

Canadian Human
Rights Tribunal



Tribunal canadien
des droits de la personne

BETWEEN:

RICHARD WARMAN

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

MARC LEMIRE

Respondent

- and -

**ATTORNEY GENERAL OF CANADA
CANADIAN ASSOCIATION FOR FREE EXPRESSION
CANADIAN FREE SPEECH LEAGUE
CANADIAN JEWISH CONGRESS
FRIENDS OF SIMON WIESENTHAL CENTER FOR HOLOCAUST STUDIES
LEAGUE OF HUMAN RIGHTS OF B'NAI BRITH**

Interested Parties

RULING

MEMBER: Athanasios D. Hadjis

2006 CHRT 48
2006/10/26

[1] The Respondent, Marc Lemire, has filed a motion requesting an order that the Complainant, Richard Warman, be added as a respondent in the present case.

[2] According to Mr. Warman's human rights complaint, dated November 23, 2003, Mr. Lemire is the owner of an Internet website called "freedomsite.org", on which one could allegedly view hate messages (i.e. material that is proscribed under s. 13 of the *Canadian Human Rights Act*). Mr. Warman also alleges in the complaint that Mr. Lemire posted some of this material himself.

[3] With the present motion, Mr. Lemire is in effect attempting to introduce his own human rights complaint against Mr. Warman. He is claiming that Mr. Warman wrote and posted hate messages of his own on the very same website, freedomsite.org. Mr. Lemire argues that Mr. Warman should therefore be added as an additional respondent in the present case.

Does the Tribunal have the authority to add a party to an existing inquiry?

[4] Although the *Act* does not explicitly state that the Tribunal has the power to order the addition of a party to a proceeding before it, s. 48.9(2)(b) provides that the Chairperson of the Tribunal may make rules of procedure governing "the addition of parties and interested persons to the proceedings".

[5] In an oral ruling in *Desormeaux v. Ottawa-Carleton Regional Transit Commission* (October 2, 2002), Ottawa, T701/0602 (C.H.R.T.), referred to in *Brown v. National Capital Commission*, 2003 CHRT 43 and in *Syndicat des employés d'exécution de Québec-Téléphone, section locale 5044 du SCFP v. Telus Communications (Québec) Inc.*, 2003 CHRT 31 ("*Telus*"), then Tribunal Chairperson Mactavish observed how s. 48.9(2)(b) of the *Act* specifically contemplates the addition of both parties and interested persons to existing Tribunal inquiries. Given the wording of this provision, she concluded that Parliament's intention was to empower the Tribunal to add parties to an inquiry on motion where the Tribunal deems it appropriate.

[6] Chairperson Mactavish issued a subsequent oral ruling in the same case, on October 3, 2002, in which she noted that the legislative context surrounding the Tribunal's discretionary power to add parties suggests that any such discretion should be exercised with caution. The addition of a party during the course of an inquiry may deprive the new respondent of the benefit of certain procedural protections. These would include the opportunity to persuade the Commission during its investigation process that it should refuse to deal with the complaint because, for instance, the complaint is without merit or it is based on acts or omissions that occurred more than one year before the receipt of the complaint (s. 41(1)(e)). Thus, the Tribunal found that although the legislative scheme permits the Tribunal to add a respondent, the situations under which this will be permitted are "somewhat limited" in view of the loss of procedural protections that could result from such an action.

[7] The Tribunal in *Telus*, at para. 30, endorsed the cautious approach articulated in *Desormeaux*, and concluded that the forced addition of a new respondent would be appropriate where it is established that the presence of the new party is "necessary to dispose of the complaint before the Tribunal and that it was not reasonably foreseeable, once the complaint was filed with the Commission, that the addition of a new respondent would be necessary to dispose of the complaint". As was noted in *Brown*, at para. 20, this is accepted as the state of the current law on the question.

Is the addition of Mr. Warman as a respondent necessary to dispose of the complaint that is before the Tribunal?

[8] Mr. Lemire has not convinced me that the addition of Mr. Warman as a respondent is necessary to dispose of the complaint that is before me at this time. The complaint alleges that Mr. Lemire is the registered owner of the freedomsite.org website and that he has discriminated against persons or groups of persons on prohibited grounds by repeatedly communicating hate messages, in his capacity as webmaster and owner of this Internet website, and through his own personal postings on the website.

[9] In what way can the inclusion of Mr. Warman as an additional respondent assist in the disposition of this complaint? Mr. Lemire's only argument on this point would appear to be that Mr. Warman posted his alleged hate messages as a way to "entrap" persons like Mr. Lemire, against whom he has subsequently laid human rights complaints. I gather that Mr. Lemire's point is that by making these alleged postings on the website, Mr. Warman somehow enticed others to post hate messages of their own.

[10] It appears to me that this argument is being presented as a defence to the allegations of discriminatory practices that have been made in the complaint. If there is any merit under the *Act* to such a defence, it would seem to me that it could be raised by a respondent whether or not the alleged "inciter" to commit the discriminatory practice is named as an additional respondent in the case.

[11] Mr. Lemire claims to find support for his position in the *Brown* ruling, where the Tribunal allowed the addition of a third party to a complaint. However, the circumstances of the *Brown* case are very different from those of the present case. The complainant, Mr. Brown, was disabled. He had alleged that the National Capital Commission (NCC) had discriminated against him by failing to provide wheelchair access to a park in Ottawa that was within the responsibility of the NCC. He claimed that the only available access was via a long set of steps, known as the York Street Steps. During the course of the hearing, evidence was adduced suggesting that a possible solution to the problem was to provide public access to an elevator situated in a nearby building owned by the federal Department of Public Works and Government Services (Public Works). The Commission made a motion requesting that the Tribunal order the addition of Public Works as a co-respondent.

[12] The Tribunal held that in the event that Mr. Brown's complaint was ultimately found to be substantiated, the addition of Public Works might be necessary in order to implement a viable solution to the problem arising from the York Street Steps. Given the evidence that the elevator in Public Works' building could provide the access needed to remedy the discriminatory practice, Public Works would have had an "indispensable part to play in resolving any question of discrimination" (*Brown* at para. 43). In the facts of the *Brown* case, therefore, the Tribunal faced

the real possibility that without the added party's full participation in the case, the Tribunal would have been unable to order an effective remedy to the discriminatory practice.

[13] The same cannot be said of the present case. It has not been demonstrated to me how the Tribunal's ability to issue effective remedial orders against Mr. Lemire under the *Act* will be hampered by not adding Mr. Warman as a respondent in the present case, nor has it been demonstrated that the participation of Mr. Warman *as a respondent* is necessary or "indispensable" to the resolution of any question of discrimination raised in Mr. Warman's complaint.

[14] If Mr. Lemire is of the view that Mr. Warman has contravened the *Act*, he is free to file his own human rights complaint with the Commission. The Tribunal is, however, seized at this time with a complaint filed by Mr. Warman against Mr. Lemire. The addition of Mr. Warman as a respondent is not necessary to dispose of the complaint. Mr. Lemire's motion is dismissed.

[15] Finally, I note that a good portion of the parties' submissions on the motion dealt with the technical workings of the website and the alleged evidence of Mr. Warman's visits to the website's message board. Given my findings on the inappropriateness of adding Mr. Warman as a respondent in the present case, these questions need not be addressed at this time.

"Signed by"

Athanasios D. Hadjis

OTTAWA, Ontario
October 26, 2006

CANADIAN HUMAN RIGHTS TRIBUNAL

PARTIES OF RECORD

TRIBUNAL FILE: T1073/5405

STYLE OF CAUSE: Richard Warman v. Marc Lemire

RULING OF THE TRIBUNAL DATED: October 26, 2006

APPEARANCES:

Richard Warman	For himself
Giacomo Vigna / Ikram Warsame	For the Canadian Human Rights Commission
Barbara Kulaszka	For the Respondent