

Canadian Human
Rights Tribunal



Tribunal canadien
des droits de la personne

Between:

Richard Warman

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Canadian Heritage Alliance

- and -

Melissa Guille

Respondents

Ruling

Member: Pierre Deschamps

Date: June 24, 2008

Citation: 2008 CHRT 28

[1] The Tribunal is seized of a motion brought by the Respondents, Ms. Melissa Guille and Canadian Heritage Alliance, to dismiss the complaint brought against them in the present file for the following reasons: 1. the actions taken by the Canadian Human Rights Commission in the present case (see herein) are contrary to natural justice and due process as guaranteed by sections 7 and 11(d) of the *Canadian Charter of Rights and Freedoms*; 2. the actions taken by the Commission are a further violation of the Respondents' guaranteed right to a fair trial as also guaranteed by sections 7 and 11(d) of the *Canadian Charter of Rights and Freedoms*. Alternatively, the Respondents request that the case be reopened and the witnesses recalled for examination of the issue of the Complainant, Mr. Richard Warman, and the Commission posting messages on websites subject to complaints.

[2] The Respondents allege that, in the present case, the Commission has not disclosed information relating the Commission's investigators secretly creating accounts on forums they judge controversial. The Respondents further argue that withholding this information constitutes a breach of the principles of natural justice and fairness as well as an abuse of process.

[3] In support of these allegations, the Respondents rely on a statement made in the case of *Warman v. Lemire* by Ms. Margot Blight, the lead Commission attorney. The Respondents allege that the latter stated that the Commission's explicit policy has been to withhold such information from any Freedom of Information requests and legal disclosure responsibilities.

[4] Furthermore, in relation to the *Warman v. Lemire* case, the Respondents allege that the Commission's lead investigator, Dean Steacy, testified that the Commission did not maintain a list or central registry of user accounts that the Commission and police created on forums. In addition, the Respondents allege that Mr. Steacy would have admitted in the course of his testimony that someone could technically be found liable for content posted by police or investigators as they didn't keep a central registry. The Respondents states that Mr. Steacy testified that in some cases, no one but he and one other Commission employee knew of the practice of creating infiltration accounts on forums being investigated.

[5] The Respondents finally claim that considering that the present case “involves hefty fines for a low-income simple parent and a possible lifetime ban to post messages contrary to a ridiculously vague Act” [*sic*], the complaint should be dismissed.

[6] The Complainant’s position is that the present motion is unsupported by any evidence whatsoever and that the Tribunal cannot rule on it without reopening the case to hear evidence.

[7] As for the Commission, it is of the view that nothing in the allegations made by the Respondents in their motion justifies in any way the granting of the motion to dismiss the complaint or reopen the case. The Commission argues that the allegations made by the Respondents would be more appropriately dealt with in the context of the constitutional challenge brought by the Respondents, which the Tribunal will deal with once a decision on the merits of the case has been rendered. In this respect, the Commission argues that the motion brought by the Respondents is untimely, without foundation and before the wrong forum.

[8] The Tribunal has not yet ruled on the merits of the case. The Tribunal has already ruled that once a decision is rendered on the merits of the case, it would suspend the execution of its decision, if the Respondents were found to be in breach of section 13 of the *Canadian Human Rights Act*, and entertain the constitutional challenge brought by the Respondents.

[9] The Tribunal is of the view that, given the nature of the issues raised by the Respondents in the present motion, i.e. actions by the Commission contrary to the principles of natural justice and due process as well as the right to a fair trial guaranteed by Sections 7 and 11(d) of the *Canadian Charter*, these will be better dealt with in the context of the constitutional challenge brought by the Respondents. The notice of constitutional question filed by the Respondents refers already to sections 1, 2(a), (b) and (d) as well as section 7 of the *Act* as the basis for the Respondents’ constitutional challenge.

[10] The proposition that the Tribunal should dismiss the present complaint on the basis of the testimony of witnesses rendered in another case has no legal basis. Furthermore, to reopen the

case to hear additional evidence at this point in time would only prolong proceedings which have extended over an already too long period of time.

[11] Hence, Respondents' motion to dismiss the complaint and, alternatively, to reopen the case is denied. It will be open to the Respondents to raise again the issues contained in its motion in the context of the constitutional challenge that the Tribunal has already decided it would entertain once the decision on the merits has been rendered.

Signed by

Pierre Deschamps
Tribunal Member

Ottawa, Ontario
June 24, 2008

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T1089/7005 and T1090/7105

Style of Cause: Richard Warman v. Canadian Heritage Alliance and Melissa Guille

Ruling of the Tribunal Dated: June 24, 2008

Appearances:

No submissions made, for the Complainant

K.E. Ceilidh Snider, for the Canadian Human Rights Commission

Alexan Kulbashian, for the Respondent, Melissa Guille

Paul Fromm, for the Respondent, Canadian Heritage Alliance