

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

Interested Party

RULING

MEMBER: Athanasios D. Hadjis

2006 CHRT 8
2006/02/23

[1] Several groups have applied to the Tribunal seeking leave to appear as interested parties at the inquiry into this complaint.

[2] Richard Warman filed the complaint in November 2003. He alleged that the respondent, Marc Lemire, had communicated hate messages through an Internet website, contrary to s. 13 of the *Canadian Human Rights Act*. The Canadian Human Rights Commission referred the complaint to the Tribunal for inquiry on August 24, 2005.

[3] On October 24, 2005, the Tribunal held a case management meeting by conference call with the parties. Mr. Lemire's counsel, Barbara Kulaszka, indicated during the meeting that she intended to present a preliminary motion regarding the constitutionality of s. 13 of the *Act*. The Tribunal set down dates for Ms. Kulaszka to file her motion and for the other parties to respond.

[4] On November 29, 2005, Paul Fromm, acting for the Canadian Association for Free Expression Inc. (CAFE), sent a letter to the Tribunal "seeking leave to obtain standing as an interested party making written and oral submissions in support of [Mr. Lemire's] motion".

[5] On December 12 and 19, 2005, Douglas H. Christie communicated in writing with the Tribunal, on behalf of the Canadian Free Speech League (CFSL). He advised that the CFSL was seeking standing in the present case, "as an interested party making written and oral submissions on the motion put forth by Marc Lemire regarding the constitutionality of s. 13 [and s. 54] of the *Act*".

[6] On December 13, 2005, Marvin Kurz, solicitor for the League of Human Rights of B'Nai Brith Canada, writing on behalf of counsel for the Canadian Jewish Congress and the Friends of Simon Wiesenthal Center for Holocaust Studies, advised the Tribunal that the three organizations (the "B'Nai Brith Group") were seeking interested party status to jointly participate in opposing Mr. Lemire's motion regarding the constitutionality of s. 13 of the *Act*.

[7] On December 19, 2005, the Tribunal directed that Mr. Lemire's motion would be dealt with in the course of the hearing into the complaint, and no longer as a preliminary matter.

[8] All three groups seeking interested party status have informed the Tribunal that they still wish to participate in this case, but to varying degrees.

CAFE

[9] CAFE wishes to participate throughout the course of the hearing. Mr. Fromm indicated that CAFE seeks “full participatory rights to make oral and written arguments, to present written evidence, to call [...] and cross-examine witnesses”.

[10] CAFE states that it is a non-profit organization, which is dedicated to promoting and maximising the guarantees of freedom of speech, freedom of expression, and freedom of assembly, under the *Canadian Charter of Rights and Freedoms*. Since this proceeding raises important issues regarding these values, CAFE contends that it can bring “a unique expertise” regarding the effects of the *Act*’s hate message provisions on the *Charter*.

[11] CAFE publishes a regular newsletter that explores threats to free speech, conducts meetings on free speech related issues, and makes representations to legislative bodies on these matters. Mr. Fromm claims that the organization has “about 2,000 supporters and subscribers across Canada”.

The B’Nai Brith Group

[12] The members of the B’Nai Brith Group seek to be added as interested parties for the full proceeding, but undertake to limit their participation to the Charter issues. They also undertake to act jointly throughout the proceedings and file one set of submissions. They will coordinate their efforts with Mr. Warman and the Commission to ensure that there is no duplication in the evidence or submissions.

[13] Mr. Kurz explains in his application that his clients are “three major Canadian Jewish human rights organizations”. He claims that they have an “extensive history” of participation as

intervenor in Charter litigation regarding hate propaganda, free speech and the determination of reasonable limits of hate propaganda.

[14] As representatives of a group of persons who have a long history of being subject to hatred and vilification, the three organizations making up the B’Nai Brith Group argue that they will bring to bear a unique experience and perspective, which will permit them to make helpful submissions that differ from those of the Commission and Mr. Warman.

The CFSL

[15] The CFSL wishes to “simply argue the constitutional issue” regarding s. 13 of the *Act*. It does not propose to call or cross-examine any witnesses.

[16] Mr. Christie claims that the CFSL exists to “defend freedom of speech in Canada and to provide counsel and assistance to those who have had their free speech rights assailed by government”. He has appeared as general counsel for the CFSL in a number of cases before courts and quasi-judicial tribunals, as an “advocate for free speech”. In his view, the CFSL’s perspective and experience may be of assistance to the Tribunal in considering Mr. Lemire’s motion.

[17] Incidentally, on February 3, 2006, the Tribunal was informed that the Attorney General of Canada would be exercising the right, pursuant to s. 57 of the *Federal Court Act*, R.S.C. 1985, c. F-7, to participate and adduce evidence at the hearing, as well as to make submissions, in respect of the constitutional question.

Analysis

[18] Section 50 of the *Act* gives the Tribunal wide discretion with respect to the granting of interested party status (*Nkwazi v. Canada (Correctional Service)*, [2000] C.H.R.D. No. 15 at para. 22 (C.H.R.T.) (QL)). The onus is on an applicant to demonstrate how its expertise would be of assistance in the determination of the issues before the Tribunal. Interested party status will not

be granted if it does not add significantly to the legal positions of the parties representing a similar viewpoint (*Schnell v. Machiavelli and Associates Emprize Inc.*, [2001] C.H.R.D. No. 14 at para. 6 (C.H.R.T.) (QL)).

[19] Based on the material and arguments presented, I am satisfied that all of the applicants can add significantly to the legal positions of the parties regarding the constitutionality of s. 13. It is obvious, however, that their interest in this case is limited to the constitutional question. None of the applicants sought to intervene in the case prior to this issue being raised by Ms. Kulaszka as a preliminary matter. The parties to the complaint had been instructed to address the question by written submissions. The Tribunal left the door open to the possibility of receiving oral submissions at a later time, if needed. For as long as it appeared that the question was going to be dealt with as a preliminary matter, the three applicants seemed satisfied to restrict their input to the constitutional issue only.

[20] The applicants (the Canadian Association for Free Expression Inc., and the Canadian Free Speech League, as well as the group comprised jointly of the League of Human Rights of B’Nai Brith Canada, the Canadian Jewish Congress, and the Friends of Simon Wiesenthal Center of Holocaust Studies) are, therefore, granted interested party status in the present case, but solely with respect to the issue of the constitutionality of s. 13 and any related provisions of the *Act*.

[21] The interested parties shall have the right to present evidence, cross-examine, and make submissions, relating to the constitutional issue only. They will not, however, be permitted to overlap or repeat the evidence, cross-examination, or submissions of Mr. Warman, the Commission, Mr. Lemire, or the Attorney General of Canada.

[22] Ms. Kulaszka has raised certain concerns regarding the additional costs arising from the participation of additional parties (such as photocopying, faxing and courier costs). These matters can be addressed at the next case management meeting.

“Signed by”

Athanasios D. Hadjis

OTTAWA, Ontario
February 23, 2006

CANADIAN HUMAN RIGHTS TRIBUNAL

PARTIES OF RECORD

TRIBUNAL FILE:	T1073/5405
STYLE OF CAUSE:	Richard Warman v. Marc Lemire
RULING DATED:	February 23, 2006
APPEARANCES:	
Richard Warman	On his own behalf
Giacomo Vigna / Ikram Warsame	On behalf of the Canadian Human Rights Commission
Barbara Kulaszka	On behalf of the Respondent
Simon Fothergill	On behalf of the Attorney General of Canada
Paul Fromm	On behalf of the Canadian Association for Free Expression
Douglas H. Christie	On behalf of the Canadian Free Speech League
Marvin Kurz	On behalf of the League of Human Rights of B’Nai Brith and on behalf of counsel for the Canadian Jewish Congress and the Friends of Simon Wiesenthal Center for Holocaust Studies