1) Reference Details

Jurisdiction: Human Rights Committee, Sixty-seventh session
Date of Decision: 3 November 1999
Case Status: Concluded by the Human Rights Committee

2) Facts

The author of the communication was Mr Arieh Hollis Waldman, a Canadian citizen residing in the province of Ontario. He was a father of two school-age children and a member of the Jewish faith who enrolled his children in a private Jewish day school. In the province of Ontario Roman Catholic schools are the only non-secular schools receiving full and direct public funding. Other religious schools must fund through private sources, including the charging of tuition fees.

In 1994 Mr. Waldman paid $14,050 in tuition fees for his children to attend Bialik Hebrew Day School in Toronto, Ontario. This amount was reduced by a federal tax credit system to $10,810.89. These tuition fees were paid out of a net household income of $73,367.26. In addition, the author was required to pay local property taxes to fund a public school system he does not use.

The Roman Catholic separate school system was not a private school system. As with the public school system it is funded through a publicly accountable, democratically elected board of education. Separate School Boards were elected by Roman Catholic ratepayers, and these school boards had the right to manage the denominational aspects of the separate schools. Unlike private schools, Roman Catholic separate schools were subject to all Ministry guidelines and regulations. Neither s. 93 of the Constitution Act 1867 nor the Education Act provided for public funding to Roman Catholic private/independent schools.

3) Law

International Law

- Article 2 of the International Covenant on Civil and Political Rights 1966
- Article 18 of the International Covenant on Civil and Political Rights 1966 (right to freedom of thought, conscience and religion)
- Article 26 of the International Covenant on Civil and Political Rights 1966 (right to non-discrimination)
- Article 27 of the International Covenant on Civil and Political Rights 1966 (In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language)

National Law

- Section 93 of the Constitution Act 1867
4) Legal Arguments

The Author

The author contended that the legislative grant conferring power to fund Roman Catholic “separate” schools authorised by s. 93 of the Constitution Act of Canada 1867, and carried out under ss. 122 and 128 of the Education Act (Ontario) violates Article 26 of the Covenant.

The author contended that these provisions create a distinction or preference which is based on religion and which has the effect of impairing the enjoyment or exercise by all persons, on an equal footing, of their religious rights and freedoms. He argued that the conferral of a benefit on a single religious group cannot be sustained. When a right to publicly financed religious education is recognized by a State party, no differentiation should be made among individuals on the basis of the nature of their particular beliefs. The author submitted that the provision of full funding exclusively to Roman Catholic schools cannot be considered reasonable as the historical rationale for the Ontario government’s discriminatory funding practice, that of protection of Roman Catholic minority rights from the Protestant majority, has now disappeared.

The State

With regard to the alleged violation of Article 26, the State party contended the communication is inadmissible *ratione materiae*, or, in the alternative, does not constitute a violation. The State party recalled that a differentiation in treatment based on reasonable and objective criteria does not amount to prohibited discrimination within the meaning of Article 26. It referred to the Committee’s jurisprudence in communication *Blom v Sweden* where the Committee found that the State party was not violating Article 26 by not providing the same level of subsidy for private and public education, when the private system was not subject to State supervision. It also referred to the Committee’s Views in communication *Lindgren and Lundquist v Sweden* where the Committee decided that the State party could not be deemed to be under an obligation to provide the same benefits to private schools as to public schools, and that the preferential treatment given to public sector schooling was reasonable and based on objective criteria. The Committee also considered that the State party could not be deemed to discriminate against parents who freely choose not to avail themselves of benefits which are generally open to all.

The State party argued that its funding of public schools but not private schools was not discriminatory. All children of every or no religious denomination have the same right to attend free secular public schools maintained with tax funds. According to the State party, the establishment of secular public institutions was consistent with the values of Article 26 of the Covenant.

5) Decision

Consideration of Admissibility

The Committee noted that the State party has challenged the admissibility of the communication *ratione materiae*. The Committee, however, considered that the author’s claim of discrimination, in itself and in conjunction with Articles 18 and 27, is not incompatible with the provisions of the
Covenant. The State party has not raised any other objections and accordingly the Committee finds the communication admissible.

Consideration of Merits

The Committee explained that the issue before it was whether public funding for Roman Catholic schools, but not for schools of the author's religion, which results in him having to meet the full cost of education in a religious school, constitutes a violation of the author's rights under the Covenant.

The Committee opined that providing funding for the schools of one religious group and not for another must be based on reasonable and objective criteria. The Committee concluded that the material before it does not show that the differential treatment between the Roman Catholic faith and the author's religious denomination is based on such criteria. Consequently, there had been a violation of the author's rights under Article 26 of the Covenant to equal and effective protection against discrimination.