

Communication No. 420/1990, G. T. v. Canada (decision of
23 October 1992, adopted at the forty-sixth session)

Submitted by: G. T. (name deleted)

Alleged victim: The author

State party: Canada

Date of communication: 22 March 1990 (initial submission)

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

Meeting on 23 October 1992,

Adopts the following:

Decision on admissibility

1. The author of the communication is G. T., a Canadian citizen residing in Toronto, Canada. He claims to be the victim of a violation of his human rights by Canada. No reference is made to the Covenant.

Facts as submitted

2.1 The author states that he was employed for eleven years as a physical education teacher by the Board of Education for the City of North York (hereinafter North York Board). Early in 1986, pursuant to the provisions of a collective agreement between the North York Board and the Ontario Secondary School Teachers' Federation District 13 (hereinafter the Federation), the author was identified as being surplus to the Board's requirements. Accordingly, on 20 August 1986, the North York Board decided to transfer him to the Metropolitan Separate School Board, the Roman Catholic board with jurisdiction over the same geographical area as the North York Board, pursuant to Section 136-1 of the Education Amendment Act of 1986, commonly referred to as "Bill 30".

2.2 Section 136-1(10) of the Act provides that:

"If a designated person objects to the transfer of employment to the Roman Catholic school board for reasons of conscience, he or she may so advise the public board and, unless it is of the opinion that the objection is not made in good faith, the public board shall designate another person in place of the person making the objection."

2.3 Some teachers, who were designated in July and August 1986 by the North York Board pursuant to Section 136-1(1), objected to their transfers on grounds of conscience and other teachers were nominated in their place; those

who did not object on grounds of conscience were transferred to the Metropolitan Separate School Board with effect from 1 September 1986. The author was initially advised by the North York Board that he could object on grounds of conscience until 5 September 1986. Subsequently, this deadline was extended until 12 September 1986.

2.4 The Roman Catholic school board requested the author not to report to work before 12 September 1986, since no vacant post of physical education was said to be available. The author therefore submits that he had no experience with the Roman Catholic school system prior to the deadline set by the North York Board for objections on the grounds of conscience.

2.5 On 12 September 1986 the author was assigned to the Senator O'Connor Secondary School. However, he was not given a position in accordance with his qualifications and experience. In December 1986 he was rejected as a possible candidate for the position of "head of physical education" at a secondary school under the Metropolitan Separate School Board, on the ground that he had no experience in the Catholic education system. In September 1987, the author was re-assigned to the Father Brebeuf Secondary School, to act as assistant to a physical education teacher.

2.6 During the first two weeks of his teaching at the Father Brebeuf School, the author realized that it was no longer possible for him to teach in an environment functioning on the basis of rules and beliefs incompatible with his own personal convictions. Moreover, he had by then learned that two other teachers, who had also objected to their transfers on grounds of conscience after the transfer had become effective, had been allowed to return to the public school system. He therefore ceased to report to work. On 14 September 1987, he filed an objection with the North York Board pursuant to Section 136-1(10) of Bill 30.

2.7 On 2 November 1987, the Director of the North York Board informed the author that his objection had been rejected. This prompted the Teachers' Federation to file a complaint against the Board's decision on behalf of the author. The dispute was then submitted to an Arbitration Board set up pursuant to Section 136m(1) of Bill 30. On 17 August 1988, the Arbitration Board dismissed the complaint on the ground that the author, under Bill 30, had no statutory rights to return to the public system, since Section 136-1(10) of the Act could not be interpreted as guaranteeing such a right. It rejected the author's argument that his rights under the Canadian Charter of Rights and Freedoms, in particular his right to non-discrimination and freedom of conscience, thought, belief and religion, had been violated.

2.8 Subsequently, the Federation, on the author's behalf, applied for review of the Arbitration Board's decision to the Divisional Court of Ontario, which dismissed the application on 21 August 1989.

Complaint

3.1 The author claims that he did not enjoy equal opportunity with respect to the Roman Catholic teachers, and refers in this connection to the fact that he was not offered a position suitable to his qualifications and experience. He also alleges that he was not allowed to discuss certain health issues, such as contraception, abortion and AIDS, with the students, as he did not share the Roman Catholic beliefs.

3.2 The author submits that he only started to have conscientious objections after he had experienced working in the Roman Catholic school system for a while. He stresses that he entered the Roman Catholic education with an open mind and without prejudices.

3.3 The author further contends that he was discriminated against by the North York Board, as two teachers who had been transferred to the Metropolitan Separate School Board were subsequently permitted to return to the public school system. He indicates that one of those teachers notified the North York Board of her objection on 11 September 1986, while the other did so on 4 November 1986. In support of his argument, the author quotes from a dissenting opinion submitted by one of the arbitrators on the Board of Arbitration, according to which Section 136-1(10) of Bill 30 does not envisage time-limits for filing objections on grounds of conscience; nor can, according to this opinion, a limit be inferred from other sections of the Act.

3.4 Although the author does not invoke any article of the International Covenant on Civil and Political Rights, it appears from his submission that he claims to be a victim of a violation of articles 18 and 26 of the Covenant.

State party's observations and the author's comments thereon

4.1 The State party, by submission dated 5 November 1991, argues that the communication is inadmissible under article 5, paragraph 2 (b), of the Optional Protocol. It contends that, by failing to seek leave to appeal from the Divisional Court's decision to the Ontario Court of Appeal, the author precluded a definitive judicial assessment of his claim by the courts in Canada. The State party also states that legal aid would have been available to enable the author to seek leave to appeal.

4.2 The State Party further argues that the author could have pursued remedies available under the Ontario Human Rights Code, which in section 4 expressly prohibits discrimination in employment. It submits that both Ontario case law and the Code clearly indicate that legislation that provides for arbitration of disputes does not eliminate the jurisdiction of the Ontario Human Rights Commission, or subsequently the Board of Inquiry. It states that the procedure is free of charge for the complainant and that, in the past, orders requiring reinstatement in employment have been issued. It indicates that decisions by the Board of Inquiry may be appealed to the Divisional Court of Ontario.

4.3 The State party further argues that the author has failed to establish a prima facie case of a violation of his rights under the Covenant. In this context, the State party observes that the author has not invoked any of the articles of the Covenant. It argues that, if the author means to allege a violation of article 26 of the Covenant, he has not provided any evidence of an unreasonable distinction which could amount to discrimination.

4.4 In this connection, the State party submits that Section 136-1(21) of the Education Act protects designated teachers in a position comparable to the author's against discrimination in employment on the basis of religion. It contends that the author did not exercise his rights to object to his transfer on grounds of conscience at the relevant time provided by law. The State party submits that nothing in the Optional Protocol shields a person from the consequences of a failure to use processes designed to protect freedom of religion and conscience in a reorganization of employment among different school systems. It finally argues that there is no evidence that the author was in any way required to adopt or express Roman Catholic beliefs or opinions.

5.1 In his comments on the State party's observations, dated 3 September 1991, the author stresses that he could not in good faith have filed conscientious objections against his transfer before 12 September 1986, the time-limit set by the North York School Board, as he had never experienced working in a Roman Catholic school system. Only in September 1987 he became aware of the fact that two other designated teachers had been allowed to return to the public school system after 12 September 1986; he therefore argues that he could not have submitted his request at an earlier date.

5.2 As regards the State party's claim that he has not presented a prima facie case of discrimination, the author refers to the refusal of the Metropolitan Separate School Board to include him on the list of potential candidates for the position of "head of physical education" at a secondary school under its jurisdiction (see paragraph 2.5 of the present decision).

5.3 With regard to the State party's contention that he failed to exhaust domestic remedies, the author states that, following the Divisional Court's decision, the Ontario Secondary School Teachers' Federation, who had been providing him with a lawyer, decided to withdraw its support. The author claims that, since he could not afford to hire a lawyer, he therefore could not pursue the appeal. He further submits that, because of lapse of time, any other remedy available would no longer be effective.

Issues and proceedings before the Committee

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

6.2 With regard to the State party's objection that the author has not identified the articles of the Covenant he claims have been violated, the Committee affirms its jurisprudence that it is not necessary for authors to specifically invoke articles of the Covenant; a/ under the Optional Protocol procedure authors are, however, required to submit the relevant facts and to substantiate their allegations.

6.3 The Committee observes that the author has not sought judicial review of the decision of the Divisional Court to the Court of Appeal of Ontario, and that he appears to have made no effort to apply for legal aid under the Ontario Legal Aid Act. Moreover, the author has not availed himself of procedures under the Ontario Human Rights Code, which he could have done without incurring expenses. The State party has argued and the author has not contested that a petition before the Ontario Human Rights Commission, or subsequently the Board of Inquiry, could have resulted in his reinstatement in the public school system.

6.4 In the light of the above, the Committee concludes that the author has not met the requirement of exhaustion of domestic remedies set forth in article 5, paragraph 2 (b), of the Optional Protocol.

7. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 5, paragraph 2 (b), of the Optional Protocol;

(b) That this decision shall be communicated to the State party and to the author.

[Done in English, French, Russian and Spanish, the English text being the original version.]

Notes

a/ See the Committee's decision in communication No. 273/1988 (D. B. v. the Netherlands), para. 6.3.