

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

RICHARD WARMAN

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

CRAIG HARRISON

Respondent

RULING

MEMBER: Michel Doucet 2006 CHRT 28
06/06/13

[1] At the opening of the hearing, Mr. Marc Lemire, a potential witness, represented by counsel Barbara Kulaszka, filed a motion asking the Tribunal to set aside the subpoena it had issued on June 6, 2006, requiring Mr. Lemire to attend and give evidence at this hearing. The subpoena further required Mr. Lemire to produce "all information within [his] possession relat[ing] to the use of the pseudonyms "rump" and "realcanadianson" on the FreedomSite message board. The information sought would include, but was not limited to, all the information identified by Mr. Lemire in paragraph 5 of an attached request by the Complainant for the issuance of a subpoena for Marc Lemire."

[2] Ms. Kulaszka opposed the issuance of the subpoena on the grounds that it was unnecessary to the full hearing before the Tribunal, that Mr. Lemire had no material evidence to give to the Tribunal which was not already before it and that the subpoena was an abuse of process by the Complainant.

[3] The Tribunal's authority to issue a subpoena is contained in section 53(3)a) of the Canadian Human Rights Act which provides:

53 (3) In relation to a hearing of the inquiry, the member or panel may

(a) in the same manner and to the same extent as a superior court of record, summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath and to produce any documents and things that the member or panel considers necessary for the full hearing and consideration of the complaint

[4] The issuance of a subpoena by this Tribunal is not an administrative act. The Tribunal has the discretion to issue or not a subpoena. Under section 50(3)(a) of the *Act*, a member or panel *may* issue a subpoena if the member or panel *considers* it necessary for the full hearing and consideration of the complaint (*CTEA v. Bell Canada*, T503/2098, ruling #2). The threshold to meet is not very heavy. First, there has to be a rational connection between the evidence that the potential witness is to give and the issues before the Tribunal. The request must not be speculative or amount to a "fishing expedition". Finally, the request should not be oppressive.

[5] After she took into consideration the request of the Complainant, the Tribunal member Karen Jensen, felt that the evidence of Mr. Lemire was necessary for the full hearing and consideration of the complaint and she agreed to issue a subpoena. I see no reason to set this decision aside. I find in the present case that the proposed evidence to be given by Mr. Lemire, as submitted in the Complainant's request for a subpoena, is relevant to the issues in this hearing. The Complainant has established that there is a connection between the proposed evidence to be given by the witness and the issues in dispute.

[6] Counsel for Mr. Lemire has not convinced me that the evidence of her client is unnecessary and she has also failed to convince me that the issuance of the subpoena was an abuse of process. The question of whether the evidence is relevant or material will be a question for me to decide.

[7] Mr. Warman, during his reply to Ms. Kulaszka's motion, indicated that he would be satisfied if Mr. Lemire would agree to provide affidavit evidence. Ms. Susen Holmes, representative of the Respondent, did not object to this procedure. Although I am not ready to order that the evidence of Mr. Lemire be introduced by way of affidavit, I strongly urge the parties to consider this avenue. The Complainant and the Commission could forward to Ms. Kulaszka a series of questions by 4:00 p.m. Tuesday, June 13, 2006, and the answers could be provided by affidavit at the same time on Wednesday, June 14, 2006 and be introduced into evidence on the morning of Thursday, June 15, 2006.

[8] At this time, the request of Ms. Kulaszka that the subpoena served on Mr. Marc Lemire be set aside is rejected. Mr. Lemire will be compelled to attend before the Tribunal at a date and time which will be indicated at the start of the hearing on Tuesday morning and notified to his solicitor, unless the parties are ready to agree on an alternate procedure.

Signed by

Michel Doucet

OTTAWA, Ontario
June 13, 2006

PARTIES OF RECORD

TRIBUNAL FILE:	T1072/5305
STYLE OF CAUSE:	Richard Warman v. Craig Harrison
DATE AND PLACE OF HEARING:	June 13, 2006
DECISION OF THE TRIBUNAL DATED:	
APPEARANCES:	
Richard Warman	For himself
Giacomo Vigna	For the Canadian Human Rights Commission
Susen Holmes Craig Harrison	For the Respondent, Craig Harrison