Maritimes (Saint Annes Point Press: Fredericton, 1980) examines the historical and legal background of native claims in the Maritime Provinces of Canada. The book makes constant reference to the "hunting grounds" of the Micmac and Maliseet tribes. There is good evidence to suggest that the Tobique Band were originally hunting, and not farming societies, and that the latter was imposed upon them.

Interim Decision wherein it is stated that "The Indian community should not be endangered by legislative changes."[39] There is agreement with the view that legislative changes should not threaten the Indian community, but there is strong disagreement with the presumption that amending s.12(1)(b) of the Indian Act would constitute such a threat.

The Human Rights Committee should note that, at the present time, the various Indian communities across Canada are divided on the issue of whether s.12(1)(b) of the Indian Act would constitute such a threat.

The Human Rights Committee should note that, at the present time, the various Indian communities across Canada are divided on the issue of whether s.12(1)(b) of the Indian Act should be amended. This division was created by the inherent offensiveness of the section as it already exists, and not by any proposed amendments to it. The position of Sandra Lovelace is that the Indian Act as it presently exists, is dividing the Indian people, and that it must be changed in order to permit that division to cease. By arbitrarily permitting some individuals who have had little or no contact with an Indian community (e.g., non-Indian women who marry Indian men) to become members of it, and by arbitrarily banning from the community some individuals who were born and brought up in it (e.g., Indian women who marry non-Indian men), the Government of Canada has created a

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[39] At p. 2, paragraph 5.

division among the Indian people in Canada and it has encouraged a substantial number of Indians to support the denial to women of equal rights. - The present legislation is the cause of the division among the Indian people, and the body which created that legislation should be bound to amend it and correct whatever harm has been caused by it.

- Determining Indian Status Without Violating Human Rights;

Many of the observations and questions in the Interim Decision appeared to presume that the only effective method of determining Indian status and protecting the Indian minority in Canada is to implement legislation which is based upon discrimination by sex. This problem also plagued the Supreme Court of Canada in the Lavell and Bedard cases, where the basis of the judgment of the bare majority of the Court was predicated upon a belief that Parliament should not be prohibited by human rights legislation from carrying out its constitutional duty of protecting Indians and lands reserved for them.

Counsel for Sandra Lovelace does not believe that the United Nations International Covenant on Civil and Political Rights or its Optional Protocol requires a complainant to provide (in addition to its assertion of a violation of human rights) legislative proposals which will provide for the State Party in breach of its human rights obligations an alternate legislative formula which will solve its difficulties. This would be both presumptuous and often times far too great a burden for a complainant.

In the instant case, however, the difficulty of formulating an alternative method of determining Indian status while still protecting the Indian minority, seems to have provided so considerable a barrier to the minds of judges, that they chose to permit a violation of human rights to continue rather than criticize and render inoperative legislation which was repugnant to basic rights and freedoms. As the Human Rights Committee appears to be challenged by a similar barrier, the necessity of offering a possible solution for determining Indian status appears to be unavoidable. The solution which follows is not necessarily one which all Indian people would accept, nor is it the best answer to a difficult problem. The Government of Canada has the ty and the expertise to make such decisions. The solution is merely an attempt to show that the Indian people and their lands can be protected without violating human rights.

Instead of determining Indian status according to the present method, status could be determined according to a combination of factors: sanguinity, affinity and cultural preference. These factors could be combined in the following formula:

(1) If one were born an Indian, one would automatic remain so, until

(a) one requested a change of status, or

(b) one voluntarily removed oneself completely from Indian society and culture for a prolonged period of time and it was reasonable to presume that a break with the society and culture had been made;

(2) If one marries an Indian (regardless of sex) one could be granted Indian status if one embraced Indian society and culture. Once Indian status was obtained, one would automatically remain so unless (1)(a) or (b) became applicable.

(3) The children of a mixed Indian/non Indian marriage could attain Indian status only if they embraced Indian society and culture. Again, once the children attained Indian status, they would automatically remain so unless (1)(a) or (b) applied.

(4) Determing whether anyone (either the non-Indian spouse of an Indian or the children of a mixed marriage) embraced Indian society and culture could be determined by an objective test taking into account such things as place of residence, work and social activity, and contributions to the community. Similarly, the test in (1)(b) could be established and applied in an objective manner.

The advantages of the above-mentioned formula (or something similar to it) for determining Indian status are that:

(1) It is not based upon discrimination by sex or any other violation of human rights;

(2) It does not threaten minority rights, but rather reinforces them by;

(a) guaranteeing the status of those born within the minority who wish to remain associated with it;
(b) permitting those who genuinely embraced the society and culture to obtain status within it; and
(c) preventing those who do not or can not embrace the society and culture from obtaining status in it.

C. ON THE MATTER OF CERTAIN OBSERVATIONS BY THE HUMAN RIGHTS COMMITTEE

An historical review of the legal remedies available to individuals whose human rights have been violated by legislative provisions of the Federal Government of Canada[40] show that, prior to 1960, no challenge to any legislation duly passed could be made unless one was able to establish that Parliament had infringed upon the powers of the Provincial Legislatures and that its legislation, therefore, was ultra vires. Between 1960 and 1974, another remedy had been added. The Canadian Bill of Rights, as reinforced by the decision of the Supreme Court of Canada in the Drybones case, provided a strong promise that the combination of Federal human rights legislation and the judicial interpretation of it created an effective legal remedy to any potential violation of human rights by the Federal Government of Canada. However, this hope was destroyed in 1974 when the decision in the Lavell and Bédard cases severely restricted the effect of the Canadian Bill of Rights and Drybones. It did so by holding that the Bill could not be employed to render inoperative legislation by which, through the use of discrimination on the basis of sex, the Federal Government of Canada attempted to discharge its constitutional obligation to control Indians and the lands reserved for them. The repercussions of the decision in Lavell and Bédard were threefold:

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40 Supra, at pp. 4-17.

(1) all legal remedies available to Indian women who suffered from discrimination on the basis of sex by virtue of 2.12(1)(b) of the Indian Act were rendered void;[41]

(2) all legal remedies available to Indians who might suffer a violation of their human rights resulting from Federal legislation relating to the "internal administration of the life of Indians on Reserves"[42] were rendered void; and

(3) as a result of a restrictive defintiion of the right of "equality before the law" by the bare majority of the Court, any group of individuals which were so defined by duly enacted Federal legislation could be made to suffer violations of human rights.[43]

The effects of the Lavell and Bédard cases were somewhat mitigated by the promulgation in 1977 of the Canadian Human Rights Act and the establishment of the Canadian Human Rights Commission.[44] Under this Act, many individuals now have a potential remedy for violations of certain of their human rights which did not previously exist. Unfortunately, Indians were

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[41] Infra at pp. 10, footnote 23.

[42] Infra at p. 13, footnote 28.

[43] Infra at pp. 13-15.

[44] Infra at p. 16, footnote 32.

specifically exempted from the Canadian Human Rights Act[45] and, as a result, they continue to receive no protection from violations of their human rights. The only remedy presently available to Indians in Canada rests in the hands of the Human Rights Committee.

1. ARTICLE 2 AND 3 OF THE UNITED NATIONS INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

State Parties to the Covenant place themselves under a basic obligation. Each one undertakes:

> to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as ...sex...[46]

That basic obligation is further elaborated upon in Article 3, which creates upon State Parties to the Covenant the positive obligation to:

> to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

In addition to the basic obligation of State Parties to the Covenant, there exist other obligations. For example, States must:

> ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy...[47].

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[45] Id. at footnote 33.

[46] The United Nations International Covenant on Civil and Political Rights, Article 2(1).

[47] Id., Article 2(3)(a).

In the present case, the obligations referred to above have not been met by the Government of Canada. As the facts show, Sandra Lovelace is an individual within the territory and jurisdiction of Canada who does not enjoy certain human rights. She has been deprived of them because of legislation which creates a distinction on the basis of sex. Furthermore, the facts also show that there is no effective remedy for the violation of the human rights of Sandra Lovelace which she has suffered, and continues to suffer, because of the refusal of the Government of Canada to amend the legislative provision which is repugnant to the obligations which Canada has assumed by becoming a party to the United Nations International Covenant on Civil and Political Rights.

ARTICLE 26 OF THE UNITED NATIONS INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

In addition to the basic obligations concerning the elemination of discrimination which the States Parties to the Covenant undertake, there is an affiliated right which they also bind themselves to guarantee. That right deals with the recognition that:

> All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. 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 ...sex...[48].

Again, as the facts show, the Government of Canada, in violating its obligations to prevent discrimination on the

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[48] Id., Article 26.

basis of sex, has violated the right as outlined in Article 26. Sandra Lovelace is not a person who is "equal before the law" and, because of discrimination on the basis of sex, she does not enjoy "equal protection of the law". As the Supreme Court of Canada has ruled in favour of legislation which discriminates on the basis of sex, and as there is no legal remedy available, it is encumbant upon the Government of Canada to alter the offending legislation which deprives Indian women who marry non-Indian men of equal protection of the law.

3. ARTICLES 23, 17 AND 12(1) OF THE UNITED NATIONS INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS.

Article 23(2) establishes the "right of men and women . marriageable age to marry and found a family". As the Interim Decision has stated,[49] Section 12(1)(b) of the Indian Act "entails serious disadvantages on the part of the Indian woman who wants to marry a non-Indian man" although not legally restricting the right to marry. Even though the Indian Act does not legally restrict the right to marry, the disadvantages which it does create often entails more disadvantages than merely causing an Indian woman to live with her fiancee in an unmarried relationship. By depriving a family of one-half of its social and cultural background (which, in effect, occurs when an Indian woman marries a non-Indian man and is thereby deprived of her Indian culture by losing her status under the Indian Act) the family unit is

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[49] Interim Decision at p. 2, paragraph 7.

ubjected to a great deal of strain and pressure. In such cases, the family unit is permitted to be ostracized by one portion of society, and the protection to which the family is entitled by both society and the State[50] is removed. In addition, Section 12(1)(b) of the Indian Act deprives Indian women who marry non-Indian men of "equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution".[51] Because an Indian woman is forced to abandon her social and cultural background when she chooses to marry an non-Indian man, she is prevented from returning to her community once she marries. As a result, she is subjugated during marriage because of an inability to return to her native home should any difficulties arise which threaten the marriage. Further, at the dissolution of a marrriage, an Indian woman who has married a non-Indian man cannot return to her native community. She does not regain her Indian status at the dissolution of her marriage.

Affiliated to the rights set out in Article 23 are those in Article 17. In the latter article, the family is protected from "arbitrary or unlawful interference" and every individual is granted "the right to the protection of the law against such interference or attacks". Because Section 12(1)(b) of the Indian Act effectively disengages Indian women who marry non-Indian men from the society, culture and past family ties of the Indian woman, both the Indian woman's new family and her old one, have been

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[50] United Nations International Covenant on Civil and Political Rights, Article 23(1).

[51] Id., Article 23(3).

subjected to interference. In this case, the interference, although lawful, is an arbitrary one. It is an arbitrary one because it has been based on a decision that has been reached on inadequate grounds. Furthermore, the law in this instance creates the interference with family and does not protect it as it is bound to do under the terms of Article 17(2).

Article 12(1) of the Covenant provides for the "right to liberty of movement and freedom to choose his residence". The offending section of the Indian Act contradicts this right for Indian women who marry non-Indian men because it restricts their right to liberty of movement and freedom to choose a residence. The restriction lies in the fact that, again, once the decision to marry has been reached by an Indian woman, she is bound to follow the dictates of her non-Indian spouse and is powerless to return, either with or without him, to the center of her culture, society and upbringing. An Indian woman brought up on an Indian reserve, who marries a non-Indian man, is forced to enter an alien social milieu. She is totally dependent upon her husband and would be helpless should the marriage cease to function. She could not legally return to her own people, nor is it likely that she would be successful in the alien white culture without the guidance and assistance to her spouse.

4. ARTICLE 24(1) OF THE UNITED NATIONAL INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

The Human Rights Committee has suggested that Section 12(1)(b) of the Indian Act may affect rights which are contained

in Article 24 of the Covenant.[52] Sub-section 1 of that article grants to every child the right:

> without discrimination as to race, color, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

Although this right does not relate specifically to Sandra Lovelace, it does concern her children. The children of Sandra Lovelace are denied the social and cultural background of their mother because neither she nor they are permitted any legal rights or status within the Indian community. This is so regardless of the contribution made by their father, the husband of Sandra Lovelace, and regardless of the degree of emotional and cultural ties which might bind them more strongly to the Indian community as opposed to the non-Indian community. The children of Indian women who marry non-Indian men are denied the normal measures of protection which it is encumbant upon society and the State to provide in order to accord with Article 24(1).

5. ARTICLE 27 OF THE UNITED NATIONS INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

The Interim Decision reflects a view that States Parties to the Covenant are under an obligation to accord protection to ethnic and linguistic minorities.[53] The Government of Canada relies upon a presumption that the obligations under

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[52] Interim Decision at p. 3, paragraph 9.

[53] Id. at p. 3, paragraph 7.

this article provide justification for a State, in certain circumstances, to act or legislate in violation of the other human rights of individuals as outlined in the Covenant.[54] Such a presumption should not be the basis upon which the Covenant is interpreted. Counsel for Sandra Lovelace maintains that the obligation as outlined in Article 27 need not be carried out in a manner which conflicts with the rights as outlined in the Covenant. Articles 2(1) and 5(1) state that the rights set out in the Covenant are not to be interpreted in such a way as to negate other rights set out in the Covenant. In addition, an examination of the travaux preparatoires which resulted in the final draft of the Covenant indicates that most States were not prepared to interpret Article 27 in such a way as to oppose upon themselves positive obligations which will necessitate costly and complex administrative procedures to protect such rights.

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[54] Reply of the Government of Canada of 4 April 1980 at p. 2. This view seems to have posed a problem for the Human Rights Committee, as it is reflected in the Interim Decision on p. 3, paragraph 8.

D. ON THE MATTER OF CERTAIN QUESTIONS POSED BY THE HUMAN RIGHTS COMMITTEE

1. HOW MANY INDIAN WOMEN MARRY NON-INDIAN MEN ON THE AVERAGE EACH YEAR?

(a) Objections to the Question

The question as posed by the Interim Decision[55] reflects two presumptions:

> (1) that such statistics are valid in determining whether the Government of Canada has violated any of the human rights enumerated in the United Nations International Covenant on Civil and Political Rights; and
>
> (2) that (presuming the statistics to be of validity in determining whether a violation of human rights occurred) the statistics relating to how many Indian men marry non-Indian women are not relevant.

Counsel for Sandra Lovelace takes exception to both presumptions, should they exist in the mind of the Human Rights Committee.

(i) Re: The Validity of the Statistics

It is trite to argue that numbers should not be a factor in determining the rights of individuals. Ostensibly, the obligations of State Parties to any human rights treaty guarantee rights equally for everyone, regardless of the numbers involved. To think in any other terms would constitute a denial of human rights.

One can presume, from the first question posed in

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[55] At p. 3, paragraph 10(a).

the Interim Decision[56] and from its reference to Article 27 of the United Nations International Covenant on Civil and Political Rights[57] that the Human Rights Committee fears that a sudden influx of non-Indian men into the Indian communities would constitute a threat to the Indian minority. This is a fear which was shared by the bare majority of the Supreme Court of Canada when it rendered its decision in the Lavell and Bédard cases.[58] That fear should not be the basis upon which to determine whether the human rights of Indian women have been violated by the Government of Canada. Indeed, the fear should be ignored because it does not take into account the following considerations:

> (1) anyone choosing to move into an Indian community upon marriage would only remain there if he or she were capable of embracing the local society and culture;
>
> (2) if the proposition mentioned above were not true, non-Indian women (who are granted the status of Indians once they marry Indian men) would constitute an equal threat to the protection of that minority when they are given the right to live in the community upon marriage to Indian men;
>
> (3) Indian women who are forced by law to remove themselves from their Indian society merely because they marry non-Indian men constitute a considerable loss to that minority group both in social and cultural terms and in terms of family and blood relationships; and

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[56] Ibid.

[57] Id. at p. 3, paragraph 7.

[58] Infra. at pp. 8-12.

(4) no credence is given to the view that a person who comes from outside a given social and cultural milieu can enter it and embrace it with such enthusiasm that he or she can contribute in a very positive sense to its maintenance and development.[59]

(ii) Statistics Only for Indian Women Marrying Non-Indian Men

The request for only one-half of the numerical view of the problem reflects, in itself, thinking which is based upon discrimination on the basis of sex. One presumes this is not the case, and that the first question posed in the Interim Decision implies that statistics concerning the numbers of Indian men marrying non-Indian women is also requested.

Counsel for Sandra Lovelace presumes that the Federal Government of Canada will supply the Human Rights Committee with a complete and up-to-date answer to the first question. However, in order to provide the maximum possible assistance to the Human Rights Committee, statistics obtained from the Canadian Human Rights Commission are attached as Appendix D. The statistics cover Indian marriages from 1965 to 1978. No other information was readily available.

In accord with the view that statistical information, in this case, is not of relevance, it is felt that there is no need, at this time, to comment upon any apparent trends or patterns which they may reveal. Nevertheless, counsel for Sandra Lovelace believes that the statistics do not reflect detrimentally upon,

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[59] The historical view of granting Indian status only to non-Indian women who marry Indians is based upon the belief that female passivity would not detract from the Indian lifestyle. The corollary which follows is that female passivity would not contribute to the society and culture either. The fallacy of this view is obvious, but it is, nevertheless, still manifest in the minds of decision-makers.

or prejudice, the complaint she has raised before the Human Rights Committee.

2. LEGAL BASIS OF A PROHIBITION TO LIVE ON A RESERVE; DIRECT RESULT OF LOSS OF INDIAN STATUS OR DISCRETIONARY DECISION?

The following portion of the answer to the second question contained in the Interim Decision was supplied by courtesy of the Canadian Human Rights Commission:

> 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?
>
> The legal basis of a prohibition to live on a reserve is a direct result of the loss of Indian status. Section 30 of the Indian Act makes it an offence for a person to trespass on a reserve. Section 28(1) voids any permission to reside on a reserve given by a Band or a Band member to a non-Indian.
>
> It should be noted, however, that section 28(2) authorizes the Minister, acting on the consent of the Band Council, to permit any person to reside on a reserve indefinitely.
>
> It should be noted further that the Minister of Indian Affairs and Northern Development announced in the House of Commons on July 24, 1980 that the Government would suspend the application of section 12(1)(b) upon request by Indian Band Councils. The Minister presumably would be acting under section 4(2) of the Indian Act.[60]

The second part of the question as it appears in paragraph 10(b) of the Interim Decision[61] raises a presumption that,

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[60] See Appendix E for a list of the Band Councils which, up to 10 October 1980, had requested the Minister to use s. 4(2) of the Indian Act to revoke s. 12(1)(b). Only 5 Bands have done so, and the Tobique Band is not one of them. As a result, Sandra Lovelace continues to suffer a violation of her human rights.

[61] At p. 3.

so long as a State Party to the United Nations International Covenant on Civil and Political Rights delegates to a smaller group within it the option of violating the human rights of an individual, that such a delegation exculpates the State from its obligations under the Covenant. A reasonable interpretation of the Covenant would indicate that such is not the case, and the obligations of State Parties as defined in Articles 2, 3 and 5(1) of the Covenant make it quite clear that such is not the case. The Government of Canada is under an obligation to ensure that no law exists in its jurisdiction which permits a violation of the human rights outlined in the Covenant. If such a law exists, it must be remedied. The Government of Canada has not remedied the situation which has given rise to the complaint by Sandra Lovelace to the Human Rights Committee.

3. REASONS FOR DENYING A RIGHT TO ABODE ON A RESERVE

This question appears to be addressed to the Government of Canada. The only stated reason which it has made appears in its reply of 4 April 1980.[62] In effect, the Government of Canada argued that, historically, the protecting mechanism had to discriminate on the basis of sex because in a farming society reserve land was more threatened by non-Indian men than non-Indian women. The validity of such reasoning is, at most, doubtful[63] and it is certainly obsolete in the present day and age.

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62 At p. 2.

63 Infra. at p. 18, footnote 38.

PRESENT LEGISLATIVE PROPOSALS ENSURING EQUALITY BETWEEN THE SEXES WITH REGARD TO INDIAN STATUS

The questions outlined in paragraph 10(d) of the nterim Decision[64] can best be answered by the Government of anada. At the present time, counsel for Sandra Lovelace has een unable to obtain information concerning any legislative roposals to ensure full equality between the sexes with regard o Indian status or the dates to introduce them. Consequently, t is not possible, at the present time, to determine how they ould affect the position of Sandra Lovelace. The only informa- ion which has been obtained consists of sections of debates in he House of Commons. Communiqués from the Federal Department of ndi and Northern Affairs, statements made by Premier Hatfield f New Brunswick and Prime Minister Trudeau during a Federal- rovincial Conference of First Ministers on the Constitution, orrespondence between the Indian Rights for Indian Women Group nd the Government of Canada, and a selected copy of press overage on the complaint by Sandra Lovelace to the Human Rights ommittee. The material is interesting, if not informative, and s attached to this reply for the benefit of the members of the ommittee. See Appendix F.

In addition to possible legislative changes, the ederal Government of Canada is attempting to initiate constitutional hanges. Its method of so doing is to attempt to patriate the ritten portion of the constitution of the nation from the United

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[64] At p. 3.

Kingdom and, at the same time, to insert a so-called constitutional protection of human rights within it. As very few of the Provincial Governments (two or three of the ten) wish the patriation to take place with its present constitutional alterations, as virtually every human rights group in Canada has voiced serious objections to the proposed human rights guarantees, and as the Indian peoples in Canada are united in their stand against the Federal proposal because of fears that more of their rights will be destroyed, counsel for Sandra Lovelace suggests that such potential changes are ones which should not be considered in the present case.

If the Government of Canada introduces to the Human Rights Committee any legislative proposals which it has drafted or the constitutional amendments which it is presently seeking, counsel for Sandra Lovelace wishes to reserve the privilege of responding to and commenting upon any such proposals.

5. THE ABODE OF SANDRA LOVELACE PRIOR TO HER MARRIAGE, ETC.

Prior to her marriage, Sandra Lovelace lived on the Tobique Reserve. At the time, she was living with her mother and father. As a result of her marriage, she was denied the right to live on an Indian reserve.

- Additional Comments;

At the present time, Sandra Lovelace is living on the Tobique Indian Reserve, although she has no right to remain there. She has returned to the reserve with her children because her marriage has broken up and she has no other place to reside.

She is able to remain on the reserve in violation of the law of the local Band Council because dissident members of the tribe who support her cause have threatened to resort to physical violence in her defence whould the authorities attempt to remove her. No stronger evidence need be provided to demonstrate that s.12(1)(b) of the Indian Act has divided the various communities of the Indian minority which the Government of Canada claims it is attempting to protect.

6. PERSISTING EFFECTS OF THE LOSS OF STATUS OF SANDRA LOVELACE

Again, with the assistance of the research facilities of the Canadian Human Rights Commission, the following response is provided. It appears to cover the persisting effects of the loss of status of Sandra Lovelace:

> All the consequences of loss of status persist in that they are permanent and continue to deny the complainant rights she was born with.

A person who ceases to be an Indian under the Indian Act suffers the following consequences:

> (1) Loss of the right to possess or reside on lands on a reserve (ss. 25 and 28(1)). This includes loss of the right to return to the reserve after leaving, the right to inherit possessory interest in land from parents or others, and the right to be buried on a reserve;
>
> (2) An Indian without status cannot receive loans from the Consolidated Revenue Fund for the purposes set out in section 70;
>
> (3) An Indian without status cannot benefit from instruction in farming and cannot receive seed without charge from the Minister (see section 71);

(4) An Indian without status cannot benefit from medical treatment and health services provided under section 73(1)(g);

(5) An Indian without status cannot reside on tax exempt lands (section 87);

(6) A person ceasing to be an Indian loses the right to borrow money for housing from the Band Council (Consolidated Regulations of Canada, 1978, c. 949);

(7) A person ceasing to be an Indian loses the right to cut timber free of dues on an Indian reserve (section 4 - Indian Timber Regulations, c. 961, 1978 Consolidated Regulations of Canada);

(8) A person ceasing to be an Indian loses traditional hunting and fishing rights that may exist;

(9) The major loss to a person ceasing to be an Indian is the loss of the cultural benefits of living in an Indian community, the emotional ties to home, family, friends and neighbours, and the loss of identity.

- Additional Comments;

There are other sections of the Indian Act that indicate the legislative intent that a woman takes her status from her husband. Section 10 provides that whenever the name of a male person is included in, omitted from, added to or deleted from a list, the names of his wife and his minor children shall be treated in the same way. Section 14 provides that a woman's status as a Band member (rather than as an Indian) depends on the Band membership of her husband. Section 11(1)(c) focuses on male lineage. Section 109(2) provides that where an Indian woman marries a non-Indian the Governor-in-Council may order that all or any of her children are enfranchised as well as of the date of her marriage. This section technically applies to children from a previous relationship with an Indian man.

E. SUMMATION

A review of the possible remedies available to Sandra Lovelace demonstrate that, within Canada, all possible recourse has been exhausted. The highest court of the state has ruled against Indian women who have married non-Indian men on the very issue brought before the Human Rights Committee by Sandra Lovelace, and the Government of Canada has expressly excluded the Indian Act or any provision made under or pursuant to it from the purview of the Canadian Human Rights Act. This denial of remedies exists notwithstanding the fact that violations of the human rights of Sandra Lovelace exist because of Federal Government legislation which creates discrimination on the basis of sex and these violations are recognized as being such.

In its two submissions to the Human Rights Committee on this matter, the Government of Canada has been inconsistent in its statements and it has given no justifiable rationale for the continuance of its human rights violations by virtue of Section 12(1)(b) of the Indian Act. The historical rationale provided by the Government of Canada (the protection of farming societies) is, at best, questionable in its accuracy. Furthermore, it is no longer valid, even if it might have been in the past. The strongest reason which the Federal Government of Canada has provided as an excuse for not amending the offending legislation is based upon the argument that it is protecting the minority rights of Indians as outlined in Article 27 of the United Nations

International Covenant on Civil and Political Rights. This argument is not a valid one, and it should be rejected by the Human Rights Committee, because it is neither a proper interpretation of the rights outlined in Article 27, nor does it account for the view as reflected in Articles 2(1) and (5)(1) of the Covenant which state that the rights set out in it are not to be interpreted in such a way as to negate other rights set out and protected in it.

Another implied rationalization by the Government of Canada is that a change in the Indian Act will threaten Indian communities. Again, this rationale is highly questionable. The Indian Act as it presently exists is a major cause dividing Indians who are affected by it, and there is no evidence to suggest that legislative changes relating to the determination of Indian status cannot be made in a manner which will accord with human rights on the one hand and protect Indian communities on the other. Indeed, it is quite possible an amendment to Section 12(1)(b) of the Indian Act will serve to unite the Indian peoples if the changes made in the proper manner and with the proper spirit.

The violations of human rights suffered by Sandra Lovelace have been outlined and commented upon in Section C of this submission,[65] and the replies[66] to a number of questions posed by the Human Rights Committee reinforce the observation that such violations have been made, and continue to be made, by the Government of Canada.

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[65] Infra. at pp. 21-29.

[66] Infra. at pp. 23-31.

In conclusion, counsel for Sandra Lovelace wishes to reiterate that which was stated in the Additional Information and Observations submitted to the Human Rights Committee by and on behalf of Sandra Lovelace dated 20 June 1980.[67] The case speaks for itself. The Government of Canada has presented no supportable arguments for its failure to amend Section 12(1)(b) of the Indian Act and to grant to Sandra Lovelace such relief as is reasonable and necessary. Accordingly, Sandra Lovelace requests that the Human Rights Committee find:

> (1) That Section 12(1)(b) of the Indian Act is in violation of the rights set forth in the United Nations International Covenant on Civil and Political Rights as outlined in her communication of 29 December 1977 submitted to the Human Rights Committee under the provisions of the Optional Protocol to the Convention; and
>
> (2) That the Government of Canada can provide no reasonably acceptable ground for refusing to amend the legislation which has created the violation of the rights of the Covenant as set out in her communication of 29 December 1977.

In addition, Sandra Lovelace petitions the Human Rights Committee to append it to its finding the following recommendations:

> (1) That the Government of Canada amend Section 12(1)(b) of the Indian Act at the next session of its Federal Parliament following the issuance of the Committee's findings and recommendations;
>
> (2) That the amendment by the Government of Canada of Section 12(1)(b) of the Indian Act resolve all past difficulties which have been created by the application of that section;
>
> (3) That the amendment by the Government of Canada of Section 12(1)(b) of the Indian Act ensure that the formula to determine the status of Indians

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[67] At pp. 15-16.

accord with the obligations undertaken by Canada pursuant to the United Nations International Covenant on Civil and Political Rights.