



**Convention on the Elimination  
of All Forms of Discrimination  
against Women**

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**Committee on the Elimination of Discrimination  
against Women**

**Communication No. 19/2008**

**Views adopted by the Committee at its fifty-first session, 13 February to  
2 March 2012**

*Submitted by:* Cecilia Kell (not represented by counsel)  
*Alleged victim:* The author  
*State party:* Canada  
*Date of communication:* 24 June 2008 (initial submission)  
*References:* Transmitted to the State party on 28 August  
2008 (not issued in document form)  
*Date of adoption of decision:* 28 February 2012

## Annex

### **Views of the Committee on the Elimination of Discrimination against Women under article 7, paragraph 3, of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (fifty-first session)**

concerning

#### **Communication No. 19/2008\* \*\***

<i>Submitted by:</i>	Cecilia Kell (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Canada
<i>Date of the communication:</i>	24 June 2008 (initial submission)
<i>References:</i>	Transmitted to the State party on 28 August 2008 (not issued in document form)

*The Committee on the Elimination of Discrimination against Women*, established under article 17 of the Convention on the Elimination of All Forms of Discrimination against Women,

*Meeting on 28 February 2012,*

*Adopts the following:*

#### **Views under article 7, paragraph 3, of the Optional Protocol**

1. The author of the communication, dated 24 June 2008, is Cecilia Kell, a Canadian aboriginal woman living in the Northwest Territories of Canada. The author claims to be the victim of violations by Canada of her rights under articles 1; 2, paragraphs (d) and (e), 14, paragraph 2 (h), 15, paragraphs 1-4, and 16, paragraph 1(h), of the Convention on the Elimination of All Forms of Discrimination against Women (hereinafter "Convention"). The author is acting on her own behalf and is not represented by counsel. The Convention and its Optional Protocol entered into force for Canada on 10 December 1981 and 18 January 2003, respectively.

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\* The following members of the Committee participated in the adoption of the present communication: Ms. Magalys Arocha Dominguez, Ms. Violet Tsisiga Awori, Ms. Barbara Evelyn Bailey, Ms. Olinda Bareiro-Bobadilla, Mr. Niklas Bruun, Ms. Naela Mohamed Gabr, Ms. Soledad Murillo de la Vega, Ms. Violeta Neubauer, Ms. Pramila Patten, Ms. Victoria Popescu, Ms. Zohra Rasekh, Ms. Patricia Schulz, Ms. Dubravka Šimonović and Ms. Zou Xiaoqiao.

\*\* The text of one individual opinion (dissenting), signed by Ms. Patricia Schulz, is included in the present document.

**Factual background**

2.1 The author is an aboriginal woman who belongs to the community of Rae-Edzo, in the Northwest Territories in Canada. After attending college, she returned to the community as a single mother but decided to leave her three children with her relatives outside the community until she could get established and secure a home for her family. The author and her late partner, W.S. (hereinafter “partner”), began a common-law relationship in 1989.

2.2 When housing became available in the Rae-Edzo community under a scheme by a local housing authority which earmarked housing for the indigenous population, the author told her partner that she wanted to apply for a house in order to bring her children home. Without telling her, her partner applied in his name only for a unit from the Rae-Edzo Housing Authority (hereafter “Housing Authority”). On 1 November 1990, his application was turned down by the Housing Authority Board because he was not a member of the community, and had applied for himself as a single man. The author’s partner told her that the Housing Authority had turned her down for a house. The author could not ask her partner any questions as to why she would have been turned down without even applying because her partner was violent and abusive towards her. It was common knowledge within the Rae-Edzo community that the author and her partner had a common-law relationship. The author was informed by the Tenant Relations officer at Rae-Edzo that her partner could not apply for himself as he was not a member of the aboriginal community, and they advised her to apply for housing, listing her partner as her spouse.

2.3 The author and her partner therefore applied as a family for a house on a leasehold land, in accordance with the advice from the Housing Authority. On 7 October 1991, the Northwest Territories Housing Corporation issued an Agreement for Purchase and Sale to William Senych and Cecilia Kell as purchasers (co-owners) of the house that they moved into.

2.4 Over the next three years, the author experienced spousal abuse and the situation worsened when she got a job and became financially independent. Her partner was extremely jealous and controlled her finances, monitored her whereabouts, threatened her, prevented her from having contact with her family, assaulted her on several occasions, tried to stop her from working and took actions that resulted in her losing jobs. She was admitted a couple of times to McAteer House, a shelter for battered women in Yellowknife.

2.5 In February 1992, at the partner’s request and without the author’s knowledge, the Housing Authority wrote to the Northwest Territories Housing Corporation stating that the partner wanted the author’s name removed from the Assignment of Lease, the document that certified co-ownership of the author and her partner. Her partner was a board member of the Housing Authority Board at the time, and in June 1993, the Northwest Territories Housing Corporation complied with his request.

2.6 In early 1995, when the author took employment without her partner’s consent, the latter changed the locks on the family home and denied her access. As a result, the author had no place to go for several days, until she found a place with her employer’s help. In February 1995, when the author was allowed to enter the house to pick up a few belongings, her partner presented her with a letter from his lawyer requesting her to vacate the house by 31 March 1995. The letter further notified her that his client would exercise the remedies available to him under the law if she did not comply with his request. The author is of the opinion that she was evicted from the house by her partner because she had escaped the abusive relationship by leaving home and seeking refuge in a battered women’s shelter.

2.7 In May 1995, the author decided to file the first court action against her partner before the Supreme Court of the Northwest Territories to seek compensation for assault,

battery, sexual assault, intimidation, trespass to chattels, loss of use of her home and consequential payment of rent and attendant expenses. She also filed a declaration that her partner had obtained the house through fraudulent methods, aided and abetted by the Government of the Northwest Territories.<sup>1</sup> The author applied for legal aid and was assigned a lawyer who advised her to comply with the eviction letter and not to return to her home, otherwise she would be charged.

2.8 Shortly after the first lawsuit was filed, the partner became ill with cancer and the author's lawyer recommended that the court action be delayed. The partner died in November 1995. In March 1996, the author's lawyer initiated the second court action against the estate of the partner, the Northwest Territories Housing Corporation and William Pourier, who was alleged to have been residing in the house with her partner at the time of his death, and who continued to reside there. The author's claim was amended by her new counsel on 9 July 1998 to include the claim for damages for assault and intimidation, in addition to the previously submitted claim.

2.9 In May 1999, a formal offer to settle in the amount of Can\$15,000 was made by the partner's estate and the Northwest Territories Housing Corporation, while the author's lawyer focused his efforts on negotiating a settlement of Can\$20,000. No further steps were taken in respect of the author's outstanding legal actions. Thereafter, the author's file was reassigned twice to different lawyers because one relocated to Alberta, and the other ceased employment with the Legal Services Board. In November 1999, the author was assigned a fourth lawyer, who insisted that she accept a monetary settlement. As the author's primary focus has always been on regaining ownership and possession of her house, she wanted to pursue her claim in court, rather than pursue a monetary settlement. As a result of the conflict between the author and her lawyer, the latter ceased acting on her behalf in June 2002. The author was then denied another legal aid lawyer and had to appeal against her denial of legal coverage to the Legal Services Board, which allowed her appeal and assigned her a fifth lawyer.

2.10 On 3 June 2003, a notice of motion was filed by her partner's estate to set aside the author's statement of claims, for "want of prosecution" on the grounds that the author, as the party who initiated a legal action, has not diligently acted to pursue her claim.<sup>2</sup> On 10 June 2003, the Northwest Territories Housing Corporation also brought a motion to dismiss the action. When the application for dismissal of the first action was heard in October 2003 in the Supreme Court of the Northwest Territories, the author did not contest the dismissal; therefore the first action was dismissed without appeal to the Court of Appeal for the Northwest Territories. However, the author argued against the dismissal of the second action, on the ground that the Court should have reviewed all the actions in the two cases in its assessment of whether there had been a material delay in prosecution. The author was actively responsive to the first action which was linked to the second case, therefore she considered it unjust that the Court deemed that she had taken "no action" in the past few years. The second action was nevertheless dismissed on 3 November 2003 by the Supreme Court of the Northwest Territories for "want of prosecution," on the grounds that no action had been taken by the author. Costs were imposed, which were later taxed at Can\$5,800.<sup>3</sup>

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<sup>1</sup> Under Canadian jurisdiction, the Supreme Court of the Northwest Territories is the court of first instance, whose decision may be appealed in the Court of Appeal for the Northwest Territories. The decision of the Court of Appeal for the Northwest Territories is subject to the appeal in the Supreme Court of Canada.

<sup>2</sup> In common-law countries, "want of prosecution" is an application to a judge to dismiss a lawsuit alleging that the litigant has inexcusably delayed moving the litigation along and that, under the circumstances, the litigation ought to be dismissed.

<sup>3</sup> Currency used is Canadian dollars.

The author appealed against this decision in the Court of Appeal for the Northwest Territories but her appeal was dismissed without any reasons provided in writing. No further appeal was made by the author in the Supreme Court of Canada regarding the second action.

2.11 On 16 November 2004, the author initiated a new (third) action dealing solely with the issue of her interest in and right to the leasehold title and possession of the property. In January 2005, a counsel for the respondent, the partner's estate (hereinafter the "Estate"), brought a motion seeking summary judgment dismissing her action or security for costs in the alternative. The property in question had been sold by the Estate to third-party purchasers and a transfer of lease had been given to them in early November 2004. The author's position was that the Estate still held her legal title and equitable interest, which she had acquired prior to the purchasers in question. On 27 May 2005, an affidavit from the then Tenant Relations officer of Rae-Edzo was submitted during the third court action, which stated that the minutes of the meeting of the Board of Directors of the Housing Authority of 1 November 1990, denied the deceased partner's application for housing on the grounds that he did not belong to the community, however, the said minutes were missing. The affidavit also stated that the Tenant Relations officer was instructed by the Board of Directors to contact the author and advise her to apply for housing by listing her partner as her spouse. The affidavit further stated that after the signing of the Agreement of Purchase and Sale, the original copy of the document was sent to the main office of the Northwest Housing Corporation at Yellowknife, while a copy was retained by the Tenant Relations officer for record. However both copies of the Agreement were said to be missing and lost, and that there was no explanation for the situation.

2.12 On 21 July 2005, the Supreme Court of the Northwest Territories, while hearing the application for summary dismissal in the third court action, held that since the third action sought essentially the same relief as the previous two actions, the author had to pay the amount of the taxed bill of costs in court with respect to the previous court actions as well as post security for the respondent's costs in this third action before continuing with the case. The Court ordered that the cost payments had to be made within 60 days of the filing of the memorandum and that the case was stayed till compliance was met. As the author could not comply with the time limit set by the Court for the payment of costs and the security, the case was dismissed on 26 April 2006 by the Supreme Court of the Northwest Territories.

2.13 The author contends that she has exhausted all domestic remedies. She explains that she had to represent herself in the third case because, as a single mother, she did not have the means to retain a private lawyer. Although the author had been represented by many lawyers from the Legal Services Board over a period of 10 years, the lawyers did not comply with her instructions. She submits that a settlement had been negotiated without her consent and contrary to her instructions. She believes that as a result of her refusal of the said settlement, she was denied further legal aid and was obliged to represent herself.

### **The complaint**

3.1 The author claims to be the victim of a violation of article 1 of the Convention, because the State party allowed its agents (namely, the Northwest Territories Housing Corporation and the Rae-Edzo Housing Authority) to discriminate against her on the basis of her sex, marital status and cultural heritage, in that it failed to ensure that its agents provide equal treatment to women applicants for housing.

3.2 She also claims that the State party has contravened article 2, paragraph (d), of the Convention, as it failed to ensure that its agents refrain from engaging in any act or practice of discrimination against women, when they removed the author's name from the lease without her consent. She further contends that the fact that the State party did not take any

action to remedy the situation when it was brought to its attention is a violation of article 2, paragraph (e), of the Convention.

3.3 She further claims that the State party has contravened article 14, paragraph 2(h), of the Convention by failing to ensure that its agents take all appropriate measures to eliminate discrimination against women in rural areas such as Rae-Edzo, in particular taking into account her situation. She alleges that the State party failed to ensure that its agents apply its policies and procedures with regard to the allocation of housing and the provision of adequate living conditions fairly and equally for men and women.

3.4 She submits that the State party has contravened article 15, paragraphs 1 and 2, of the Convention as it failed to ensure that its agents recognize her equal rights to conclude a legal contract, in particular a leasehold, independently of her partner, and to administer property independently and equally in all stages and procedures in court and before the housing corporations.

3.5 She also submits that the State party has contravened article 15, paragraphs 3 and 4, of the Convention as it failed to ensure that its agents respect the Agreement for Purchase and Sale, failed to rectify the fraudulent act of her partner and failed to ensure that the new Assignment of Lease, on which the author's name was not included, was declared null and void.

3.6 She further submits that the State party has contravened article 16, paragraph 1(h), of the Convention as it failed to ensure that its agents afford the same rights to her in comparison to her partner's rights in respect of ownership, acquisition, management, administration and enjoyment of the property.

#### **State party's submission on admissibility**

4.1 On 6 January 2009, the State party submitted<sup>4</sup> that it considers the "relevant fact" on which all of the author's allegations are based to be the alleged removal of the author's name from the Assignment of Lease in the early 1990s.

4.2 The State party challenges the admissibility of the communication on three grounds: (i) that the facts that form the subject matter of the communication occurred prior to the entry into force of the Optional Protocol of the Convention; (ii) that the author failed to exhaust all available domestic remedies; and (iii) that the communication is manifestly ill-founded or not sufficiently substantiated.

4.3 The State party submits that the "relevant fact" on which the communication is based, that is, the removal of the author's name from the Assignment of Lease, occurred between 1992 and 1993, well before the entry into force of the Optional Protocol for Canada on 18 January 2003; and action in that respect was completed at that time. Accordingly, the State party submits that the whole communication is inadmissible *ratione temporis* under article 4, paragraph 2 (e), of the Optional Protocol.

4.4 The State party notes that the substance of the present communication has never been brought before the domestic authorities, therefore the communication should be declared inadmissible on the basis of non-exhaustion of domestic remedies. While acknowledging that the author initiated some domestic legal proceedings, the State party submits that the author did not allege any form of discrimination on the part of the Government of Canada, the Government of the Northwest Territories, or its agents. The

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<sup>4</sup> The State party makes this submission on behalf of the respondents identified in the author's communication, namely, the Government of the Northwest Territories, the Northwest Territories Housing Corporation and the Rae-Edzo Housing Authority.

State party further argues that the author did not exhaust all domestic appeal routes in respect of any of her three court actions: for the first action, she did not appeal to the Court of Appeal for the Northwest Territories; for the second action, she did not appeal to the Supreme Court of Canada; and the third action was dismissed by the Supreme Court of the Northwest Territories. Therefore, the State party submits that the entire communication should be deemed inadmissible for failure to exhaust domestic remedies under article 4, paragraph 1, of the Optional Protocol.

4.5 The State party is of the view that the communication neither singles out any particular legislation or policy of the Government of Canada or the Government of the Northwest Territories as being discriminatory, nor points to any pattern of discrimination, and does not otherwise demonstrate how the Government of Canada or the Government of the Northwest Territories, or its agents, have discriminated against the author or women in general on the basis of sex, marital status, cultural heritage or place of residence, or any other ground of discrimination. The State party further argues that the communication is not sufficiently substantiated, as the author has not submitted any evidence which would substantiate the allegation of discrimination against the author or women in general.

#### **Author's comments on the State party's observations on admissibility**

5.1 In her submission of 1 March 2010, the author, in response to the State party's submission on admissibility, claims that the communication should be dealt with on the merits in accordance with both the doctrine of "equity *contra legem*," as the use of equity in derogation of the law, where, under the circumstances of the case, an exception to the law is needed to achieve an equitable and just result; and the doctrine of "equity *intra legem*," as the Court's power to interpret and apply the law to achieve the most equitable result. The author also submits that the legal system did not understand the aboriginal way of solving disputes or the particular spiritual connection that the author had with the land.

5.2 With regard to the admissibility *ratione temporis*, the author submits that discrimination has continued after the date of the critical event. In relation to the requirement to exhaust domestic remedies, the author claims that she did not have entire control over the delays in taking action on her case. She also claims that the application of certain domestic remedies would have been unreasonably prolonged and unlikely to give effective relief. The author further claims that she would not have been approved for legal assistance to file an appeal before the Supreme Court of Canada.

#### **State party's further submission on admissibility**

6.1 By further submission on 13 April 2010, the State party reiterates that the communication is inadmissible on the following grounds: *ratione temporis* pursuant to article 4, paragraph 2(e) of the Optional Protocol; non-exhaustion of domestic remedies pursuant to article 4, paragraph 1; and manifestly ill-founded pursuant to article 4, paragraph 2(c), of the Optional Protocol.

#### **Issues and proceedings before the Committee concerning admissibility**

7.1 During its 47th session, from 4 to 27 October 2010, the Committee on the Elimination of Discrimination against Women decided, in accordance with rules 64 and 66 of its rules of procedure, to consider the question of admissibility and the merits of the communication separately.

7.2 The Committee considered the admissibility of the communication, in accordance with rules 64 and 66 of its rules of procedure. In accordance with article 4, paragraph 2, of the Optional Protocol, the Committee was satisfied that the same matter has not been or is not being examined under another procedure of international investigation or settlement.

7.3 The Committee found, with one dissenting opinion, the communication admissible under article 4, paragraph 1, of the Optional Protocol, and concluded that even assuming that domestic remedies had not been exhausted, the application of those remedies was unlikely to bring effective relief to the author.<sup>5</sup>

7.4 The Committee observed that the author was subject to domestic violence by her abusive partner; that she belongs to the indigenous community; and that the housing in question was earmarked for the indigenous community, despite which, the author was advised by the Housing Authority to include her partner as her spouse and apply for a family unit, thereby denying her the sole right; that the author was forcibly evicted by her partner and his estate after the alleged connivance with the Housing Authority Board, and as a result, to this date, has not received her share in the estate. The Committee further noted that under general recommendation 19, it is the obligation of the State party concerned to exercise due diligence to protect women, including against gender-based violence by private actors; investigate the crime; punish the perpetrator; and provide compensation. Although the State party argues that the author has not brought any claim of discrimination in the domestic court, the Committee noted that the author filed a second action on 14 March 1996 before the Supreme Court of the Northwest Territories, subsequently augmented with an amended statement of claim dated 9 July 1998, which included the following claims of sex-based discrimination: that her partner was cruel, abusive, extremely dominant, intimidating and physically aggressive; that, as a result, she had to seek protection in a women's shelter and find alternative accommodation for fear of physical harm, serious injury or death; and that she was evicted from the property and land, and caused to suffer financial and emotional hardship. Accordingly, the Committee considered that the author's allegations, relating to articles 1, 2, paragraphs (d) and (e), 14, paragraph 2 (h), 15, paragraph 4 and 16, paragraph 1 (h), of the Convention had been sufficiently substantiated for the purposes of admissibility under the requirements of article 4, paragraph 2 (c), of the Optional Protocol.

7.5 The Committee found that since the author's claim had not been barred by limitation in any of the proceedings before the domestic courts after ratification of the Protocol, and since the author's claim had already been pending before the courts at the time of ratification and entry into force of the Protocol, her claim constituted a pending claim. The Committee was of the view that the subject matter and discriminatory effect of the alleged violation did not cease to exist, as the claim was a pending continuing claim not barred by limitation. The Committee considered the facts that are the subject of the communication to be of a continuous nature, and found that admissibility *ratione temporis* is thereby justified, and declared the communication admissible under article 4, paragraph 2 (e), of the Optional Protocol.

7.6 The Committee declared the communication admissible on 15 October 2010, with one dissenting opinion.<sup>6</sup>

#### **Comments from the State party on the merits**

8.1 On 25 May 2011, the State party submitted that the author's communication alleges that the Government of Canada and the Government of the Northwest Territories contravened articles 1, 2, paragraphs (d) and (e), 14 paragraph 2 (h), 15 and 16, paragraph 1(h), of the Convention by virtue of the acts or omissions of the Northwest Territories Housing Corporation and the Rae-Edzo Housing Authority. The State party clarifies that the Northwest Territories Housing Corporation and the Rae-Edzo Housing

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<sup>5</sup> Ms. Yoko Hayashi submitted a dissenting opinion that the communication should be declared inadmissible due to non-exhaustion of domestic remedies, pursuant to article 4, paragraph 1, of the Optional Protocol.

<sup>6</sup> See footnote 5 above.



Authority are not agents of the Government of Canada, but are rather agents of the Government of the Northwest Territories. The Northwest Territories Housing Corporation is a corporate body and agent of the Commissioner of the Northwest Territories, created pursuant to the Northwest Territories Housing Corporation Act, and the Rae-Edzo Housing Authority is a housing authority incorporated to operate within the municipal limits of the hamlet of Rae-Edzo pursuant to an order made under the Northwest Territories Housing Corporation Act.

8.2 The State party reiterates its view that the author's communication is inadmissible for the reasons set out in its 6 January 2009 submission on the question of admissibility.

8.3 The State party reiterates at great length the chronology of the facts of the case and submits that the author has not demonstrated that articles 1, 2, paragraphs (d) and (e), 14, paragraph 2 (h), 15 and 16, paragraph 1 (h), of the Convention have been violated.

8.4 As to the author's allegation regarding violations of her rights under article 1 of the Convention, the State party submits that the author has at no time provided any evidence, either in her communication or before the domestic courts and tribunals in Canada, that the Government of Canada, the Government of the Northwest Territories, the Northwest Territories Housing Corporation or the Rae-Edzo Housing Authority (hereafter the "State party's authorities") have committed any direct or indirect acts of discrimination as defined in article 1 of the Convention, and has thus not established any discrimination in contravention of article 1 of the Convention. It maintains that the author's communication does not single out any particular legislation or policy of the State party as being discriminatory, nor does it point to any acts or patterns of discrimination, or otherwise demonstrate how the State party's authorities have discriminated against the author or women in general on the basis of sex, marital status, cultural heritage or place of residence, or any other ground of discrimination set out in the Convention. Rather, the communication deals with a highly personal dispute between the author and her former common-law partner, who, at a certain point in time, held a position with the Rae-Edzo Housing Authority, and who allegedly abused that position for his personal gain. While the author alleges that the Northwest Territories Housing Corporation and the Rae-Edzo Housing Authority played a role in removing her name from the Assignment of Lease, there is no evidence demonstrating that there was any discriminatory conduct on the part of these bodies in respect of the removal of the author's name from the document and, in turn, that there was a violation of one of the articles of the Convention.

8.5 The State party submits that the author has alleged discrimination against "women applicants for housing," and against "women generally," as well as failure on the part of the State party to take all appropriate measures to eliminate discrimination against women in general, and women living in rural areas in particular. The State party submits that the author does not presently have any standing to represent women applicants for housing generally, Canadian women generally, women living in rural areas or any other individuals or groups of individuals, since she has not demonstrated that she has obtained consent from such individuals or groups of individuals to act on their behalf, nor has she demonstrated that she can act on their behalf without their consent.

8.6 The State party submits that there is no evidence that removal of the author's name from the Assignment of Lease for the Rae-Edzo property was due to a failure to pursue a policy of eliminating discrimination against women, and that the removal of the author's name has not been shown to be due to a failure on the part of any Government entity to undertake to refrain from engaging in any act or practice of discrimination against women (art. 2, para. (d)) or due to a failure on the part of any Government entity to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise (art. 2, para. (e)). The State party also submits that the author has not advanced any evidence of discriminatory conduct on the part of the State party's

authorities in respect of the circumstances surrounding the filing of the joint application for housing listing the author and Mr. Senych (her partner) as co-applicants for housing under the Northern Territorial Rental Purchase Program. The State party observes that the author has provided two letters indicating that in October of 1992, her partner made a request to have her name removed from the Assignment of Lease for the Rae-Edzo property. The author has also provided a copy of an Assignment of Lease indicating that the Rae-Edzo property was assigned to her partner, solely in his name, in June of 1993. However, the State party submits that these documents are not evidence indicating that the removal of the author's name from the Assignment of Lease was motivated by or was in any way a by-product of a failure on the part of the State party's authorities to refrain from engaging in any act or practice of discrimination against women or to ensure that the Northwest Territories Housing Corporation and the Rae-Edzo Housing Authority refrained from engaging in any such acts or practices of discrimination. Further, because the author did not pursue her litigation claims against her partner, his Estate or the Housing Authority, there is no domestic decision-making body's judgment attempting to determine why her name was removed. The State party maintains that the author's partner may have perpetrated a fraud against her by abusing his position within the Housing Authority, although this has not been established in any way. This abuse of authority for personal reasons cannot be attributed to the State party or any of its Government entities as an act of discrimination against the author or women generally, and is not evidence of an act or pattern of discrimination. Accordingly, the State party submits that the author's allegations in respect of article 2, paragraph (d), of the Convention are without merit or have not been sufficiently substantiated.

8.7 The State party submits that after Mr. Senych (the author's partner), solely on his own behalf, applied to the Rae-Edzo Housing Authority to purchase a dwelling unit under the Northern Territorial Rental Purchase Program and was denied, "the Board of Directors of the Rae-Edzo Housing Authority instructed one of their Tenant Relations officers to contact the author and explain to her that her partner's application for housing would be considered if her name was added to the application since she was a resident of the community of Rae-Edzo." The State party maintains that the Board of Directors advised the Tenant Relations officer to provide this information to the author because "it was apparently common knowledge in the community of Rae-Edzo that Mr. Senych lived in a common-law relationship with the author, and because it was also common knowledge that the author was from the community of Rae-Edzo, and thus, was eligible to apply for housing from the Rae-Edzo Housing Authority." The State party observes that the author has not advanced any evidence to the effect that she was specifically told that she could only apply for housing under the Northern Territorial Rental Purchase Program if she submitted an application which listed Mr. Senych as a co-applicant or that she could not apply for housing on her own behalf or that she could not seek sole ownership of a housing unit from the Rae-Edzo Housing Authority. The State party further observes that the eligibility criteria under the Northern Territorial Rental Purchase Program in place at the material time did not contain any restrictions along the lines of gender, marital status or cultural heritage, and that the eligibility criteria cannot be seen as unfairly targeting women living in rural areas.

8.8 The State party maintains that both the author's income and the income of her partner were taken into account in determining their eligibility under the Northern Territorial Rental Purchase Program and that it is significant that the author has not demonstrated that she would have actually been in a position to acquire the Rae-Edzo property on a rent-to-own basis had she made an application solely on the basis of her own earnings.

8.9 As to the author's allegation that the State party contravened article 2, paragraph (e), of the Convention, the State party maintains that in order for the author to demonstrate a

violation, the author must show that it has failed to take appropriate measures to eliminate the discrimination that the author experienced personally as a consequence of her name being removed from the Assignment of Lease, when the same was brought to the authorities' attention. The State party submits that several efforts were made by the Northwest Territories Housing Corporation, along with the Estate of Mr. Senych, to rectify the situation faced by the author when it was brought to their attention that her name had been removed from the Assignment of Lease. Between June 1996 and August 1996, the Northwest Territories Housing Corporation tried to address the author's situation by offering her "other homes in the community of Rae-Edzo that were of comparable size and market value to the Rae-Edzo property." For instance, the Northwest Territories Housing Corporation offered as settlement to the author a one bedroom duplex (in August 1996) and another Northern Territorial Rental Purchase Program unit (on an unspecified date), both of which the author rejected. Further, on 31 May 1999 and in 2001, the Northwest Territories Housing Corporation and the Estate of her late partner made offers to jointly settle the author's claim respectively for the amount of \$15,000 and \$20,000, but these offers were also rejected by the author. The State party notes its understanding that in 2003, the estimated value of the Rae-Edzo property had been found to be \$28,500. The State party further notes that according to a 1996 appraisal report submitted by the author, the estimated value of the Rae-Edzo property was \$40,000 at that time. The State party thus notes that the value of the author's undivided one-half interest would likely have been \$14,250 in and around the time of the \$20,000 offer, and would have been, at the very most, \$20,000 at the time of that 2001 offer. The State party maintains that the author's refusals of all of the above reasonable offers to settle this dispute render the allegations with respect to article 2, paragraph (e), of the Convention, as set out in the author's communication, moot and completely without merit. The State party further submits that the explanations offered by the author in respect of her refusals to settle this dispute do not withstand scrutiny. The author has insisted on receiving a one-half interest in the Rae-Edzo property even though this particular request has long been legally impossible. The State party submits that the Northwest Territories Housing Corporation was actually no longer the registered owner of the property at the time that the settlement negotiations were ongoing, and thus was unable to offer the author a one-half interest in the property. Even in the event that the Northwest Territories Housing Corporation did have the ability to fulfil the author's requests when settlement negotiations were ongoing, doing so would have required evicting the new tenants from the Rae-Edzo property, thus creating significant inequities. For, in November of 2004, third parties became the registered owners of the leasehold interest in the Rae-Edzo property, and said third parties remain in lawful possession of the property today.

8.10 The State party also submits that it does provide the legislative and other measures necessary to eliminate discrimination against women by any person, organization or enterprise. The Canadian Charter of Rights and Freedoms (hereafter the "Charter") provides constitutional protection against discrimination against women. In addition, the State party has in place various pieces of domestic human rights legislation prohibiting discrimination against women,<sup>7</sup> including discrimination against women on the grounds set out by the author in her communication, as well as specific protection against discrimination in the context of housing and accommodation. The State party submits that the human rights legislation in force in the Northwest Territories at the relevant time was the Fair Practices Act, and refers to section 4 of that Act.<sup>8</sup> The Fair Practices Act was

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<sup>7</sup> The State party referred to sects. 7, 8 and 15 of the Canadian Charter of Rights and Freedoms; the remedial provisions of sects. 24 and 52 of the Constitution Act, 1982; sect. 1, para. (a) of the Canadian Bill of Rights.

<sup>8</sup> Section 4 of the Fair Practices Act (repealed 1 July 2004) provided as follows:

replaced with the Northwest Territories Human Rights Act,<sup>9</sup> which similarly prohibits discrimination on a number of grounds, in the context of the provision of goods, services, accommodations and facilities, and thus likewise seeks to eliminate discrimination against women by any person, organization or enterprise as per article 2, paragraph (e), of the Convention. In addition, the State party's federal legislation, the Canadian Human Rights Act, specifically prohibits the denial of occupancy of residential accommodations on the basis of a prohibited ground of discrimination, such as race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and conviction for which a pardon has been granted.

8.11 The State party notes that in its Decision of 25 November 2010 with respect to the admissibility of the author's communication, the Committee observed the author's claims that she was subject to domestic violence by her partner and in turn noted its general recommendation No. 19 on violence against women. The State party submits that the author herself did not raise in her communication any allegation to the effect that she was discriminated against on the basis of a failure on the part of the State party's authorities to ensure that their agents exercised due diligence to protect her from domestic violence, including violence committed by her partner, nor did she otherwise allege a failure on the part of these agents to investigate or punish acts of violence or to provide compensation for the same. The State party further submits that there is no evidence that the author had made known to the authorities that she was suffering violence at the hands of her partner at any point before she filed the domestic litigation against him, at which point, determination of such allegations fell to the civil court process. The State party maintains that, in fact, it has acted with due diligence to generally prevent violations under the Convention, and that Canadian governments do act with due diligence to investigate and punish acts of violence against women by individuals, where these acts are brought to their attention.

8.12 The State party proceeds to analyse the circumstances of the current case in light of the Committee's jurisprudence<sup>10</sup> and concludes that, unlike in those cases, the Canadian authorities could not have known that the author was in danger, since she failed to pursue her claims in the domestic courts. The State party also notes "the sharp contrast between the procedural history of the author's domestic litigation and the procedural history in the Communication *Vertido v. The Philippines*"<sup>11</sup> and submits that, unlike the situation in the *Vertido* case, there is no evidence that the delays associated with the author's domestic litigation were due to the failure of the court system to deal with her claims in a fair, impartial, timely and expeditious manner. The State party proceeds to describe the legislative and policy measures it has taken to protect victims of domestic violence.

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4. (1) No person shall, because of the race, creed, colour, sex, marital status, nationality, ancestry, place of origin, disability, age or family status of a person or because of a conviction of a person for which a pardon has been granted, deny to that person the accommodation, services or facilities available in any place to which the public is customarily admitted.

(2) No person shall, directly or indirectly,

(a) deny to any person or class of persons occupancy of any apartment in any building that contains self-contained dwelling units, or

(b) discriminate against any person or class of persons with respect to any term or condition of occupancy of any apartment in any building that contains self-contained dwelling units, because of the race, creed, colour, sex, marital status, nationality, ancestry, place of origin, disability, age or family status of that person or class of persons or because of a conviction for which a pardon has been granted.

<sup>9</sup> The State party referred to sects. 11 and 12 of the Northwest Territories Human Rights Act.

<sup>10</sup> The State party referred to the Committee's views in communications No. 5/2005, *Goekce v. Austria*, adopted on 6 August 2007, and No. 6/2005, *Yildirim v. Austria*, adopted on 6 August 2007.

<sup>11</sup> See Communication No. 18/2008, *Vertido v. The Philippines*, views adopted on 16 July 2010.

8.13 As to the author's allegation that the State party has contravened article 14, paragraph 2 (h), of the Convention, the State party submits that the author does not have standing to represent the interests of women in general, women living in rural areas generally or women living in the specific area of Rae-Edzo, Northwest Territories. It maintains that there is no evidence that the State party's authorities have applied their policies or procedures in respect of housing unfairly, in a discriminatory manner, in contravention of article 14, paragraph 2 (h), of the Convention. The author has not advanced any evidence indicating that the removal of her name from the Assignment of Lease was motivated by or in any way a by-product of a failure on the part of the State party's authorities to refrain from engaging in any act or practice of discrimination against women in general or women in rural areas in particular, or a failure on the part of the State party's authorities to ensure that the agents of the Government of the Northwest Territories refrain from engaging in any such acts or practices of discrimination against such women. The State party submits that the author has failed to substantiate this allegation and to demonstrate any violation of article 14, paragraph 2 (h), of the Convention.

8.14 The State party further submits that many of the constitutional protections and legislative measures set out above in response to the author's allegations under article 2, paragraph (e), of the Convention serve to demonstrate that it has appropriate measures in place, as required by article 14, paragraph 2 (h), of the Convention, to eliminate discrimination against women in rural areas in order to ensure, on the basis of equality of men and women, that they participate in and benefit from rural development, and in order to also ensure that women have an equal right to enjoy adequate living conditions. It proceeds to describe the policies and programs designed to meet the housing needs of women.

8.15 With respect to the author's allegations in regard to article 15, paragraph 4, of the Convention, the State party questions the applicability of this article of the Convention, given the Committee's general recommendation No. 21. The State party also submits that the author has failed to bring forth any evidence demonstrating that she was precluded in any manner from choosing the domicile ("country") in which she intended to reside "on the same basis as a man," or that her freedom to choose her residence was restricted on account of any discriminatory conduct, whether direct or indirect, on the part of the authorities. The State party does acknowledge that it became legally impossible for the author to acquire the specific Rae-Edzo property as a consequence of the fact that the property came to be lawfully occupied by third-party individuals in the years following the removal of her name from the Assignment of Lease, but it notes that various positive steps had been taken in order to remedy the situation of the author, and to allow her to once more reside in the community of Rae-Edzo, thus respecting her particular spiritual connection with the land where that community is located.<sup>12</sup> The State party submits that the author is currently living in housing provided by the North Slave Housing Corporation, and has been living in housing provided by this housing authority since 2006. The State party submits that the facts fail to demonstrate that the author has been denied the opportunity to choose her place of residence as required by article 15, paragraph 4, of the Convention, and accordingly maintains that the author has not demonstrated a contravention of article 15, paragraph 4 of the Convention.

8.16 With respect to the author's allegations in regard to article 16, paragraph 1 (h), of the Convention, the State party submits that the author has not pointed to any property laws or customs that discriminate against married or unmarried women in respect of the ownership,

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The State party refers to the various other housing options that were offered to the author over the course of the many years leading up to the filing of her communication before the Committee, as well as the various housing programs and options currently available in the Northwest Territories.

acquisition, management, administration and enjoyment of property, any discriminatory practices or laws that interfered with her ownership, acquisition, management, administration or enjoyment of the Rae-Edzo property in particular, or any discriminatory conduct on the part of the authorities in respect of the removal of her name from the Assignment of Lease for that property. The State party reiterates its arguments that the author has not brought forth any evidence to substantiate the claim that there has been discrimination in her case, and that the communication deals with a personal dispute between the author and her partner, and an act of fraud and/or abuse of public office committed by the partner to advance his personal interests. It also submits that the constitutional protections and legislative measures cited above, in combination with any applicable family law legislation, aim to ensure the elimination of discrimination against women in all matters relating to marriage and family relations, and to ensure the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property in accordance with article 16, paragraph 1 (h), of the Convention.<sup>13</sup> The State party therefore maintains that the author has not demonstrated any violation of article 16, paragraph 1 (h), of the Convention.

#### **Further submissions from the parties**

9.1 On 26 October 2011, the author submitted as the reasons for not accepting alternative housing offers that her home and belongings were illegally stripped from her as a direct result of the collusion between her partner and the local housing association of which he was a member of the Board and the Northwest Territories Housing Corporation which carried out his request to remove her name from the Assignment of Lease without her authorization. She submits that her common-law relationship was falsely characterized by her partner and the legal system as a “boarder” relationship. After she took refuge in a battered women’s shelter, she was informed by her lawyer that she had been evicted from her home and was under threat of criminal charges and arrest if she stepped onto the property again. As a result, she and her three children became homeless for several years, were forced to live apart for an extended period of time, and her ability to obtain and maintain employment were affected by that eviction.

9.2 The author submits that in exchange, the Northwest Territories Housing Corporation proposed to replace her three-bedroom privately owned home with a one-room duplex with a studio space, which was a rental unit. She had three teenage children and was pregnant with a fourth child and considered that the offer was neither fair nor reasonable. She did not believe that the Housing Corporation was making the offer in good faith because they had already played a role in taking her home. She was concerned that if she moved into the rental unit with her three children, they would evict her under a different rule regarding limitation, for example, on the size of families living in studio units. She maintains that she is an aboriginal woman with a homeland and a treaty right to land and a house, that she chose where to reside when she purchased her home and that she wanted security and enough space in her home for her growing family and the Northwest Territories Housing Corporation did not offer her that. Furthermore, she was told by the North Slave Housing Corporation that she could apply to purchase a home if she wanted, but when she applied on two occasions she was denied a house because her income did not meet the criteria to become a homeowner.

9.3 The author further submits that the lawsuit took so many years to settle, because between 1995 and 2005, she was pursuing the same goal to regain her home and her

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<sup>13</sup> The State party notes, as one example, the Northwest Territories’ Family Law Act which sets out the laws about the rights and responsibilities of married and common-law spouses, both before and after separation, and also deals with spousal support and how people divide their property.

belongings, but at every point in the legal process, she was told that it was not possible. She maintains that the failure to reach a settlement in her lawsuit was a result of discrimination perpetrated against her by lawyers assigned to the case and by officials at the Northwest Territories Legal Services Board. As an aboriginal person, she experienced racism, and as a woman, she experienced sexism. Both of these aspects of discrimination contributed to a pattern of behaviour that was “at best bullying and at worst abusive”. Poverty, unemployment, dislocation and homelessness resulting from the theft of her home played a role because she could not afford a lawyer of her own choosing, and at times she could not afford the contribution that the Northwest Territories Legal Services Board demanded in order to provide her services. She maintains that the failure to reach a settlement was impacted by the fact that she was assigned a number of different lawyers in ten years. The failure to reach a settlement was also a direct result of actions or lack of action on the part of those lawyers. Most of the lawyers would not “hear” her instructions, but instead gave her instructions and threatened to quit if she disputed their position; some lawyers acted on her behalf without her knowledge or consent. She had no choice about which lawyer she got and those who were assigned to her case by the Northwest Territories Legal Services Board were not held accountable by it. The author provides numerous examples of misconduct on the part of the lawyers assigned *ex officio* to represent her, and maintains that she lost her case because she did not have the expertise to pursue it through the legal system on her own, and she did not receive adequate legal representation.

9.4 With regard to the remedies that the author wishes to obtain from the State party, the author describes the hardships that she and her family were forced to endure as a result of losing her home and states that she would be grateful if she could receive compensation for the damage that has occurred but that she could not “put a price tag on the extreme maltreatment we had to endure as a result of losing our family home.” She further states that the remedies that would make a difference would be receiving a three-bedroom home; rebuke of the Government of the Northwest Territories, including the Northwest Territories Housing Corporation and the Northwest Territories Legal Services Board outlining their illegal and discriminatory behaviour; a commitment to train and employ more Aboriginal people in the legal system; reimbursement of all the legal fees she paid over the 10 years.

9.5 On 22 December 2011, the State party reiterated its main observations on the merits of the communication.

### **Consideration of the merits**

10.1 The Committee has considered the present communication in the light of all the information made available to it by the author and by the State party, as provided for in article 7, paragraph 1, of the Optional Protocol.

10.2 In the present case, the Committee observes that the author’s name was removed from the Assignment of Lease, making her partner, who was not a member of the aboriginal community, the sole owner of the property; that she lost her share in the house as a result of an alleged fraudulent transaction effected by her partner; that such change was impossible without action or inaction of the Northwest Territories Housing Corporation; that the Northwest Territories Housing Corporation was an agent of the State party; that her partner was serving as a director of the Housing Authority Board and therefore occupied a position of authority; that she was not informed by the Housing Corporation of the annulment of her property rights, despite the fact that she was the eligible right holder as a member of the Rae-Edzo community. These facts show that the author’s property rights were prejudiced as a result of an act of a public authority acting together with her partner. The Committee also observes that the author was subsequently denied access to the family home by her partner, who changed the locks and evicted her while she was attempting to

escape an abusive relationship and seeking protection in a battered women's shelter. The Committee further notes that the author's lawyer, who was assigned by the Legal Services Board, advised her to follow the evacuation request made by her partner, and did not challenge the validity of such request. The Committee considers that the combined effect of the above facts led to discrimination against the author as defined by article 1 of the Convention. The Committee considers that the author has established a distinction based on the fact that she was an aboriginal woman victim of domestic violence, which she clearly submitted in her first lawsuit against her partner, and that such violence had the effect of impairing the exercise of her property rights. In its general recommendation No. 28, the Committee states that intersectionality is a basic concept for understanding the scope of the general obligation of States parties contained in article 2 of the Convention. The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste, and sexual orientation and gender identity. States parties must legally recognize and prohibit such intersecting forms of discrimination and their compounded negative impact on the women concerned (para. 18). Accordingly, the Committee finds that an act of intersectional discrimination has taken place against the author.

10.3 As to the author's allegation regarding violations of her rights under article 2, paragraphs (d) and (e), of the Convention, the Committee recalls that the said article calls on States parties to ensure that public authorities and institutions refrain from engaging in any act or practice of discrimination against women and to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise. Article 2, paragraph (d), of the Convention establishes an obligation for States parties not only to abstain from engaging in any act or practice of direct and indirect discrimination against women, but to ensure that any laws, policies or actions that have the effect or result of generating discrimination are abolished.<sup>14</sup> Further, article 2, paragraph (e), of the Convention requires the State party to adopt measures that ensure the practical realization of the elimination of discrimination against women, which includes measures enabling women to make complaints about violations of their rights under the Convention and have effective remedies.<sup>15</sup> As the author is an aboriginal woman who is in a vulnerable position, the State party is obliged to ensure the effective elimination of intersectional discrimination.

10.4 The Committee takes note of the State party's submission that several efforts were made by the Northwest Territories Housing Corporation to rectify the situation faced by the author when it was brought to their attention that her name had been removed from the Assignment of Lease, including offering her other homes in the community or monetary compensation, but that these offers were rejected by the author. It also notes the submission that the Northwest Territories Housing Corporation was no longer the registered owner of the property at the time that the settlement negotiations were ongoing, and thus was unable to offer the author a one-half interest in the property. The Committee, however, observes that the Northwest Territories Housing Corporation was administering the property when it removed the name of the author from the Assignment of Lease and reassigned the author's share to her partner, who was not eligible for such accommodation in the first place according to the Corporation's own rules;<sup>16</sup> that the alternative accommodations offered to the author were for rent and not ownership, and smaller in size than the house from which she had been evicted; also that the monetary compensation offers were, according to her,

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<sup>14</sup> See the Committee's general recommendation No.28, para. 35.

<sup>15</sup> *Ibid.*, para. 36.

<sup>16</sup> See the Procedural Directive of the Northwest Territories Housing Corporation, Northern Territorial Rental Purchase Program, para. 6.7, as submitted by the State party.



insufficient to allow her to provide adequate accommodation for her and her children. The Committee also observes that the first offer made by the Housing Corporation did not take place until August 1996, three years after the author was evicted from her home. The Committee concludes that State party has failed to ensure that its agents provide effective legal protection by respecting the Agreement for Purchase and Sale, and failed to ensure that the new Assignment of Lease, on which the author's name was not included, was declared null and void.

10.5 The Committee further observes that the author was forced to change lawyers numerous times due to the pressures of settling for monetary compensation instead of the restitution of the property; and that the author suffered severe prejudice in relation both to her domestic violence complaint and her property-related lawsuits, by the action of the legal aid lawyers assigned to her case. The Committee refers to its general recommendation No. 28 and recalls that States parties have an obligation under article 2, paragraph (e), of the Convention to adopt measures that ensure women's equality with men, including measures that ensure that women have access to effective remedies (para. 36). Accordingly, the Committee is of the view that the rights of the author under article 2, paragraphs (d) and (e), of the Convention have been violated.

10.6 As to the author's allegation that the State party has contravened articles 14, paragraph 2 (h), and 15, paragraph 4, of the Convention, the Committee notes that the information before the Committee does not show that the act of discrimination suffered by the author is related to her originating from a rural area or that she was prevented from residing in another property in the community of Rae-Edzo, in the Northwest Territories of Canada. Accordingly, the Committee is of the view that the facts before it do not reveal a violation of articles 14, paragraph 2 (h), and 15, paragraph 4, of the Convention.

10.7 With respect to the author's allegations in regard to article 16, paragraph 1 (h), of the Convention, the Committee takes note of the State party's submission that the author has not pointed out any property laws or customs that discriminate against married or unmarried women; any discriminatory practices or laws that interfered with her ownership, acquisition, management, administration or enjoyment of the Rae-Edzo property in particular; or any discriminatory conduct on the part of the authorities in respect of the removal of her name from the Assignment of Lease for said property. The Committee, however, observes that even though the formal eligibility criteria did not require so, the author was advised by a Tenant Relations officer of the Rae-Edzo Housing Authority that her partner's application for housing would be considered if the author's name was added to the application. The Committee also observes that the author was a victim of domestic violence, a fact which was not contested by the State party; that her partner tried to stop her from working, thus limiting her ability to lead an independent economic life; and that she was evicted from her home while seeking protection from domestic violence in a battered women's shelter. The Committee further observes that, according to the State party's submission, both the author's income and the income of her partner were taken into account in determining their eligibility under the Northern Territorial Rental Purchase Program, yet when her name was removed from the Assignment of Lease, the Northwest Territories Housing Corporation did not take her contribution into consideration or inform her of the removal. These facts considered together indicate that the rights of the author under article 16, paragraph 1 (h), of the Convention have been violated.

11. Acting under article 7, paragraph 3, of the Optional Protocol to the Convention, and in the light of all the above considerations, the Committee is of the view that the State party has failed to fulfil its obligations and has thereby violated the rights of the author under articles 2, paragraphs (d) and (e), and 16, paragraph 1 (h), read in conjunction with article 1 of the Convention, and makes the following recommendations to the State party:

- (a) Concerning the author of the communication

- (i) Provide housing commensurate in quality, location and size to the one that she was deprived of;
- (ii) Provide appropriate monetary compensation for material and moral damages commensurate with the gravity of the violations of her rights;
- (b) General
  - (i) Recruit and train more aboriginal women to provide legal aid to women from their communities, including on domestic violence and property rights;
  - (ii) Review its legal aid system to ensure that aboriginal women who are victims of domestic violence have effective access to justice.

12. In accordance with article 7, paragraph 4, of the Optional Protocol, the State party shall give due consideration to the views of the Committee, together with its recommendations, and shall submit to the Committee, within six months, a written response, including any information on any action taken in the light of the views and recommendations of the Committee. The State party is also requested to publish the Committee's views and recommendations and to have them widely disseminated in order to reach all relevant sectors of society.

[Adopted in Arabic, Chinese, English, French, Russian and Spanish, the English text being the original version.]

## Appendix

### Individual opinion of Committee member, Ms. Patricia Schulz (dissenting)

1.1 I was not a member of the Committee at the time that it reached its decision on the admissibility of this complaint in 2010, but I have participated in the deliberations leading to the decision taken on 28 February 2012 and am therefore entitled to express my views concerning both the admissibility and the merits of the case. For the most part, I do not share the position adopted by the Committee in either of these two respects.

1.2 In my view, the communication should have been found to be inadmissible under article 4, paragraph 1, of the Optional Protocol to the Convention on the ground of failure to exhaust domestic remedies, and possibly also under article 4, paragraph 2, on the ground that it is manifestly ill-founded. Having nonetheless been found admissible, the communication should have been rejected on its merits because no evidence was provided of the alleged discrimination against the author or against women in Canada, including aboriginal women, rural women, women living in the Rae-Edzo community and women who are victims of domestic violence. I would also point out that the author is not qualified to submit a communication on behalf of those groups of women, under the terms of article 2 of the Optional Protocol.

#### Admissibility

2.1 I share the Committee's view that the communication is admissible *ratione temporis* under article 4, paragraph 2 (e), of the Optional Protocol. However, I believe, as does the State party, that the author has not exhausted the available domestic remedies, which, under article 4, paragraph 1, of the Optional Protocol, renders her communication inadmissible. The author did not make use of all the available legal procedures during the three court actions brought before the judicial authorities, inasmuch as she did not make the court review the merits of either her claims or her allegations that she was the victim of one or more acts of discrimination committed by the respondents in those legal actions, which included the two State housing authorities involved in the case, and by the legal aid service and her court-appointed defence attorneys. It was not until she submitted her communication to the Committee that the author alleged — in my view, for the first time — that she had been the victim of sexism and racism on the part of the authorities, the legal aid service and her court-appointed defence attorneys. The Canadian courts were thus unable to consider the merits of her allegations concerning one or more forms of discrimination against her or, if appropriate, provide her with compensation on that basis.

2.2 The author filed the **first civil suit** in May 1995. The sole respondent was her former partner. She claimed to have been the victim of violence, trespass to chattels and eviction from the house which they had bought together. She sought compensation for various damages (see para. 2.7 of the communication) and a statement indicating that her former partner had been aided and abetted in obtaining the dwelling by the Government of the Northwest Territories. W.S. (the partner) died in November 1995, five months after the suit had been filed. Following his death, the author took no further action to continue with the suit, which remained pending until 2003.

2.3 A **second civil suit** was filed by the author in March 1996, in which she named the estate of her former partner, a friend of his who was living in the house, and the Northwest Territories Housing Corporation. The author claimed that the Corporation had allowed W.S. to appropriate her share of the property by fraudulent means. It was only then that, for the first time, the Northwest Territories Housing Corporation was informed of the author's

situation and her claims against it. This second suit was amended in July 1998 to include applications for damages and interest on a number of different grounds, and a petition that her title to half of the property and leasehold be recognized.

2.4 Various arrangements involving other dwellings or a financial settlement were proposed to the author in an effort to resolve the situation in some way other than by reinstating her title to one half of Parcel No. 138. Specifically, a financial settlement of \$15,000 was offered to the author in May 1999, and one of \$20,000 was offered in 2001. The author rejected these offers and instead chose to continue to attempt to recover title to her share of the property, but she did not reactivate the second civil suit which she had filed in 1996 and amended in 1998. That suit remained pending until 2003.

2.5 On 3 and 10 June 2003, respectively, the estate of W.S. and the Northwest Territories Housing Corporation filed motions to dismiss the author's two suits for "want of prosecution". On 27 October, the Supreme Court of the Northwest Territories accepted the application for the dismissal of the first action. The author did not contest the dismissal of her first suit even though her complaints against her former partner and the various claims that she had made had not been examined on the merits. The Canadian courts have therefore not had the opportunity to consider the author's complaints on the merits; nor did the author provide information about her claims of discrimination. The author did, however, lodge an application with the Court of Appeal for the Northwest Territories to overturn the decision taken by the Supreme Court of the Northwest Territories to dismiss her second civil action for "want of prosecution" on 3 November 2003. The Court of Appeal rejected her application but did not issue its reasons for doing so in writing. The author did not appeal that decision before the Supreme Court of Canada and did not apprise the Canadian courts of the reasons why she did not or could not do so. Existing treaty body jurisprudence indicates that, given the intended purpose of the requirement regarding the exhaustion of domestic remedies, this procedural rule should not be overridden unless there are compelling reasons for its waiver. The absence of a written reasoned decision from the Court of Appeal cannot be regarded as such a reason. Unlike the Committee (para. 7.3 of the communication), I do not think that an appeal before the Supreme Court of Canada would be unlikely to bring effective relief to the author. Even if that remedy had given rise to no more than a limited consideration of the procedural issue related to the author's inaction between, respectively, 1996/1998 and 2003, it could have led to a decision in the author's favour. If the Supreme Court of Canada had found that the five-year delay during which the author had not taken any court action was excusable because, for example, negotiations were being held between the author and the other parties during that period, then the Supreme Court could have referred the case back to a lower court for an examination of the merits. By failing to appeal to the Supreme Court of Canada, the author precluded the consideration of her communication by the Committee, since she has not exhausted the available domestic remedies. In my view, this first reason suffices to render the communication inadmissible under article 1, paragraph 4, of the Optional Protocol.

2.6 The fact that a third legal action was brought does not make up for the author's failure to exhaust domestic remedies in connection with the second legal action. The author did not take effective action to contest the court decision concerning her second suit under the applicable rules of procedure. She therefore cannot, in my opinion, cite the third suit, which had the same objective as the second, to rebut the argument that she failed to exhaust domestic remedies in the second legal action, since to do so would render the requirement that domestic remedies be exhausted — a requirement cited on numerous occasions by the

Committee<sup>17</sup> — meaningless. The author did not exhaust domestic remedies in the third legal action either. Indeed, the third suit, which was filed on 16 November 2004 (i.e., eight years after the second), once again named the estate of her former partner and, in addition, the new owners of Parcel No. 138, to whom her former partner's estate had sold the property. As in the case of the second, in this third suit, the author sought to secure recognition of her property rights. Neither the Northwest Territories Housing Corporation nor any other Canadian authority was named in the third suit. As is also true of the first two suits, this third legal action yields no basis for finding that the author was discriminated against by any Canadian authority because she was a woman, an aboriginal woman or a woman living in that region of the country. This third action can thus be regarded as a means employed by the author to attempt to make up for her failure to lodge an appeal with the Supreme Court of Canada against the dismissal of her second suit by the Court of Appeal for the Northwest Territories. The judge who heard the third case ruled that, since the first two suits had not been examined on the merits, the author was entitled to bring the third action and that it was not an abuse of legal process, as the respondents had claimed. That decision, taken on 21 July 2005, opened the way for a consideration of the merits of the author's complaints, which had not taken place before owing to the author's failure to take the necessary steps in either of the two preceding legal actions. The judge did, however, instruct the author to pay the court costs of the second suit and to post security for costs for the third action within 60 days; otherwise, it would be struck from the docket. The author did not appeal that decision before the Court of Appeal for the Northwest Territories. In my opinion, the author has therefore not exhausted the available domestic remedies with regard to the third legal action and has not cited any circumstance that would have released her from that obligation. Neither financial difficulties nor doubts as to the outcome of an application lodged with the Court of Appeal absolve her from the obligation to exhaust domestic remedies.<sup>18</sup>

2.7 Furthermore, in neither the second nor the third actions can the remedies be said to have been unreasonably prolonged, and this can therefore not be used as an argument for exempting the author from the obligation to exhaust domestic remedies.

### **The merits**

3.1 I do not concur with the description of the facts of the case and the conclusions reached on that basis by the Committee, as presented in paragraphs 10.2 to 10.4 of the communication. The author's complaints were not examined on the merits in any of the three court actions which she filed, and in no case was she able to provide evidence of the act or acts of discrimination which she alleged were committed against her by the respondents in those suits, including the two State housing authorities named in them, or by the legal aid service or its court-appointed attorneys. At no time in any of these three civil actions did discrimination on the basis of sex, marital status, cultural heritage, place of residence or any other ground figure among the complaints put forward by the author in her own case. The second suit is the only one in which a Canadian authority (the Northwest Territories Housing Corporation) is named; in the other two, all the respondents are private parties (W.S., his estate, and the parties who purchased Parcel No. 138 from that estate). In the introductory paragraphs of this written opinion, I indicated that, in my view, the author is not qualified under the terms of article 2 of the Optional Protocol to submit a communication on behalf of the groups of women that she has named, and I would add here

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<sup>17</sup> Communications No. 10/2005, *N.S.F. v. The United Kingdom of Great Britain and Northern Ireland*, para. 7.3; No. 17/2007, *Zheng v. The Netherlands*, para. 7.3.

<sup>18</sup> See, for example, Human Rights Committee, communication No. 397/1990, *P.S. and T.S. v. Denmark*, para. 5.4.

that she has put forward general statements and has not provided evidence of the alleged acts of discrimination against the various groups of women which she has mentioned, whereas the State party has refuted, in detail, each and every one of the general statements made by the author.

3.2 In my view, this case stems from a problem that arose between the author and her former partner, W.S., who appears to have used — and abused — his position of authority as a board member of the Rae-Edzo Housing Authority to request, in February 1992, and to secure, in June 1993, the removal of the author's name from the Assignment of Lease, which certified the author's co-ownership of Parcel No. 138, by the Northwest Territories Housing Corporation. It is probable that the removal of the author's name from that document was obtained by fraudulent means by W. S., who did not meet any of the eligibility requirements for property ownership in Rae-Edzo. The circumstances under which this occurred were not investigated and, to this day, it remains an open question as to whether or not a punishable criminal offence was committed by W.S. and one or more employees of the Northwest Territories Housing Corporation. No light has been shed on the facts surrounding the disappearance of the corresponding file either.

3.3 I do not, in particular, share the conclusions reached by the Committee concerning the violence suffered by the author at the hands of her former partner. In June 1993, when the Northwest Territories Housing Corporation assigned — whether as the result of an error, negligence or a conspiracy to commit fraud — Parcel No. 138, which had until that point in time been co-owned by the author and her former partner, to W.S. as sole rights-holder, the Northwest Territories Housing Corporation had not been made aware of the difficulties that the author was experiencing in her relationship with W.S. and, more specifically, had not been informed that the author was a victim, if the statements made in the communication are to be believed, of violence, threats, repeated sexual abuse and intimidation and was being prevented from engaging in gainful employment. The Corporation did not learn of the author's situation until 1996, when she filed the second suit. Before that, when the author had filed the first suit, in May 1995, W.S. was the sole defendant. Thus it was through two civil actions, filed (but not pursued) in 1995 and in 1996/1998–2003, that the Canadian authorities learned of the author's allegations concerning the violence committed upon her by her former partner. Thus, in my view, the State party cannot be charged with having failed to exercise due diligence in this case.

3.4 Nor do I share the Committee's view, as expressed in paragraph 10.4 of the communication, that the State party failed to ensure that its agents provided legal protection to the author. It is certainly surprising that the Northwest Territories Housing Corporation did not undertake an inquiry into the circumstances under which the author's name was removed from the contract once the Corporation was informed of this situation by the author in 1996; at the very least, this bespeaks an inexplicable lapse on the part of that housing authority in the enforcement of its own rules on the assignment of properties, but the author has not demonstrated that this lapse constituted discrimination against her. An error, or even an act of fraud, leading to the removal of her name from the Assignment of Lease and a failure to undertake proper monitoring and, if appropriate, to rectify that error in the corresponding documents do not in themselves constitute discrimination against the author. Nor did the author advance this argument in a Canadian court with a view to proving that discrimination had taken place. In addition, the Northwest Territories Housing Corporation and W.S.'s estate attempted, on repeated occasions, to remedy, insofar as possible, the injury done to the author through the loss of her property rights. I share the State party's view that the author has not demonstrated that the offers made to her were not made in good faith or that all of them were insufficient. In particular, the monetary compensation offered in 1999 and 2001 (\$15,000 and \$20,000, respectively) appears to correspond to the value of the property of which the author was deprived, since Parcel No. 138 was ultimately sold by the estate for \$30,000.

3.5 I have not reached the same conclusions as the Committee has in paragraph 10.5 of the communication concerning the difficulties encountered by the author in defending her interests, which she argues resulted in a violation of her rights under article 2, subparagraphs (d) and (e), of the Convention. I do not share the Committee's opinion that the reassignment of her case to different lawyers on several occasions points to discrimination against the author, and particularly not in the case of her complaint of marital violence. The author filed her first suit in May 1995, and her former partner died five months later from cancer. I do not see how the author could have been prejudiced by the change in the lawyer assigned to her case, since the first two suits and the amendment to the second of those suits were handled by the same attorney, who represented her from 1995 to 1998. According to the file, five lawyers handled her case. It is certainly possible that these changes may have hurt her case with regard to her property rights, but that does not necessarily mean that she was discriminated against. I do not believe that the file supports the conclusion that the author's attorneys discriminated against her when they advised her to accept a financial settlement rather than seeking to recover her property rights to Parcel No. 138. In any event, after a certain point in time had been reached, it appears that an attempt to recover those rights would run into very considerable legal problems (since title to the property had changed hands), and advising the author to accept a financial settlement therefore does not appear to be a sign of discrimination but rather to be a recommendation based on a realistic assessment of the actual situation, although this would certainly be a painful realization for the author. This case went on for 10 years. Legal aid was provided to the author so that she could pursue legal action and engage in negotiations with the estate of W.S. and the Northwest Territories Housing Corporation. After legal aid had been denied to her when she wanted to lodge an appeal in 2003, she succeeded in having it restored and was assigned counsel. The State party has cited objective reasons why the author had to work with five different attorneys: one left the region, one left the Government legal service; and another decided to resign from his position as the author's counsel. That resignation does not appear to have been an inadmissible form of pressure that would have had a discriminatory effect because that attorney took that decision in 2002 after she had refused an offer of \$20,000, which was apparently how much the property was worth. The author also received legal aid during the third court action, through which she sought to obtain what she had not secured in her second suit, even though she had not exhausted all available remedies in that second action.

3.6 I note that the judge who heard the third case ruled that, since the first two suits had not been examined on the merits, the author was entitled to bring that new action, which would therefore not constitute an abuse of legal process, as the respondents had claimed. That decision, taken on 21 July 2005, opened the way for a consideration of the merits of the author's complaints, which had not taken place before, owing to the author's failure to take the necessary steps in either of the two preceding legal actions. It would also have provided the author with an opportunity to include her complaints regarding alleged discrimination in the communication. That judge also ordered her to pay the court costs for the first two suits and to post security for costs for the new suit. Neither the decision of the Supreme Court of the Northwest Territories to make the pursuit of the third legal action conditional upon payment by the author of the court costs of the two preceding suits and provision of security for costs for the third one, nor its establishment of a 60-day period in which to do so, appears to constitute discrimination. The author had not paid the court costs of the preceding suits and, given the way in which the earlier legal actions had proceeded, it was not unreasonable to require payment of past court costs and security for costs for the new suit. In view of these facts, I do not feel that it is justifiable to accuse the State party of not having given the author the chance to assert her rights.

3.7 Even though the author has questioned the quality of the legal assistance provided to her during the years in question, the first time that she made the claim that she was

discriminated against by her attorneys and the legal aid service was apparently in the communication. Unlike the Committee, I therefore believe that the author received legal assistance on a non-discriminatory basis. I do not rule out the possibility that the quality of those legal services may not have been entirely satisfactory. However, according to the existing jurisprudence, litigants (unfortunately for them) bear the burden of the errors committed by their attorneys.<sup>19</sup>

3.8 I share the Committee's conclusion, as stated in paragraph 10.6 in fine of its Views, that there was no violation of article 14, paragraph 2 (h), or of article 15, paragraph 4, of the Convention. Contrary to the opinion set forth by the Committee in paragraph 10.7 of its Views, I do not believe that the State party is guilty of discrimination under the terms of article 16, paragraph 1 (h), of the Convention. The author does seem to have been the victim of domestic violence, and it is quite possible that her ability to engage in gainful employment was limited by her partner, but at the time of the event that gave rise to the communication, namely, the removal of her name from the Assignment of Lease, no Canadian authority had been informed of that situation. As indicated above in the discussion of paragraphs 10.2 to 10.4, it was not until the first suit was filed, in which W.S. was the sole respondent, that, for the first time, a judicial authority was informed that the author claimed to be the victim of domestic violence. As the author did not pursue either that legal action or the second such action, the State party cannot be accused of having failed to exercise due diligence in the case in question or in regard to women victims of violence in general.

3.9 The fact that the incomes of both partners were taken into consideration at the time that the contract was drawn up cannot, in my view, be interpreted as a violation of the author's rights under article 16, paragraph 1 (h), either. If the former partner's income had not been taken into account, the author might very probably have been unable to buy Parcel No. 138 because she would not have had the required level of income. This is confirmed by the author's statement in the communication to the effect that she later applied to purchase a home on two occasions but was denied because her income was too low. Furthermore, the author was not forced to add her former partner's name to the application but was simply told that, if she did, her application might be approved. It appears to have been common knowledge that the two of them lived together, and the provision of such information would therefore not constitute a violation of the author's rights under article 16, paragraph 1 (h). The failure of the Northwest Territories Housing Corporation to inform the author that her name had been removed from the contract cannot be regarded as constituting discrimination either. Inasmuch as W.S. quite probably used fraudulent means to have the author's name removed from the contract, it is quite conceivable that he would have done everything he could in order to prevent her from learning of that fact. Alternatively, if the failure to notify the author were not the result of collusion on the part of one or more employees of the Northwest Territories Housing Corporation, but rather the result of an error or oversight, it would not necessarily constitute discrimination on the basis of sex either. In other words, a fraudulent act or an error which had what were certainly dramatic consequences for the author do not necessarily constitute acts of discrimination on the basis of sex in violation of article 16, paragraph 1 (h).

4. In view of the foregoing, I believe that the communication is inadmissible on the ground of failure to exhaust domestic remedies and that, if considered on the merits, should be rejected on the ground that the author has failed to advance evidence to support her allegations.

(Signed) Patricia Schulz

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<sup>19</sup> Human Rights Committee, communication No. 1059/2002, *Carvallo Villar v. Spain*.



[Done in French. Subsequently to be issued also in Arabic, Chinese, English, Russian and Spanish.]

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