

CANADIAN HUMAN RIGHTS TRIBUNAL TRIBUNAL CANADIEN DES
DROITS DE LA PERSONNE

RICHARD WARMAN

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

ALEXAN KULBASHIAN,
JAMES SCOTT RICHARDSON, TRI-CITY SKINS.COM,
CANADIAN ETHNIC CLEANSING TEAM,
AND AFFORDABLE SPACE.COM

Respondents

RULING

MEMBER: Athanasios D. Hadjis

2006 CHRT 04
2006/01/30

[1] The inquiry into Mr. Warman's complaint began on August 30, 2004. After 13 days of hearings into the evidence, final submissions from all parties were heard from February 23rd to February 25th, 2005. The parties were given additional time thereafter to address certain issues in writing, namely two court decisions that had just been released. Mr. Warman filed his additional submissions on March 2, 2005, and Mr. Kulbashian followed suit on March 21, 2005. The Commission opted not to send in any additional submissions. I would note that Mr. Kulbashian took this opportunity to make several additional arguments, which were unrelated to the court decisions to which he was supposed to limit his remarks.

[2] The Tribunal thereafter took the case under advisement and is still considering its decision.

[3] On January 3, 2006, some ten months after final oral arguments were completed, Mr. Kulbashian filed a "motion to revisit a witness", which was basically a request to have Mr. Warman called to the stand again to be cross-examined by Mr. Kulbashian (**Motion no. 1**).

[4] On January 4, 2006, Mr. Kulbashian filed a motion to "exclude evidence against" Tri-City Skins.com and Affordablespace.com "from the judgment phase of the Tribunal process" (**Motion no. 2**). In this motion, Mr. Kulbashian essentially argued that both of these respondents are not entities capable of being parties subject to a complaint under s. 13 of the *Canadian Human Rights Act*.

[5] On January 6, 2006, Mr. Kulbashian sent to the Tribunal some "information" about Mr. Warman and the Commission's witness, Terry Wilson, which actually consisted of supplemental documentary evidence that Mr. Kulbashian sought to introduce relating to their testimonies (**Motion no. 3**).

[6] Another "motion" was filed on the same day, January 6, 2005 (**Motion no. 4**), although I think it should be more aptly characterized as additional arguments. They were to the effect that the Tribunal has no jurisdiction to deal with any Internet messages that were allegedly not specifically set out in the complaint nor mentioned in the Commission investigator's report.

[7] It seems copies of Motions 3 and 4 were not forwarded on by the Tribunal to the Commission and Mr. Warman, as has been the normal practice in this case. The Tribunal Registry is instructed to forward copies of these motions to the Commission and Mr. Warman forthwith.

[8] On January 19, 2006, Mr. Kulbashian presented another motion, requesting that the evidence that had already been introduced at the hearing, relating to a copy of a computer's hard drive, now be "excluded from this Tribunal process" (**Motion no. 5**).

[9] On January 20, 2006, the Commission and Mr. Warman filed their submissions in reply to Mr. Kulbashian's first two motions (of January 3 and 4, 2006). The Commission complained in its submissions of the manner in which Mr. Kulbashian has proceeded with his motions. The Commission alleges that this sequential filing of motions, which are in some ways repetitious of one another, constitutes an abuse of process. Just as Commission counsel was preparing to address one motion, another would be filed. The Commission asks the Tribunal to rule on the first two motions before compelling the Commission to devote additional effort addressing the subsequent motions.

[10] On January 23, 2006, Mr. Kulbashian filed yet another motion, this time requesting that the Tribunal "exclude evidence against the Respondent C.E.C.T. from the judgment phase of the Tribunal process" (**Motion no. 6**). The submissions contained in this motion resemble those in Mr. Kubashian's earlier motion of January 4, 2006.

[11] I agree with the Commission. Mr. Kulbashian has indeed "inundated" the other parties with a barrage of motions, at what is effectively the very last minute prior to the issuance of the decision on the merits into the complaint. In my view, the Tribunal's process is best served by the Tribunal issuing its findings on all of these motions immediately. I do not find it necessary to hear any further submissions regarding Mr. Kulbashian's motions.

Motion no. 1

[12] In the case of *Vermette v. CBC*, (1994) 28 C.H.R.R. D/89 (C.H.R.T.), aff'd (1996) 28 C.H.R.R. D/139 (F.C.T.D.), the Tribunal addressed the issue of re-opening a hearing to adduce additional evidence. Relying on Sopinka's and Lederman's The Law of Evidence in Civil Cases, the Tribunal noted that, except in the case of fraud or surprise, the evidence that a party seeks to introduce must be newly discovered, and must be evidence that, with reasonable diligence, could not have been discovered during the trial. It must also be of such a character that it would have a determining factor in the result. Where the application to reopen is received prior to the decision being rendered, a broader discretion to reopen has been recognized.

[13] In the present case, Mr. Kulbashian is not trying to adduce newly discovered evidence, as he himself acknowledged at page 2 of his motion:

During the Tribunal hearing, the applicant attempted to question Richard Warman on his association with the ARA. The Commission and the witness objected, and the Tribunal ruled that there would be no cross-examination relating to his association with the ARA.

Mr. Kulbashian now wants to call Mr. Warman back to the witness stand to cross-examine him with regard to his involvement with the ARA group, which is in effect an attempt to re-introduce the same evidence. In so doing, Mr. Kulbashian is asking the Tribunal to re-visit its decision maintaining the other parties' objections to this line of questioning. I see no reason to do so. The respondents made their submissions regarding these objections when they sought to adduce the evidence at the hearing. The Tribunal considered their submissions and ruled. The ruling stands. Motion no. 1 is dismissed.

Motion no. 2

[14] This motion strikes me more as an attempt to present additional arguments rather than a motion to "exclude evidence". The fact of the matter is that this issue was already addressed by the parties during final submissions. I do not see anything fundamentally new in the way of argument in what Mr. Kulbashian has submitted in his motion. In any event, I would view any attempt to re-argue the case at this time as unfair and an abuse of process.

[15] Final oral submissions were conducted over three days in February 2005. Mr. Kulbashian's argument lasted about one hour on the first day, took up the entirety of the following day, and continued into the final day for an additional fifty minutes. The co-respondent, Mr. Richardson, followed with his own arguments that ran for approximately one hour and twenty minutes.

[16] In my view, Mr. Kulbashian had ample opportunity to present all of his arguments. Moreover, he took advantage of the occasion that the Tribunal afforded him and the other parties to file follow-up submissions in writing, regarding some recently court decisions. Instead of just commenting on those decisions, Mr. Kulbashian went on to write almost two single-spaced pages of additional final arguments, which had nothing to do with the decisions in question. In contrast, Mr. Warman kept himself within the guidelines set down by the Tribunal.

[17] It is most unfair to the other parties for Mr. Kulbashian to return now, some ten months later, and attempt to re-argue his case, particularly since these arguments relate to issues that were already addressed or could reasonably have been raised during the three days' hearing on final submissions. Motion no. 2 is dismissed.

Motion no. 3

[18] In fact, Mr. Kulbashian did not quite file a motion. Rather, he sent a series of documents to the Tribunal, asking that they be "submitted" to the Tribunal member who heard the case. I will nonetheless treat this as a motion to re-open the case in order to adduce new evidence.

[19] Mr. Kulbashian states in his cover letter that the first set of documents consists of some "posts" made by Mr. Warman on a "white supremacist forum" on the Internet. Mr. Kulbashian alleges that the comments made in these posts violate s. 13 of the *Canadian Human Rights Act*. Mr. Kulbashian does not indicate what the relevance is to the present case, nor do I perceive any. Referring back to the principles articulated in *Vermette, supra*, I do not see what "determining factor" this evidence would have in the result of this case. As I reminded both Mr. Kulbashian and Mr. Richardson repeatedly during the hearing, the matter at issue before me consists of the discriminatory practices that were allegedly conducted by the respondents, not by other persons.

[20] The second set of attachments to Motion no. 3 relate to a complaint filed by Mr. Kulbashian with the New Westminster Police Service, which is the current employer

of Commission witness, Terry Wilson. Mr. Kulbashian makes a series of allegations against Mr. Wilson in this complaint. I again fail to see any relevance in these documents, particularly since they do not contain any finding from any authority with regard to Mr. Wilson. There is only an acknowledgement from the Office of the Police Complaint Commission that the issues raised in Mr. Kulbashian's complaint can be characterized as "Public Trust". As in the case of the first set of attachments, I do not see how this "evidence" would be a determining factor in the result of the present case.

[21] Furthermore, I find it objectionable that Mr. Kulbashian has attempted through his correspondence with the Tribunal to deposit into the record evidence that did not come properly before the Tribunal at hearing. There is no indication that any of these documents were ever previously disclosed to the other parties, not to mention that the hearing into this case has been closed for over ten months.

[22] Motion no. 3 is dismissed. The original correspondence from Mr. Kulbashian can remain in the Tribunal's official record, but the attachments in question will not be considered in my final disposition of the case.

Motion no. 4

[23] Just as in Motion no. 2, Mr. Kulbashian is attempting to re-argue the case. As I indicated when addressing Motion no. 2, Mr. Kulbashian had more than ample opportunity ten months ago to address all of the issues put before the Tribunal. It would be unfair to all parties and an abuse of this Tribunal's process to permit him to re-argue his case at this late stage.

[24] Motion no. 4 is dismissed.

Motion no. 5

[25] This motion is again an attempt to re-visit evidence adduced during the hearing. This motion or objection could have been raised when the evidence in question was adduced at the hearing or, at the very least, could have been argued in final submissions. It is not now the time, at this extremely late stage of the inquiry process, for Mr. Kulbashian to try to go back and have evidence "excluded".

[26] Motion no. 5 is also dismissed.

Motion no. 6

[27] This motion consists of additional arguments that closely resemble those made in motion no. 2. For the reasons already given with respect to Motion no. 2, Motion no. 6 is also dismissed.

[28] Mr. Kulbashian has stated in "footnotes" to his motions that the reason for the "late submission" of his motions is due to his lack of legal experience. Over the course of the entire inquiry process, the Tribunal has attempted to extend to both unrepresented respondents a significant degree of accommodation on account of their legal inexperience. However, such accommodation cannot go so far as to render the process unfair and prejudicial to the other parties.

[29] In light of my findings dismissing Mr. Kulbashian's six motions, the parties are released from filing any outstanding submissions regarding these motions that had been requested in previous correspondence from the Tribunal.

"Signed by"

Athanasios D. Hadjis

OTTAWA, Ontario

January 30, 2006

PARTIES OF RECORD

TRIBUNAL FILE:	T869/11903
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RULING OF THE TRIBUNAL DATED:	January 30, 2006
APPEARANCES:	
Richard Warman	On his own behalf
Giacomo Vigna Ikram Warsame	For the Canadian Human Rights Commission
Alexan Kulbashian	On his own behalf