



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Ninety-fifth session
16 March-3 April 2009

DECISION

Communication No. 1774/2008

Submitted by: Mr. Jean-Marc Boyer (not represented by counsel)

Alleged victim: The author

State party: Canada

Date of communication: 3 March 2007 (initial submission)

Date of adoption of decision: 27 March 2009

Subject matter: Allegation of judicial bias and denial of justice

Procedural issues: Substance of the allegations - admissibility *ratione materiae*

Substantive issues: Right to a fair trial - recognition before the law

Articles of the Optional Protocol: 2 and 3

Articles of the Covenant: 14, paras. 1 and 16

[ANNEX]

* Made public by decision of the Human Rights Committee.

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. 1774/2008**

Submitted by: Mr. Jean-Marc Boyer (not represented by counsel)
Alleged victim: The author
State party: Canada
Date of communication: 3 March 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 is Mr. Jean-Marc Boyer, a Canadian citizen born in 1965. He alleges he is a victim of violations by the State party under articles 14 and 16 of the International Covenant on Civil and Political Rights. He is not represented by counsel.

The facts as presented by the author

2.1 The author worked in the civil service. He was employed as a regional analyst at the Commission de la santé et de la sécurité du travail (CSST) (Occupational Health and Safety Board). He was a member of the Association professionnelle des ingénieurs du gouvernement du Québec (APIGQ) (Professional Association of Quebec Government Engineers), which may represent engineers employed by the Quebec Government as an exclusive bargaining agent.

** 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. Bouzid Lazhari, 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. Fabián Omar Salvioli, Mr. Krister Thelin and Ms. Ruth Wedgwood.

Every official working for CSST had an identity code and password giving him or her access to the computer system. The author was responsible for ensuring that the Laval regional office employees abided by this policy. For that purpose, the employer had provided him with information technology tools that allowed him to manage and monitor the system.

2.2 In August 2000 the author's supervisor asked him to "act against the policy of accountability of his employer", which the author refused to do. According to the author, his supervisor began harassing him from that moment on. The author asked him to fill out a "professional injury complaint form for harassment", which the supervisor refused to do. According to the author, he threatened "to use an atomic bomb" if he was asked to fill out the form once more.

2.3 On 11 December 2002 the author was suspended, in his view for no reason. He decided that same day to lodge a harassment complaint. He was not supported by APIGQ, and the Commission des lésions professionnelles (CLP) (Professional Injury Board) turned down his complaint.

2.4 On 3 February 2003 the author was dismissed. He challenged his dismissal before an arbitration commission in accordance with the complaint procedure provided for in the Collective Labour Agreement between CSST and APIGQ. An arbitrator, a former Quebec government official, was chosen by his employer, according to the author, "in collusion" with APIGQ, so that he had no say in the matter. The author was not able to express his views at the hearing. He was also allegedly prevented from submitting a written defence, and the APIGQ lawyer presented only one of the author's four grievances. On 8 June 2005 the arbitrator rejected his complaint but did not forward him a copy of the decision. He was informed of the decision by an unsigned letter from APIGQ.

2.5 On 7 July 2005 the author submitted an application for judicial review of the arbitration decision before the Supreme Court of Quebec. He put forward several objections regarding the conduct of the arbitration proceedings, and asserted that his rights guaranteed by articles 14 and 16 of the Covenant had been violated. On 27 July 2005, having listened to CSST for 16 minutes, the judge interrupted the author after he had managed to say only "a few words". His application was rejected by the Court.

2.6 On 6 September 2005 the author filed an action to set aside the arbitration decision of 8 June 2005 before the Supreme Court of Quebec. On the day of the hearing the author was informed that CSST had submitted a complaint challenging the admissibility of his action and that this complaint would be heard at the same session. The author's action to set aside the decision was rejected by the judge, on the grounds that the arbitration procedure had been properly conducted, and the CSST application for inadmissibility was accepted by a judgement of 15 November 2005.

2.7 On 6 December 2005 the author appealed the 15 November 2005 decision of the Supreme Court before the Court of Appeals of Quebec. He complained about the way in which the arbitration and the proceedings before the Supreme Court had been conducted. On 6 February 2006 his appeal was rejected by a decision in which the Court recalled in particular the monopoly of the union's representation with respect to labour relations. By a

decision of the Supreme Court of 14 December 2005 and pursuant to CSST's request, the author was declared a vexatious litigant. He lodged an appeal to set aside this order which was also rejected.

2.8 On 23 March 2006 the author introduced before the Supreme Court of Canada a request for authorization to appeal the decision of the Court of Appeal of Quebec of 6 February 2006, which was also rejected. He filed a complaint against APIGQ before the Commission des droits de la personne (Human Rights Commission), the Tribunal des droits de la personne (Human Rights Tribunal) and the Commission des relations du travail (Labour Relations Commission). According to the author, none of these actions succeeded.

The complaint

3. The author states that the facts as presented constitute a violation of articles 14 and 16 of the Covenant.

Issues and proceedings before the Committee

Consideration of admissibility

4.1 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.

4.2 With regard to the author's claims under articles 14, paragraph 1, and 16 of the Covenant, the Committee notes that it would appear that the author was dismissed from his position in the public service for disciplinary reasons. However, the author has failed to provide the factual information necessary to establish whether the claims themselves fall within the scope of the provisions invoked. For this reason, the Committee considers that the author's allegations of violations of articles 14 and 16 have not been sufficiently substantiated for the purposes of admissibility and concludes that this communication is inadmissible under article 2 of the Optional Protocol.

5. The Committee therefore decides:

(a) That the communication is inadmissible under articles 2 and 3 of the Optional Protocol;

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

[Adopted in English, French and Spanish, the French 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.]
