



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Ninety-fifth session
16 March to 9 April 2009

DECISION

Communication No. 1576/2007

<u>Submitted by:</u>	Mr. Yussuf N. Kly (not represented by counsel)
<u>Alleged victim:</u>	The author
<u>State party:</u>	Canada
<u>Date of communication:</u>	16 February 2007 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 19 July 2007 (not issued in document form)
<u>Date of adoption of decision:</u>	27 March 2009

* Made public by decision of the Human Rights Committee.

Subject matter: Forced retirement of the author on alleged discrimination grounds.

Procedural issue: Exhaustion of domestic remedies; Unreasonably prolonged remedy; Non-substantiation of claim.

Substantive issue: Discrimination based on age and race.

Articles of the Covenant: 2 (1) and (3), 5; 7; 14 (1) and 3 (c, d and e); 20 and 26

Articles of the Optional Protocol: 2; 5 (2b)

[Annex]

ANNEX

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

Ninety-fifth session

concerning

Communication No. 1576/2007**

Submitted by: Mr. Yussuf N. Kly (not represented by counsel)
Alleged victim: The author
State party: Canada
Date of communication: 16 February 2007 (initial submission)

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

Meeting on 27 March 2009,

Adopts the following:

DECISION ON ADMISSIBILITY

1. The author of the communication, dated 16 February 2007 and 26 November 2007, is Dr. Yussuf N. Kly, a Canadian citizen. He claims to be a victim of violations of article 2; article 5; article 7; article 14, paragraphs 1 and 3 (c, d and e); article 20 and article 26, of the International Covenant on Civil and Political Rights, by Canada. The author is unrepresented.

The facts as presented by the author

2.1 The author was born on 25 October 1935 and turned 65 on 25 October 2000. At that time, he worked as a Professor at the University of Regina, Saskatchewan. Pursuant to the University's Collective Agreement¹, and despite attempting to stay on for an additional two years, he was

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Yuji Iwasawa, Ms. Helen Keller, Mr. Lazhari Bouzid, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli, Mr. Krister Thelin and Ms. Ruth Wedgwood.

¹ "The normal retirement date for academic staff members is June 30th following their 65th birthday (except for members who were elected in 1975 and chose to retain a different normal retirement date)."

required to retire on 30 June 2001, after 12 years of service. He alleges that he was forced to retire against his will and that this constitutes discrimination on the basis of age, as well as ancestry, place of origin and nationality.

2.2 On 23 April 2003, he lodged a complaint with the Saskatchewan Human Rights Commission (SHRC), underlining that as a visible minority, it took a period of more than ten years after receiving his PhD to secure employment and that he therefore needed to work longer than the forced retirement age of 65. The fact that once employed by the University of Regina, he achieved the status of Professor Emeritus attests that his earlier inability to find appropriate employment was not due to lack of merit. In its response to the SHRC, the University of Regina submitted that the Saskatchewan Human Rights Code defines age as meaning “any age over 18 years or more but less than 65 years”. In its view, therefore, the author’s retirement at age of 65 was not discrimination prohibited by the Code and article 3 (“non-discrimination”), of the University Regina Collective Agreement². The University Regina further argued that the mandatory retirement policy was applicable to all members covered by the Collective Agreement and that no evidence suggested that the author was asked to retire because of his ancestry, place of origin, or nationality.

2.3 On 22 June 2004, the SHRC informed the author that their investigation was complete and on 24 March 2005, the SHRC advised the author that a lead case “*Louise Carlson v. Saskatoon Public Library Board and the Canadian Union of Public Employees, Local 2669*” on the mandatory retirement issue was before the Saskatchewan Human Rights Tribunal³. With regard to the resolution in the author’s case, the University of Regina indicated to the SHRC that they would prefer to wait for the outcome in the Carlson lead case. On 18 July 2005, the Commission informed the author that his case file was held in abeyance until a decision was rendered by the Tribunal in the Carlson test case. On 14 October 2005, the University of Regina Professors Against Age Discrimination, the author and Mona Acker requested to intervene in the Carlson test case. They were granted limited status to participate in the hearing by providing a written argument on the effect the decision on the merits of the case would have on the organization.

2.5 On 1 November 2007, the SHRC informed the author of the 24 October 2007 Tribunal decision in the precedent Carlson case on mandatory retirement. That case was declared inadmissible on the grounds that the Canadian Supreme Court had already ruled on the issue of mandatory retirement⁴, and that it was therefore up to the Legislature to determine if there was to

² Article 3 – Non-Discrimination of the University of Regina Collective Agreement reads: “3.1 The parties agree that there shall be no discrimination practiced by reason of age (except for retirement age as provided for in the Academic Pension Plan), ancestry, race, creed, colour, national origin, political or religious affiliation or belief, sex, sexual orientation, marital status, physical handicap (except where the handicap would clearly prevent the carrying out of the required duties and subject to the provisions of the Salary Continuance Plan), and membership or activity in the Association”.

³ *Louise Carlson v. Saskatoon Public Library Board and the Canadian Union of Public Employees, Local 2669*: The complaint was brought by Louise Carlson, a library assistant, against her employer and the Union of Public Employees for age discrimination in that she was forced to retire at age 65 under a collective bargaining agreement.

⁴ *McKinney v. University of Guelph*, [1990] 3 S.C.R. 229.

be a change of the law. On 17 November 2007, amendments to the age provision of the Saskatchewan Human Rights Code⁵ came into force. On 7 August 2008, the Queen's Bench for Saskatchewan dismissed the SHRC appeal in the Carlson case concluding that it was moot.

The complaint

3.1 With regard to exhaustion of domestic remedies, the author explains that he decided not pursue his case through the Canadian Court system because the Saskatchewan Human Rights Commission had told him that they expected a swift ruling in a so-called Carlson test case, as well as because of his financial constraints. The author argues that he has been waiting over six years for a resolution by the SHRC in his case and that he was not been given the opportunity to be heard. He claims that the length of the procedure before the SHRC renders that remedy ineffective and fails to provide redress for victims of age and systemic discrimination. Underlining in particular his old age, ill health and difficult financial situation, the author submits that he should not be required to exhaust domestic remedies⁶.

3.2 The author alleges that his forced retirement by the University of Regina constituted age and systemic discrimination, given that as a visible minority it took him longer to secure employment. He alleges to be a victim of violations of article 2, paragraph 1 and article 26, of the Covenant.

3.3 The author maintains that the Saskatchewan Human Rights Commission by having his case held in abeyance until a decision in the Carlson test case was rendered violated his right to a fair trial or hearing, in particular because of the undue delay in his case and the absence of any hearing for more than six years. He claims to be victim of a violation of article 5 and article 14, paragraphs 1 and 3 (c, d and e), of the Covenant.

3.4 According to the author, the undue delay and the unfair judgement in the Carlson test case renders the remedy before the Saskatchewan Human Rights Commission ineffective, thus violating article 2, paragraph 3, of the Covenant. In addition to that, the author maintains that the Saskatchewan Human Rights Tribunal in the proceedings with regard to the Carlson test case appeared to ignore international human rights obligations and that "the judge" seemed not to respect impartiality and independence principles, which may constitute a violation of article 5 and article 20, of the Covenant.

3.5 The author claims that by denying retroactivity for pending cases of mandatory retirement, the Tribunal violated his right to compensation or restitution thus violating article 2 of the Covenant.

3.6 The author also claims that the waiting time for the resolution in his case before the SHRC together with systemic discrimination amounted to cruel, inhuman and degrading treatment, and violated article 7, of the Covenant.

⁵ Changing article 2, paragraph 1 (a), of the Saskatchewan Human Rights Code to "age means any age of 18 years or more".

⁶ See General Comment No. 20 on Article 7, of the Covenant, General Comment No. 3 on Article 2, and Article 2, paragraph 3, of the Covenant; Communication No. 4/1977, Torres Ramirez v. Uruguay, Views adopted on 23 July 1980, para. 5.

3.7 Finally, the author submits that in the Carlson test case before the Saskatchewan Human Rights Tribunal, “the judge” appears to have been greatly influenced by the desires of the Canadian Union of Public Employees and the University of Regina to save money in connection with human rights cases. He claims that independence and impartiality principles appear to have been violated by the Saskatchewan Human Rights Tribunal. He submits that the SHRC resembled more a government-sponsored Ombudsman and did not enforce universal human rights, which may constitute an unintentional violation of article 2, paragraphs 1 and 2, of the Covenant.

The State party’s submission on admissibility and merits

4.1 On 28 February 2008, the State party filed its observations on admissibility and merits. In complement to the facts as submitted by the author, the State party specifies that the author was hired by the University of Regina on 1 July 1993, and that on 1 July 1998 he was promoted to the rank of Professor. Following his retirement on 30 June 2001, the author was given an additional six-month appointment until 31 December 2001. From 31 December 2001 to 31 October 2004, the author held an unremunerated appointment as Adjunct Professor and in February 2002, he was granted the title of Professor Emeritus.

4.2 The State party further notes that on 27 August 2003, the author’s complaint was formalized and served on both the University of Regina and the University of Regina Faculty Association, despite certain reservations in view of the age definition in the Saskatchewan Human Rights Code and the lack of evidence provided by the author on the systemic discrimination argument. On 22 June 2004, the SHRC indicated that it would prefer to delay a decision in the author’s case until the resolution of the Carlson test case. The University of Regina and the University of Regina Faculty Association agreed to the deferral of a decision in the author’s case and the author did not object it.

4.3 The State party submits that the SHRC had indicated that it was originally optimistic about a timely decision in the Carlson case and that this optimism might likely have been conveyed to the author. The SHRC however also underlined that it had explained to the author that the complaint process would be lengthy.

4.4 The State party challenges the admissibility of the communication on the grounds that the author has failed to exhaust all available domestic remedies, as required by article 2 and article 5, paragraph 2 (b), of the Optional Protocol; that the author failed to demonstrate that the application of remedies was unreasonably prolonged and that he failed to substantiate his claims.

4.5 The State party argues that the author failed to exhaust all available domestic remedies, as he did not commence a court action in due time, with which he could have challenged the constitutional validity of the age definition in the Saskatchewan Human Rights Code. The State party underlines in particular that two other University of Regina Professors brought a similar court application (*Leeson v. University of Regina*) to the Saskatchewan Court of Queen’s Bench and that following an unsuccessful application; their case was currently in the stage of appeal. The State party also submits that the author failed to bring a grievance process under the University of Regina Collective Agreement claiming discrimination. This process could not have altered the Collective Agreement; however it could have addressed differences related to meaning, interpretation or application of the terms in the Collective Agreement. It further

invokes the Committee's jurisprudence in the case of *J.S. v. Canada*⁷ claiming that in the current case, the author's matter was still before the SHRC and that therefore domestic remedies have not been exhausted. It further notes that according to the Committee's observations in the cases *A. and S.N. v. Norway*⁸ and *Adu v. Canada*⁹, the author's doubts about the effectiveness of domestic remedies does not absolve him from their exhaustion. Furthermore, the State party contests any similarity of the author's situation with the situation in the communication *Ramirez v. Uruguay*¹⁰, in which the State party only provided a general description of the remedies available, without specifying which ones were available to the author.

4.6 With regard to the author's argument that the SHRC remedy was unreasonably prolonged, the State party argued that the author has not explained why his initial attendance at the SHRC office was on 12 December 2002, while he was required to retire on 30 June 2001 and his six-month contract with the University expired on 31 December 2001¹¹. The State party further argues while relying only on the complaint to the SHRC, the author failed to pursue alternative remedies and to demonstrate why their pursuit would have been unreasonably prolonged. Furthermore, the author did not object that his complaint be held in abeyance until the outcome in the Carlson case, while he could have requested the SHRC to address his complaint. The State party holds that the same principle as in communication *Dupuy v. Canada*¹² should be applied given that the author did not make any official complaints about the delays in the procedure under the Saskatchewan Human Rights Code.

4.7 With regard to the author's claim that he was a victim of systemic discrimination suggesting that being a visible minority it took him longer to secure employment, the State party argues that the author did not provide any information on his efforts to obtain employment after his PhD and that he did not afford any evidence linking his visible minority status to his alleged employment status. The State party submits that the author's claim of systemic or adverse effect discrimination (article 2, of the Covenant) is a simple allegation that remains unsubstantiated and should be declared inadmissible, according to the rule 96 (b), of the Rules of Procedure.

4.8 The State party argues that the author's claims under articles 2 and 14, of the Covenant, are not substantiated and should therefore also be declared inadmissible. The State party holds that the author has not sufficiently substantiated why the SHRC would have restrained him from receiving a fair trial or hearing other than alleging that the SHRC put him in a situation where he believed he was blocked from bringing a court action after prolonged waiting for a resolution by the SHRC. The State party submits that, in spite of the difficulties posed by the age definition in the Saskatchewan Human Rights Code, the SHRC demonstrated sensitivity to claims of individuals who felt wronged by mandatory retirement provisions by advancing the Carlson test case. It further argues that the SHRC informed the author of these difficulties. The State party

⁷ Communication No. 130/1982, Inadmissibility decision adopted on 6 April 1983, para. 6.

⁸ Communication No. 224/1987, Inadmissibility decision adopted on 11 July 1988, para. 6.2.

⁹ Communication No. 654/1995, Inadmissibility decision adopted on 12 August 1997, para. 6.2.

¹⁰ Communication No. 4/1977, Views adopted on 23 July 1980.

¹¹ See Communication No. 184/1984, *H.S. v. France*, Inadmissibility decision adopted on 10 April 1986, para. 9.4.

¹² No. 939/2000, *Dupuy v. Canada*, Inadmissibility decision adopted on 18 March 2003, para. 7.3.

also submits that the author's claim of an unintentional violation of article 2, paragraphs 1 and 2, of the Covenant with regard to the type of Human Rights Commission in Saskatchewan and its adequacy in protecting international human rights, is unsubstantiated.

4.9 As to the author's allegation of a lack of independence or impartiality of the Saskatchewan Human Rights Tribunal "judge" in the Carlson test case, the State party submits that the author has not provided any evidence to support his allegation. It maintains that the author's claim that the Saskatchewan Human Rights Tribunal was influenced by the Auditor General's alleged effort to save money and by the desires of the Canadian Union of Public Employees and the University of Regina to save money in connection with human rights cases is not substantiated and it recalls the Committee's jurisprudence in *Robinson v. Jamaica*¹³, in which it stated that it can only examine arbitrariness, denial of justice or manifest violations of the judge's obligation to impartiality. The author's allegation remained general at best and he did not provide any evidence which would suggest that the Tribunal was influenced by personal bias, harboured preconceptions about the Carlson test case; that it acted in a way that promoted the interests of one of the parties over another; or that the Tribunal appeared to a reasonable observer to be partial.

4.10 With regard to the merits, the State party notes that the author's claim with respect to systemic discrimination is not sufficiently substantiated given that the author does not provide any evidence why mandatory retirement had a greater adverse effect on him being of African American ancestry. With regard to the author's allegation of age discrimination, the State party recalls the Committee's General Comment No. 18 and its jurisprudence on age discrimination¹⁴ and submits that the age definition in the Saskatchewan Human Rights Code, as it existed before the legislative change in November 2007, was based on reasonable and objective criteria. With regard to the prolonged proceedings before the SHRC, the State party submits that both the complexity of the case and the behaviour of the parties justified the length of the proceedings. The State party argues that the author was aware of the significant legal hurdles to cross, in particular the age definition in the Saskatchewan Human Rights Code, the Supreme Court case "McKinney", and the dependency of his case on the outcome of the Carlson test case. Finally, the State party submits that, anxiety caused by the length of proceedings¹⁵ would be insufficient to engage article 7, of the Covenant.

The author's comments

5.1 With regard to the exhaustion of domestic remedies, the author reiterates that the SHRC remedy was unreasonably prolonged and explains that previous to his forced retirement, he had requested a hearing before the University of Regina Faculty Association to explain his situation in particular the previous discrimination suffered as a visible minority to secure pension-guaranteeing employment. The author claims that this hearing was refused three times. With

¹³ Communication No. 731/1996, *Robinson v. Jamaica*, Views adopted on 29 March 2000, para. 9.4.

¹⁴ See General Comment No. 18, A/45/40(VOL.I) (SUPP) of 10 November 1989; Communication No. 983/2001, *Love v. Australia*, Views adopted on 25 March 2003, para. 14; Communication No. 1016/2001, *Solis v. Peru*, Views adopted on 27 March 2006, para. 8.

¹⁵ Communication No. 265/1987, *Vuolanne v. Finland*, Views adopted on 7 April 1989, para. 9.2.

regard to the author's delay to attend the office of the SHRC, he argues that until the end of his additional six-month appointment, he was hoping to be employed by the University Durban-Westville, with which he had negotiated an exchange agreement, with financial contribution of the University of Regina. Once he had realized that there was no prospect of further extension of his employment, he claims that he was trying, in vain, to find an affordable lawyer to bring his case to the Canadian court system, that he was employed on a short-term consulting contract by the Department of Justice in Saskatchewan, that he compiled evidence to support his charge of systemic discrimination, and that he needed to be hospitalized. The author further explains that the cost estimation for the resolution of his case in the regular court system would have exceeded one third of his pension. The financial argument together with the optimistic assessment by the SHRC led him to lodge his complaint only before the SHRC. The author underlines that the authorities do not appear to have acted with the necessary diligence in his case, significantly delaying its resolution.

5.2 The author reiterates that the optimism of a timely decision in the Carlson test case as conveyed by the SHRC and the estimation of the costs of using the regular Canadian Court system prevented him from filing a complaint under the regular court system. This together with the prolongation of the trial process of the Carlson test case before the Saskatchewan Human Rights Tribunal and the absence of any hearing in his case violated his right to a fair trial or hearing. The author holds that the State party has not provided the Committee with a satisfactory explanation for the delay caused in his case.

5.3 The author further maintains that the SHRC appears not to have been set up to scrutinize the Constitution in relation to relevant human rights violations in Saskatchewan. He argues that the SHRC did not request further evidence with regard to his claim of systemic discrimination and only addressed his age discrimination claim. The author maintains that he followed the advice of the investigator of the SHRC and did not to pursue his systemic discrimination complaint being under the impression that the age discrimination complaint would allow redress. He further maintains that the SHRC neglected its duty to adequately inform the victims of the range of their legal options.

5.4 With regard to his allegation of systemic discrimination, the author submits that statistical data confirms that as a visible minority, it takes significantly longer to secure employment. The author claims that he received over 100 rejection letters by Canadian Universities and when he was refused employment at the University of Windsor, his complaint to the Ontario Human Rights Commission was settled with a friendly agreement, promising that the author would be considered for the next opening, however this never materialised.

5.5 The author maintains that the undue delay of the proceedings in his case, the absence of a fair hearing and the sense of being again victim of systemic minority discrimination created such mental pain, anxiety, fear, and together with the negative outcome in the Carlson test case, it led to a feeling of helplessness, which in total amounts to cruel, inhuman and degrading treatment¹⁶.

¹⁶ See Communication No. 1015/2001, *Perterer v. Austria*, Views adopted on 20 July 2004, para. 9.2.

5.6 The author furthermore reiterates that the Saskatchewan Human Rights Tribunal lacked independence and impartiality and appeared to have been guided by the wish to solve human rights cases without cost implications. The author cites a rumour holding that staff from the Auditor General's office allegedly stated that, in a different case, the trial process should be extended until the victim died.

5.7 Finally, the author underlines that by changing the discriminatory provision in the Saskatchewan Human Rights Code, the Government acknowledged that the Code had contravened international human rights obligations.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93, of its Rules of Procedure, decide whether or not the communication is admissible under the Optional Protocol to the Covenant.

6.2 The Committee has ascertained, as required by article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under another international procedure of investigation or settlement.

6.3 On the issue of exhaustion of domestic remedies, the Committee observes that the author's case remains pending before the SHRC. It takes note of the State party's argument that the author failed to institute regular court action and that he failed to lodge a grievance process under the University of Regina Collective Agreement. The Committee also notes the author's argument that he decided not to institute regular court action given the optimistic assessment by the SHRC with regard to a timely decision in the Carlson test case, and due to his lack of financial means. The Committee further notes the author's claim that he had, in vain, requested a hearing before the University Regina Faculty Association.

6.4 As to the allegations of violations of articles 2, paragraph 1 and 26, the Committee recalls its jurisprudence according to which financial considerations or doubts about the effectiveness of domestic remedies does not absolve the author from exhausting them¹⁷. It concludes that, while the case before the SHRC remains pending and in light of the author's decision not to institute regular court action, domestic remedies with regard to the age and systemic discrimination claims under these provisions have not been exhausted. In addition, hearings before the SHRC are not in the nature of a "judicial remedy". The Committee further concludes that despite the expression by the SHRC of initial optimism of a swift ruling in the Carlson test case, the State party cannot be held responsible for the author's failure to institute regular court action, and that in accordance with the Committee's jurisprudence, failure to adhere to procedural time limits for

¹⁷ See Communication No. 224/1987, A and S.N. v. Norway, Inadmissibility decision adopted on 11 July 1988, para. 6.2; Communication No. 397/1990, P.S. v. Denmark, Inadmissibility decision adopted on 22 July 1992, para. 5.4; Communication No. 550/1993, Faurisson v. France, Views adopte don 8 November 1996, para. 6.1.

filing of complaints amounts to failure to exhaust domestic remedies¹⁸. The Committee therefore finds that this part of the communication is inadmissible under article 2 and article 5, paragraph 2 (b), of the Optional Protocol.

6.5 As to the claim that the author was deprived of a fair trial or hearing as well as to an effective remedy, the Committee takes note of the State party's argument that the author failed to demonstrate why alternative remedies were unreasonably prolonged and that he did not object to his case with the SHRC being held in abeyance until the outcome in the Carlson test case. The Committee also notes the undisputed facts that the author first attended the SHRC office on 12 December 2002 and that on 22 June 2004, he did not object to have his case being held in abeyance until the outcome in the Carlson test case. The Committee further notes that the SHRC kept the author informed of the developments in the Carlson test case throughout.

6.6 The author did not object to delay the resolution of his case until the outcome in the Carlson test case despite the SHRC assessment that a final resolution was not to be expected before a considerable period of time. The author further does not appear to have requested the SHRC for a hearing in his case and he also failed to complain to the domestic authorities about the delay in the proceedings before the SHRC. The Committee concludes that it is clear that the author acquiesced in the delay of the proceedings before the SHRC. It is therefore unable to conclude that the domestic remedies, which according to both parties, are in progress, have been unduly prolonged in a manner that would exempt the author from exhausting them. The Committee thus finds that claims under article 14, paragraph 1 and article 2, paragraph 3, are inadmissible under article 5, paragraph 2 (b), of the Optional Protocol.

6.7 With regard to the author's claim of a violation of article 14, paragraph 3, the Committee notes that, this provision only applies to criminal proceedings, which are not at issue in the present case. This claim is thus inadmissible *ratione materiae* as incompatible with the provision of the Covenant, under article 3, of the Optional Protocol.

6.8 With respect to the alleged violation of article 7, of the Covenant, the Committee considers that the author failed to sufficiently substantiate, for purposes of admissibility, how the anxiety caused by the length of the proceedings before the SHRC would amount to torture or to inhuman or degrading treatment. This part of the communication is therefore inadmissible under article 2, of the Optional Protocol.

6.9 Finally, with regard to the allegations related to the proceedings in the Carlson test case before the Saskatchewan Human Rights Tribunal and the type of Human Rights Commission the State party has established in Saskatchewan, the Committee finds that the author has not substantiated, for the purpose of admissibility, the claim of partiality and lack of independence of the Saskatchewan Human Rights Tribunal in the proceedings of the Carlson test case. Nor has he substantiated the claim of a violation of article 2, paragraphs 1 and 2, of the Covenant in this regard. The Committee thus concludes that this part of the communication is also inadmissible under article 2, of the Optional Protocol.

¹⁸ See Communication No. 743/1997, *Truong v. Canada*, Inadmissibility decision adopted on 5 May 2003, para. 7.6.

7. The Committee therefore decides:

- a) That the communication is inadmissible under article 2, and article 5, paragraph 2 (b), of the Optional Protocol;
- b) That this decision shall be communicated to the State party and to the author.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]
