

**CANADIAN HUMAN RIGHTS TRIBUNAL TRIBUNAL CANADIEN DES  
DROITS DE LA PERSONNE**

**RICHARD WARMAN**

**Complainant**

**- and -**

**CANADIAN HUMAN RIGHTS COMMISSION**

**Commission**

**- and -**

**CANADIAN HERITAGE ALLIANCE**

**Respondent**

**- and -**

**MELISSA GUILLE**

**Respondent**

**RULING**

MEMBER: Karen A. Jensen 2006 CHRT 12  
2006/03/13

[1] The Respondent, Melissa Guille, filed a motion with the Tribunal requesting that the complaint against Canadian Heritage Alliance be dismissed.

[2] The parties have very different views about what is required in order to be "a person or group of persons acting in concert" within the meaning of s. 13(1) of the *Canadian Human Rights Act*. That provision of the *Act* declares that it is a discriminatory practice for a person or group of persons acting in concert to communicate, by means of a telecommunication undertaking, messages that are likely to expose persons to hatred or contempt on the basis of an identifiable ground of discrimination.

[3] Ms. Guille argues that in order to be properly named as a respondent, Canadian Heritage Alliance must be either a living human being or a corporation. According to Ms. Guille, however, Canadian Heritage Alliance is neither. It is nothing more than a website that she runs, on her own, as a service to dissident writers.

[4] The Complainant and the Commission argue that, according to the case law on this point, it is not necessary for an organization to be incorporated in order to be properly included as a party in a s. 13 complaint. Rather, there are other indicia that are used to identify "a group of persons acting in concert" for the purposes of s. 13 such as a group name, a symbol, letterhead and whether there are officers or leaders of the group. The Complainant and the Commission argue that there is evidence that Canadian Heritage Alliance is more than just an Internet presence. They claim there is evidence that

Canadian Heritage Alliance meets most of the criteria for "a group acting in concert" under s. 13(1).

[5] The Complainant has filed an Affidavit in support of his response to the motion. Ms. Guille has also filed an Affidavit in response to that of the Complainant. There are fundamental differences between the two Affidavits. Neither affiant has been cross-examined.

[6] Regardless of what the definition of "a group of persons acting in concert" might be, it is clear from the case law that such determinations must be made on a case-by-case basis and on the basis of adequate evidence.

[7] In my view, the question of whether Canadian Heritage Alliance is a group of persons acting in concert to communicate the impugned messages is best dealt with upon completion of a hearing on the merits of the complaint. Then the Tribunal will have the benefit of a full evidentiary record upon which to base its decision.

[8] Moreover, it must be noted that the question raised in this motion is not just whether Canadian Heritage Alliance was a group of persons acting in concert, but rather whether it was a group of persons acting in concert to communicate the impugned messages. Therefore, an inquiry into the question of whether Canadian Heritage Alliance is properly named as a Respondent in this complaint will likely involve an examination of other aspects of the complaint such as the communication of the impugned messages, which will be dealt with during the hearing on the merits of the complaint.

[9] At the hearing, the Complainant will bear the burden of establishing, on a *prima facie* basis, all of the constituent elements of a violation of s. 13(1) of the *Act* including whether a group of persons called Canadian Heritage Alliance acted in concert to communicate the impugned messages. Ms. Guille will then have an opportunity to challenge that evidence and to contest the definition of the term "a group acting in concert to communicate".

[10] For these reasons, I have decided that the issue of whether Canadian Heritage Alliance is properly named as a Respondent in this case should be decided after a full hearing on the merits of the complaint.

[11] Ms. Guille's motion is dismissed without prejudice to her right to renew it at the hearing on the merits of the complaint.

*Signed by*  
Karen A. Jensen

OTTAWA, Ontario

March 13, 2006

#### PARTIES OF RECORD

TRIBUNAL FILE:	T1089/7005 & T1090/7105
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STYLE OF CAUSE:	Richard Warman v. Canadian Heritage Alliance and Melissa Guille
RULING OF THE TRIBUNAL DATED:	March 13, 2006
APPEARANCES:	
Richard Warman	On his own behalf
Giacomo Vigna Ikram Warsame	On behalf of the Canadian Human Rights Commission
Melissa Guille	On her own behalf and on behalf of the Respondent