

**J. S. v. Canada, Communication No. 130/1982, U.N. Doc. CCPR/C/OP/2 at 42 (1990).**

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*Submitted by:* J. S. (name deleted) on 14 December 1982

*Alleged victim:* The author

*Slate party:* Canada

*Declared inadmissible:* 6 April 1983 (eighteenth session)

*Subject matter:* Denial of legal aid to Canadian citizen

*Procedural issues:* Exhaustion of domestic remedies Unsubstantiated allegations

*Substantive issues.- Right to legal aid-Right to choose own counsel*

*Article of the Covenant:* 14 (3) (d)

*Article of the Optional Protocol.* 5 (2) (b)

1. The communication, dated 14 December 1982, is submitted by J. S., a resident of Canada, through her legal representative, C. R. It is alleged that J. S. has been denied the right to have legal assistance without payment, in violation of article 14 (3) (d) of the International Covenant on Civil and Political Rights.

2. On 17 June 1980, J. S. was sentenced to life imprisonment for second degree murder in British Columbia. Pending her appeal to the British Columbia Court of Appeal, Ms. S. was incarcerated in Vancouver, British Columbia. Her appeal was dismissed in August 1981 and she was transferred to the Prison for Women in Kingston, Ontario. She had not lived in Ontario before. Ms. S. retained C. R. of Toronto, Ontario, to act as her counsel before the Supreme Court of Canada. The appeal was heard in the Supreme Court of Canada in November 1982, with Mr. R. acting as counsel for Ms. S.

3. The claim concerning the alleged breach of article 14 (3) (d) of the Covenant relates to J. S.'s efforts to obtain legal aid for the purpose of her appeal to the Supreme Court of Canada. In August 1981, she applied for a legal aid certificate from the legal aid authority in Ontario (Ontario Legal Aid Plan). The application was rejected, as Ms. S. was not considered to be "a person ordinarily resident" in Ontario and also because the legal aid authority in British Columbia (Legal Services Society of British Columbia) had already offered to pay Mr. C. R., as legal counsel for Ms. S. before the Supreme Court of Canada. Mr. R. maintains that, notwithstanding the offer of the legal aid authority in British Columbia, it would, in his opinion, both be illegal for the Legal Services Society of British Columbia to offer him payment and for him to accept, as he is not entitled to practice law in British Columbia.

4. J. S. then applied to the Supreme Court of Ontario for judicial review of the decision of the Ontario Legal Aid Plan to refuse to issue a certificate for legal aid to her. The application was heard in September 1982 and was successful. The Supreme Court of Ontario set aside the decision of the Ontario Legal Aid Plan and ordered that Ms. S.'s application for a legal aid

certificate be reconsidered. However, the author of the communication indicates that the present status of this matter is that the Ontario Legal Aid Plan "is applying for leave to appeal to the Court of Appeal".

5. Before considering any claim contained in a communication, the Human Rights Committee shall, in accordance with rule 87 of its provisional rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6. As to the question whether legal aid should have been granted by the Ontario Legal Aid Plan, the Human Rights Committee notes that the matter is still, according to the information before it, *sub judice*. Domestic remedies have therefore not yet been exhausted as required by article 5 (2) (b) of the Optional Protocol. The Human Rights Committee further notes that Ms. S. was in fact represented by legal counsel of her own choosing in the proceedings before the Supreme Court of Canada and that the legal aid authority in British Columbia had offered to pay the counsel chosen by her. Consequently, the Committee is unable, in any event, to find that there are grounds substantiating the allegation of violation of article 14 (3) (d) of the Covenant.

7. The Human Rights Committee therefore decides: That the communication is inadmissible.