

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

RICHARD WARMAN

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

ELDON WARMAN

Respondent

RULING

MEMBER: Dr. Paul Groarke 2005 CHRT 43
2005/11/17

[1] I have reviewed the submissions from the Complainant and the Commission. I naturally disagree with the suggestion that my request for further submissions on the application for a penalty under s. 54(1)(c) is untoward.

[2] The Commission's statement that the constitutional issues under the subsection were never raised in the hearing neglects the rather obvious fact that the Respondent did not participate in the case. If the logic of the Complainant and Commission was correct, it would not be possible to consider any defences in the present case, since the Respondent was not there to raise them.

[3] I am obliged to reject this line of argument, which would compromise the fairness of the process. The prosecution of a complaint regarding the communication of hate messages is different than an ordinary civil matter. A respondent does not give up his rights to a full airing of the issues, simply by failing to appear. If there is an obvious defence, the Tribunal has an obligation to canvass it.

[4] I have no fault to find with the Commission. It needs to be said, however, that I was informed by the parties that the constitutional issues under section 54(1)(c) have been resolved. This is simply not the case. The issues that arise under the provision are pressing and need attention.

[5] There is also the idea that a respondent who refuses to participate in the process must somehow notify the other parties of the constitutional issues in the case. This seems rather forced. I cannot see anything to prevent the delivery of constitutional notice after an issue has raised itself. It is the substance of the requirement that matters, not the form.

[6] I nevertheless agree that it is best to deal with the constitutional issues in a hearing where the respondent is represented by counsel. This does not preclude a Tribunal from dealing with the matter in a case where the fairness of the process requires it. This is as much a matter of conscience as anything else.

[7] There is no need to continue the discussion. The Complainant and the Commission have informed me that they wish to abandon their request for a penalty under the section. That is their choice to make. There are no outstanding issues and the case is closed.

"Signed by"

Dr. Paul Groarke

OTTAWA, Ontario

November 17, 2005

PARTIES OF RECORD

TRIBUNAL FILE:	T998/11804
STYLE OF CAUSE:	Richard Warman v. Eldon Warman
DATE AND PLACE OF HEARING:	April 25, 26 and 27, 2005 May 26, 2005 Ottawa, Ontario
RULING OF THE TRIBUNAL DATED:	November 17, 2005
APPEARANCES:	
Richard Warman	On his own behalf
Valerie Phillips Monette Maillet	For the Canadian Human Rights Commission
Eldon Warman	No one appeared for Eldon Warman

