

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

CENTER FOR RESEARCH-ACTION ON RACE RELATIONS

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

WWW.BCWHITEPRIDE.COM

Respondent

RULING

MEMBER: Pierre Deschamps 2007 CHRT 20
2007/05/18

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I. INTRODUCTION

[1] On March 23, 2004, the Center for Research-Action on Race Relations (CRARR) filed a human rights complaint against www.bcwhitepride.com under sections 13(1) and 13(2) of the *Canadian Human Rights Act* (CHRA). The complaint was referred to the Tribunal on January 24, 2006.

[2] On May 11, 2006, the Commission filed a motion to modify the style of cause and add a party to the proceedings. More specifically, in its motion, the Commission stated that it was seeking to attain a triple objective:

- (1) to modify the name of the respondent from what it is presently, that is www.bcwhitepride.com to the BC White Pride Group associated to the website www.bcwhitepride.com in order to clarify any ambiguity in the event that the complaint is upheld and enforcement would be required;
- (2) to add White Renegade Group associated with the website www.whiterenegade.com and
- (3) to add the name of John Beck as a Respondent associated to the said website.

[3] This motion was first presented to my colleague, Ms. Karen Jensen, who, in a ruling rendered on June 26, 2006, ordered that the motion be decided by the member assigned to hear the merits of the complaint.

[4] It must be noted here that Ms. Jensen later authorised the issuance of a subpoena *duces tecum* at the request of the Commission to secure Mr. Beck's attendance at the hearing. Mr. Beck was present throughout the hearing of this motion as well as Mr. Paul Fromm.

[5] At the commencement of this hearing, the Tribunal asked Mr. Fromm if he was representing the current respondent www.bcwhitepride.com or Mr. Beck. After consulting with Mr. Beck, Mr. Fromm informed the Tribunal that he was acting as Mr. Beck's agent, and not as an agent for www.bcwhitepride.com. The Tribunal thus concludes that, in these proceedings, the respondent, www.bcwhitepride.com is not represented by counsel.

[6] Furthermore, the Tribunal sought clarification on the part of the Commission as to which parties it wanted to add as respondent. It appears now that the Commission wishes to add four new respondents to the current proceedings, i.e. bcwhitepride.com, namely Mr. John Beck, White Renegade Group, BC White Pride Group and www.bcwhitepride.org.

[7] In his initial address to the Tribunal, Counsel for the Commission argued that the evidence tendered in the course of this motion could also serve for the merits of the case.

[8] The Tribunal is of the view that it would be a serious breach of procedural fairness if the evidence heard in the course of a motion to add new respondents was to be part of the evidence on the merits. This would mean that if the Tribunal was to add a new respondent to the style of cause, the latter would be bound by the evidence already tendered and for which, as a respondent, he would not have had the possibility of fully defending himself against.

II. POSITION OF THE PARTIES

[9] The Commission as well as the Complainant submit that www.bcwhitepride.org BC White Pride Group and White Renegade Group as well as Mr. John Beck should be added as parties to the present proceedings and argue that their presence is necessary in relation to the conduct of the present inquiry.

[10] Mr. Fromm, as Mr. Beck's representative and not as www.bcwhitepride.com's representative, argues that Mr. Beck should not be added as a party and that, in any case,

www.bcwhitepride.com is not a legal entity, but an Internet address and has no legal standing.

III. ISSUES

[11] What the Tribunal has to decide in the context of the present motion is, on the one hand, whether or not Mr. John Beck is the person identifying himself as John in his e-mail exchanges and chat conversations with Rachel and using the alias David Drolet or Renegade1488ca.

[12] On the other hand, the Tribunal has to determine whether or not BC White Pride Group, White Renegade Group and www.bcwhitepride.org exist and are related to www.bcwhitepride.com, the present respondent, as well as Mr. Beck.

[13] In this regard, the Tribunal has to determine if adding Mr. John Beck, BC White Pride Group, White Renegade Group and www.bcwhitepride.org as respondents in the present proceedings is necessary to make a full and ample inquiry into the complaint.

[14] At this stage of the proceedings, the Tribunal does not have to decide the merits of the case and rule on the content of the *bcwhitepride* website.

IV. THE EVIDENCE

[15] The Commission called one witness, Mr. Shane Martinez. Although subpoenaed by the Commission, Mr. Beck was not called as a witness. The Tribunal also heard Mr. Bernard Klatt, called as an expert witness by Mr. Fromm.

[16] Mr. Martinez testified that, in the spring of 2004, while in the Dominican Republic, he conducted an investigation on two websites, namely, www.bcwhitepride.com and www.whiterenegade.com. Mr. Martinez stated in his testimony that what triggered his interest in these websites was a search on the *Stormfront* website, a neo-Nazi and white supremacist site, according to Mr. Martinez. There, Mr. Martinez came across postings from a user who was using the moniker Renegade, postings which related to issues in British Columbia and Canada in general.

[17] Mr. Martinez testified that, at the time he was collecting the information, it was not with the intent of filing a human rights complaint. His purpose for collecting the information was to identify the individual involved in the two websites so that some measure of community education and awareness could be brought about to expose that individual for the kind of activities that he was engaging.

[18] Given that there was no identifying information which appeared on the *bcwhitepride* and *whiterenegade* sites, Mr. Martinez was not able to identify the person or persons who had created these sites. However, in order to discover their identity, Mr. Martinez decided to establish an online relationship with the person using the moniker Renegade whose e-mail address was posted at the *whiterenegade.com* site. Mr. Martinez hoped that, by establishing such a relationship, he would learn more about the person or persons who were operating the website.

[19] In order to lure the creators of the above-mentioned websites into providing him with the information he was seeking, Mr. Martinez decided to use a ploy, a ruse, a strategy which, he stated, was quite common with respect to the type of investigation he was conducting.

[20] Thus, Mr. Martinez did not utilize his personal identity in his quest to secure the identity of the creators of the websites but the persona of a fictitious character who was involved in similar topics or shared similar views as those listed on the *whiterenegade*

website so as to build a bond of communication between himself and the person or persons responsible for the *whiterenegade* website.

[21] Mr. Martinez thus used the pseudonym Rachel and the moniker Swedish Pride 1488 as contact information. Mr. Martinez wanted to have the person he was corresponding with to believe that he was a woman interested in issues affecting the maintenance of the status of white people in society.

[22] Mr. Martinez also used pictures of a young woman to give more credibility to his persona. The pictures he used were taken from a website and are those of a woman who, according to Mr. Martinez, was involved in the type of activities and issues that are addressed at *whiterenegade.com* and *bcwhitepride.com*.

[23] Mr. Martinez also testified that when he created Rachel's profile on his Yahoo account, he associated with the character Rachel other features, such as music preferences, which espoused certain beliefs of people interested in the same political issues as the websites he was investigating, as well as her marital status, single so that people would be more inclined to engage in conversation, hobbies, the fact that she was living in Ontario.

[24] Mr. Martinez, using the moniker Rachel, used the e-mail address swedish4life@cyber-rights.net to establish contact with Renegade through the latter's e-mail address found on the *whiterenegade.com* website, i.e. whiterenegade@whiterenegade.com. According to Mr. Martinez, when writing to the e-mail address whiterenegade@whiterenegade.com, the e-mail sent was automatically forwarded to a different address, in this case renegade1488ca@yahoo.com.

[25] Through renegade1488ca@yahoo.com, Mr. Martinez, identifying himself as Rachel and using the e-mail address swedish4life@cyber-rights.net, was able to establish contact with an individual identifying himself at first as John. Mr. Martinez was not only able to communicate with John through *e-mails* but also through *chats*. Mr. Martinez was furthermore able to obtain *pictures* of John. In addition, Mr. Martinez made certain searches on the web in order to get more information as to the identity of John.

[26] In his testimony, Mr. Martinez explained what information he was trying to preserve in the course of his investigation. He stated that the information he tried to capture, aside from the content of the discussions which were taking place in the e-mails and chat conversations, was the name of the sender, the name of the recipient, the date that the e-mail was sent, as well as the subject matter of the e-mail, the internet provider addresses of the servers through which the e-mail went through the Internet in order to arrive at the destination and from where it was sent.

[27] At the hearing, Mr. Martinez explained how he went about saving the e-mail correspondence and chat conversations with Renegade. This would include copying and pasting e-mails in a word processing program as well as chat transcripts. Mr. Martinez stated that, while in the Dominican Republic, he saved the documents to an external drive whenever possible. This, he stated, was to avoid corruption of files given the rudimentary nature of the systems he was using and the constant power outages he was experiencing in March 2004 when conducting his investigation.

[28] In the course of his correspondence with the person at renegade1488ca@yahoo.com, Mr. Martinez was able to save not all but some of the material that relates to the exchange of *e-mails and chats*. Because of the power outages, some of the chat conversations were lost. Mr. Martinez further testified that, as he was doing his

investigative work, he would jot notes down by hand as well, notes that he would later use to compose a general profile of the investigation he was conducting.

A. The e-mail correspondence

[29] Two e-mails between John, a.k.a. David Drolet at renegade1488ca@yahoo.com, and Rachel at swedish4life@cyber-rights.net were filed as exhibits. According to the documents tendered in evidence, these two e-mails exchanges took place on March 8, 2004.

[30] The relevant information that Mr. Martinez was able to get out of John, a.k.a. Renegade, from these two e-mails is the following:

John states that he does not drink, that he goes to the gym five days a week, that he is 36 but looks 26, that he is a philosopher, athlete, and mentor, that he is in the Pacific time zone, that his birthday is March 8, (1968) that he lives in the Okanagan, that he is from Kelowna, that his nickname on *Stormfront* is Renegade, that his avatar is a drawing of a little shark,

[31] Furthermore, in the e-mails, John states about the *whiterenegade.com* site that it is his own personal online manifesto, that it is not a group, that he had however co-founded a group called BC White Pride, that he helped write much of the content on the site at www.bcwhitepride.com.

B. Chat discussions

[32] Following the March 8, 2004 e-mail exchange, Rachel and John continued corresponding through online chatting on Yahoo Messenger. The chatting took place between *Swedishpride1488* - Rachel - and *Renegade1488ca* - John.

[33] Transcripts of the chat conversations were put in evidence by Mr. Martinez. The chat conversations, according to the transcripts, took place between March 10 and March 29, 2004.

[34] The chat conversations refer to pictures sent by *Renegade1488ca* to *Swedishpride1488*. They reveal that *Renegade1488ca*'s middle name was David. The transcripts also show that *Renegade1488ca* had, with the help of his friend and comrade Craig, co-founded BC White Pride, that he loved dogs. The chat transcripts moreover show that *Renegade1488ca*, a.k.a. John, had never been married and that he was five feet, seven inches tall.

[35] Mr. Martinez used all the information he was able to gather in the course of the e-mail exchanges and chat talks to create a profile that, he submits, matches Mr. Beck's profile.

C. The pictures

[36] The evidence shows that, in the course of his e-mails exchange with John, a.k.a. Renegade, the latter sent to Mr. Martinez pictures of himself. These pictures were filed as Exhibit PH-4B (black and white pictures) and PH-4E (colour pictures). Two of the pictures represent a man in an athletic posture, and two are of a man coming out of the water. The last one represents a man smiling.

[37] Asked in the course of his testimony if he saw the person in the pictures in the hearing room, Mr. Martinez pointed to Mr. Beck. Asked if he saw any difference with respect to the pictures, Mr. Martinez pointed out that Mr. Beck had grown a beard.

D. Additional information

[38] Apart from the e-mails, the chat transcripts and the pictures sent to Mr. Martinez using the persona of Rachel, there are other pieces of information which are relevant to the issues to be decided in relation to this motion.

[39] The Commission filed as exhibits Mr. Beck's income tax reports for the year 2004 and 2005. These reports show that Mr. Beck lives in Kelowna and identify his home address.

[40] In his testimony, Mr. Martinez asserted that this information, Mr. Beck's address, was provided to him by John when he was conducting his investigation in the Dominican Republic but that, unfortunately, he was not able to save the chat transcript related to that information. Mr. Martinez further stated that John had provided Rachel with his address so that the latter could send him a postcard.

[41] Mr. Martinez stated in his testimony that when he obtained John's address, he made a reverse check through *411.ca* on the address online to see if that address actually existed. The check confirmed the existence of the address. The income tax return forms filed by the Commission with respect to Mr. Beck show that the latter lives at the address that Mr. Martinez asserts he obtained from John in the course of his investigation.

[42] Finally, it appears from the website pages tendered in evidence by Mr. Martinez that www.bcwhitepride.org is a website that is now situated in the USA and, as www.whiterenegade.com, has been owned since November 24, 2006, that is a few days before the commencement of this hearing, by Hal Turner Radio Network. The documentary evidence also shows that BC White Pride is associated with the website www.bcwhitepride.org.

V. ANALYSIS

[43] In the present proceedings, the Commission wishes to add as respondents Mr. John Beck, B.C. White Pride Group, White Renegade Group and www.bcwhitepride.org. Of these four entities, none were served with the Commission's motion. Mr. Beck was however served with a subpoena *duces tecum*, ordering him to appear as a witness in relation to the present motion. As stated previously, Mr. Beck attended the present proceedings and made representations through his agent, Mr. Fromm.

[44] Mr. Beck is a clearly identified individual. As for B.C. White Pride Group and White Renegade Group, they are undefined groups. www.bcwhitepride.org is a website.

[45] The Tribunal's *Rules of Procedure* contemplate the addition of a party to an inquiry on motion of another party. Section 8 (3) of the *Rules* provide that:

Where the Commission, a respondent or a complainant seeks to add a party to the inquiry, it may bring a motion for an order to this effect, which motion shall be served on the prospective party, and the prospective party shall be entitled to make submissions on the motion.

[46] In *Syndicat des employés d'exécution de Québec-Téléphone v. Telus Communications (Québec) Inc.*, 2003 CHRT 31, the Tribunal stated that "*the forced addition of a new respondent once the Tribunal has been charged with inquiring into a complaint is appropriate, in the absence of formal rules to this effect, if it is established that the presence of this new party is necessary to dispose of the complaint of which the Tribunal is seized and that it was not reasonably foreseeable, once the complaint was filed with the Commission, that the addition of a new respondent would be necessary to dispose of the complaint*", para. 30. This ruling was followed by this Tribunal in *Brown*

and the Canadian Human Rights Commission v. National Capital Commission, 2003 CHRT 43.

[47] The evidence presented in relation to the Commission's motion is both testimonial and documentary. It consists of Mr. Shane Martinez's testimony, the file he created with respect to *bcwhitepride* and Mr. Beck as well as webpages. It also consists of the testimony of Mr. Bernard Klatt, called by Mr. Fromm as an expert witness.

[48] In his cross-examination of Mr. Martinez, Mr. Fromm attacked Mr. Martinez's credibility as well as the reliability of the documents he prepared in 2004 while he was in the Dominican Republic. Mr. Fromm criticized the way Mr. Martinez went about collecting information on *bcwhitepride.com* and *whiterenegade.com*, using deception, impersonation. Mr. Fromm argued that, given Mr. Martinez's ideology and background, he should not be seen as a trustworthy witness.

[49] The evidence shows that Mr. Fromm and Mr. Martinez have a long history of violent confrontation. Excerpts from a DVD viewed by the Tribunal attest to that. To say the least, they have never entertained a peace-love relationship.

[50] The Tribunal must say that Mr. Martinez was, at times, in his testimony, evasive, unresponsive and forgetful in relation to questions pertaining to his political views and postings he might have made on certain websites, such as *Stormfront*. Mr. Martinez's calm and polite demeanour before the Tribunal is in stark contrast with his behaviour in protests, rallies and other events which occurred in Toronto in 2004. His actions, in many ways, are not in tune with what he says.

[51] Mr. Fromm called as a witness Mr. Bernard Klatt. Mr. Klatt was qualified by the Tribunal as an expert in internet services. In the course of Mr. Klatt's qualification as an expert, Counsel for the Commission challenged Mr. Klatt's credibility and objectivity by suggesting the he was a close friend of Mr. Beck, Mr. Fromm, as well as a friend of Ernst Zündel.

[52] Mr. Klatt acknowledged that he has known Mr. Fromm since 1996, that he has known Mr. Beck since 1998, that he got to know Mr. Beck in the context of media publicity that arose with respect to what was referred to as the Oliver controversy. The Oliver controversy had to do with an individual taking exception to the fact that Mr. Klatt was hosting websites which were considered hateful.

[53] Generally speaking, Mr. Klatt was, to say the least, evasive in his answers as to his links and association with the White supremacy movement, Mr. Beck and Mr. Zündel. As for his ties with Mr. Beck, Mr. Klatt had difficulty remembering the type of conversations he has had with Mr. Beck over the past 8 years. This is quite surprising given their long lasting relation.

[54] As for his expert evidence, Mr. Klatt expressed the view that the material supplied by Mr. Martinez had significant flaws and drawbacks associated with it, that the value of the material was questionable and raised significant doubts. According to Mr. Klatt, Mr. Martinez could have done a better job in saving the e-mails and the transcripts of the chat conversations which were tendered in evidence, that a more reliable form of evidence in terms of the e-mail exchange and the chat messages could have been provided.

[55] The Tribunal finds Mr. Klatt's testimony not persuasive enough for this Tribunal to conclude that the content of the e-mails and chat conversations between Rachel and John, as saved by Mr. Martinez, was in any way altered by Mr. Martinez.

[56] This said, in the present case, the documentary evidence supports Mr. Martinez's testimony. On the one hand, there is no reason for the Tribunal to find that Mr. Martinez tampered in any way with the content of the e-mails and chat transcripts put in evidence. In his testimony, Mr. Martinez clearly explained the process he used to collect the information on www.bcwhitepride.com, BC White Pride and John, a.k.a. David Drolet, a.k.a. Renegade1488ca, that Mr. Martinez believes to be Mr. John Beck.

[57] The Tribunal thus finds that the content of the e-mails tendered in evidence as well as the chat transcripts are, on a balance of probabilities, truthful and trustworthy and can be relied upon to determine the identity of the entities that the Commission wishes to add as parties to the present inquiry.

A. Mr. John Beck

[58] Although in attendance throughout the hearing of the motion, Mr. Beck was not called as a witness. Thus, there is no direct testimonial evidence establishing conclusively that John Beck is the John, alias Renegade, alias David Drolet with whom Rachel was in contact through e-mails or chat conversations. The link between John Beck and John, and his different alias, can thus only be established through circumstantial evidence.

[59] The evidence shows that Renegade1488ca, John or David Drolet never identified themselves as John Beck. The record shows John, David Drolet, etc. were the identifiers used by someone who corresponded with Rachel in March 2004.

[60] Mr. Martinez assumes and strongly argues that the John, David Drolet, Renegade with whom he corresponded, using the alias Rachel, was in fact John Beck. He relies on a number of physical features, such as the height, the color of the eyes, the color of the hair, the shoulder size. According to Mr. Martinez, the profile he created, using information gathered from different sources, fits Mr. Beck's overall description.

[61] Mr. Martinez is not an expert in forensic identification, nor is the Tribunal. The Tribunal was however able to assess that Mr. Beck's height is about five feet, seven inches when compared to other individuals, that he has blue eyes, and looks like in his late 30's. The Tribunal was also able to compare the pictures tendered in evidence by Mr. Martinez, pictures that were sent to him by John, a.k.a. Renegade. Two of the pictures show a man in a swimsuit in an athletic posture. The facial features, when compared to those of Mr. Beck, strongly resemble those of Mr. Beck.

[62] That Mr. John Beck is probably the person with whom Mr. Martinez, using the persona of Rachel, corresponded with in 2004 is further supported by other pieces of evidence, such as the fact that Mr. Beck, according to a reverse search on *411.ca* done by Mr. Martinez, lives in Kelowna BC. This information, as well as Mr. Beck's address is confirmed by Mr. Beck's 2004 and 2005 Tax Return Summary which was put in evidence by the Commission.

[63] The Tribunal finds that, in the present case, the circumstantial evidence is strong enough to establish, on a balance of probabilities, that Mr. John Beck is the person with whom Mr. Martinez corresponded with in 2004 and to link Mr. John Beck to BC White Pride, whether the group or the website. The Tribunal concludes that Mr. Beck should be added as a party to the present inquiry, his presence being necessary to dispose fully of the complaint.

[64] This said, it will always be opened for Mr. Beck to show that he is not the John with whom Rachel corresponded with in 2004 and that he is not, in any way, associated with BC White Pride, www.bcwhitepride.com, or www.bcwhitepride.org.

B. Bcwhitepride.org

[65] The evidence shows that Mr. Martinez was able to access a website called *www.bcwhitepride.org* and download many webpages from the site, webpages which, with regard to their content, resemble, in many ways, pages that used to be on the *bcwhitepride.com* website.

[66] A search on *BetterWhois.com* as well as *Whois.net* shows that the domain name *bcwhitepride.org* was created in July 2004. According to Mr. Martinez, this information is reliable given that it is generated automatically.

[67] In the present context, it appears that *bcwhitepride.org* is in fact intimately associated with *bcwhitepride.com*. In the course of his testimony, Mr. Martinez stated that it was not uncommon for someone who creates a website to use different dot, such as .com, .net, .ca, etc.

[68] Whether or not either or both of these sites are legal entities are issues which still have to be decided. At the hearing, Mr. Fromm indicated that this issue was still a live issue which might be raised in the future.

[69] Without deciding, for now, whether or not a website is an entity which has legal status or standing, the Tribunal finds that www.bcwhitepride.org is a website that exists and is most probably an offshoot of www.bcwhitepride.com. The Tribunal finds that www.bcwhitepride.org's presence in the present proceedings is necessary to fully dispose of the complaint.

C. BC White Pride Group

[70] The Commission contends that there exists, in British Columbia, a group called BC White Pride. Many exhibits tendered in evidence refer to the existence of such a group.

[71] For example, one can find many references to BC White Pride on the *bcwhitepride.org* site. A webpage found on the *bcwhitepride.org* site contains the following text:

Welcome to BC White Pride

There's a bold new movement being championed in British Columbia focused specifically on educating White people regarding issues of concern such as immigration

[72] The existence of a group called BC White Pride is furthermore confirmed by John, alias Renegade. In an e-mail dated March 8, 2004 sent to Rachel, John states that *whiterenegade.com* is his own personal online manifesto and not a group. He however acknowledges having co-founded a group called BC White Pride. In a chat conversation with Rachel on March 10th, 2004, John again refers to the fact that he co-founded BC White Pride with a friend and comrade called Craig.

[73] The Tribunal finds that, on a balance of probabilities, there exists such a group calling itself BC White Pride and that its presence is necessary to fully dispose of this complaint.

D. White Renegade Group

[74] The Commission contends that there exists, in British Columbia, a group called White Renegade. The evidence does not reveal that such a group exists. It however shows that a website www.whiterenegade.com exists and that it is the online manifesto of John which whom Rachel corresponded.

[75] It must be noted here that www.whiterenegade.com is not a party to the present proceedings.

[76] Given the absence of any evidence showing that White Renegade is a group, the Tribunal cannot conclude to the existence of a group called White Renegade. Hence, the Commission's request to add this group as a party in the present proceedings is denied.

VI. RULING

[77] Given that Mr. Beck was present throughout the present proceedings and made submissions through Mr. Fromm as to why he should not be added as a party and given the evidence, the Tribunal orders that Mr. John Beck be added as a party to the present proceedings.

[78] Given that the evidence shows that BC White Pride Group and www.bcwhitepride.org are entities which exist, the Tribunal orders that they be served with this ruling so that they can, in due course, make submissions on the Commission's motion to add them as parties.

[79] Given the lack of evidence as to the existence of White Renegade Group, the Commission's request to add White Renegade Group as a party is denied.

"Signed by"

Pierre Deschamps

OTTAWA, Ontario
May 18, 2007

PARTIES OF RECORD

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