

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 FOR HUMAN RIGHTS OF B'NAI BRITH**

Interested Parties

RULING

MEMBER: Athanasios D. Hadjis

2006 CHRT 58
2006/12/06

[1] Mr. Lemire has made a motion seeking the dismissal of the complaint. He alleges that the Statements of Particulars of the Canadian Human Rights Commission and Mr. Warman do not set out material facts sufficient to allow him to give full answer and defence.

[2] This is not my first decision regarding particulars in this case. On August 16, 2006, I issued a ruling ordering Mr. Warman and the Commission to identify the specific messages that they allege constitute hate messages, within the meaning of s. 13 of the *Act* (*Warman v. Lemire*, 2006 CHRT 32). I noted, at paragraph 26 of the decision, that if the Commission and Mr. Warman take the position that each message found on each of the freedomsite.org website's pages constitutes a hate message, then they should indicate so explicitly.

[3] Pursuant to this ruling, the Commission sent a letter to Mr. Lemire's legal counsel, on October 2, 2006, stating its position to the effect that "all of the messages contained in the Freedom site disclosed to [Mr. Lemire] in paper copy and also on C-Rom [*sic*] version constitute hate messages contrary to s. 13 of the *Act*". The Commission added that while it will be arguing at the hearing that some postings on the website "may be more explicit than others in constituting violations of s. 13", given that the website has "only one common theme", the Commission will be asking the Tribunal for an order that the entire website be closed. The Commission added that it would therefore be relying on the evidence of the entire website's contents in order to enable the Tribunal to "fully and completely assess the very nature of the website in its entirety, not just certain aspects of it".

[4] Similarly, on October 2, 2006, Mr. Warman sent a letter detailing the evidence upon which he intended to rely, namely "the entirety of the Freedomsite message board; all other examples identified in [Mr. Warman's] complaint; the entirety of the contents of jrbooksonline; and Mr. Lemire's posting of the "Canadian Immigrant Poem" to Stormfront".

[5] Mr. Lemire claims that the details provided in the Commission's and Mr. Warman's responses are insufficient and are not in compliance with my previous ruling. According to Mr. Lemire, these circumstances render it "impossible" for him to mount a defence as he does not know the case against him so that he may defend against it.

[6] I disagree. The Commission and Mr. Warman have now explicitly stated that in their opinion, the entire freedomsite.org website constitutes matter that is in violation of s. 13 of the *Act*. Prior to this particularization, the Commission and Mr. Warman had simply produced 133 pages of messages as part of their documentary disclosure, without specifying which of those messages they allege constitute hate messages under the *Act*. The Commission and Mr. Lemire have now specified that they consider each of these messages to be in violation of s. 13. These are just their allegations. It is incumbent upon them to prove these allegations at the hearing.

[7] Mr. Lemire seems to argue in his motion that all of the messages do not constitute hate messages under the *Act*, and that there is no justification for the issuance of a Tribunal order shutting down the website. The appropriate time for these arguments to be raised, however, is in final submissions. These arguments have no bearing on the issue of particulars.

[8] Mr. Warman makes reference in his October 2nd letter to “jrbooksonline” and an alleged posting by Mr. Lemire on another website. Mr. Warman notes that this material was “previously disclosed”. Mr. Lemire claims that, as of the date of his motion, the Commission and Mr. Warman had not provided him with copies of the entire freedomsite.org website (its message board, in particular), nor of jrbooksonline, as part of their disclosure. Mr. Lemire argues that given the intention of Mr. Warman and the Commission to rely on evidence from the entire freedomsite.org and jrbooksonline websites, this omission constitutes a breach of the Commission’s and Mr. Warman’s duty to disclose. More importantly, it impairs Mr. Lemire’s ability to mount a defence to the allegations made against him.

[9] According to Rule 6 of the Tribunal’s Rules of Procedure, a party is only required to disclose documents in the party’s possession that relate to a fact, issue or form of relief identified by any of the parties to the case. This duty to disclose does not preclude a party from alleging facts and issues which are supported by evidence adduced from documents in the possession of another party. Indeed, it is not uncommon in human rights cases for discriminatory practices to be established from evidence that was in the possession of the respondent and disclosed as part of the Tribunal’s disclosure process (see for e.g. *Montreuil v. National Bank of Canada*, (2004), 48 C.H.R.R. 436 (C.H.R.T.)).

[10] In the present case, if a website in question, such as freedomsite.org, is indeed “owned” by Mr. Lemire, as alleged by Mr. Warman, it strikes me as somewhat disingenuous for Mr. Lemire to argue that the Commission’s failure to provide him copies of its content would constitute unfair treatment. It would seem to me that Mr. Lemire would be the person who is best placed to have knowledge of the website’s content.

[11] In any event, Rule 9 of the Tribunal’s Rules of Procedure is available to address any question that may arise if a party tries to enter into evidence a document that was not previously disclosed.

[12] Finally, I note that in his submissions, Mr. Lemire indicates that the “jrbooksonline” material consists of “literally tens of thousands of pages”. This, I suspect, is a reference to the “literature” that I ordered Mr. Lemire to allow the Commission and Mr. Warman to view in my most recent ruling, *Warman v. Lemire*, 2006 CHRT 53. To forestall the possibility of anyone being taken by surprise, I order the Commission and Mr. Warman to inform Mr. Lemire which portions of this “literature” they intend to specifically draw the Tribunal’s attention to at the hearing. This notice must be provided to Mr. Lemire within one week following the viewing of the literature, as ordered in paragraph 11 of that decision.

[13] For all the above reasons, Mr. Lemire’s motion to dismiss is denied.

“signed by”

Athanasios D. Hadjis

OTTAWA, Ontario
December 6, 2006

CANADIAN HUMAN RIGHTS TRIBUNAL

PARTIES OF RECORD

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| RULING OF THE TRIBUNAL DATED: | December 6, 2006 |
| APPEARANCES: | |
| Richard Warman | For himself |
| Giacomo Vigna | For the Canadian Human Rights Commission |
| Barbara Kulaska | For the Respondent |