

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

HARRY ABRAMS AND THE LEAGUE FOR HUMAN RIGHTS

OF B'NAI BRITH CANADA

Complainants

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

ARTHUR TOPHAM AND RADICALPRESS.COM

Respondents

- and -

CANADIAN FREE SPEECH LEAGUE

- and -

CANADIAN ASSOCIATION FOR FREE EXPRESSION

Interested parties

RULING

MEMBER: Edward P. Lustig

2010 CHRT 14
2010/05/27

[1] This is a ruling concerning motions by the Respondents dated July 30, 2009 and September 2, 2009 for a stay of the proceedings in this matter.

[2] The complaint in this matter was filed by the Complainant on August 28, 2007. The complaint alleges that the Respondents communicated messages over the internet that were likely to expose persons identifiable as Jews and/or as citizens of Israel to hatred or contempt contrary to s. 13 (1) of the *Canadian Human Rights Act* (the "*CHRA*"). The complaints allege that the impugned conduct occurred in a manner that was ongoing.

[3] On November 17, 2008, the Commission, pursuant to s. 44 (3) (a) of *CHRA* requested the Canadian Human Rights Tribunal (the "Tribunal") to institute an inquiry into the complaint.

[4] On September 2, 2009 the Tribunal released its decision in the matter of *Warman v. Lemire* 2009 CHRT 26. That case involved a complaint under s. 13 (1) of the *CHRA*. In his very comprehensive decision, Member Hadjis concluded:

"... I have also concluded that s. 13 (1) in conjunction with ss. 54 (1) and (1.1) are inconsistent with s. 2 (b) of the Charter, which guarantees the freedom of thought, belief, opinion and expression. The restriction imposed by these provisions is not a reasonable limit within the meaning of s. 1 of the Charter."

[5] On October 1, 2009, the Commission applied to the Federal Court for judicial review of the Tribunal's decision in *Warman v. Lemire* (See FC file no. T-1640-09).

[6] In its public release commenting on its application for Judicial Review dated October 1, 2009, the Commission commented as follows:

"The Commission applied for Judicial Review so that technical but important legal issues raised by the decision can be clarified. These issues go beyond this particular case and could have an impact on other administrative tribunals. As a result, the uncertainty created by the decision is not in the public interest and merits a binding decision by a higher court."

The application is based on two grounds. It is the Commission's view that:

- 1. The Tribunal erred in law when it found that the manner by which the applicant exercises its statutory mandate could render section 13 of the Canadian Human Rights Act unconstitutional; and*
- 2. The Tribunal's findings of unconstitutionality also resulted from the adoption of subsections 54 (1) (c) and (1.1) of the Canadian Human Rights Act, subsequent to the Supreme Court of Canada's decision in *Canada (Human Rights Commission) v. Taylor*, [1990] 3 S.C.R. 892. The Tribunal erred in law when it refused to apply section 13 of the Act because a refusal to apply subsections 54 (1) (c) and (1.1) would have provided a sufficient remedy in respect of this ground."*

[7] The parties filed with the Tribunal submissions with respect to the Respondents' motions. It is to be noted that the motions were filed prior to the Commission's application for Judicial Review in the *Warman v. Lemire* case.

[8] The Canadian Human Rights Tribunal does not possess the authority to grant a stay of the proceedings, however, it can adjourn a matter before it.

[9] I have reviewed the submissions of the parties and have concluded that it would be appropriate and would properly serve the interests of justice if this matter was adjourned. While the Supreme Court of Canada has ruled in *Canada (Human Rights Commission) v. Taylor*, 1990 3 S.C.R. 892 that s. 13 (1) of the *CHRA* is constitutional, the application now before the Federal Court seeks to bring clarity to this issue in view of the distinct factual and legal context giving rise to this Tribunal's decision in *Warman v. Lemire*. Clearly Member Hadjis' decision goes beyond the consideration alone of the penalty provisions in s. 54 of the *CHRA*, as he chose not to "read out" the penalty provisions and preserve s. 13 of the *CHRA*. It is now up to the Federal Court to determine the operability of s. 13 of the *CHRA*. This will achieve the clarity that the Commission has indicated and that I agree is desirable in order to

allow the Tribunal to be able to determine this and other cases brought under s. 13 of the CHRA.

[10] For these reasons I hereby adjourn these proceedings *sine die* pending the final outcome in the *Warman v. Lemire* case.

"Signed by"

Edward P. Lustig

OTTAWA, Ontario
May 27, 2010

PARTIES OF RECORD

TRIBUNAL FILE:	T1360/9008
STYLE OF CAUSE:	Harry Abrams & League for Human Rights of B'Nai Brith Canada v. Arthur Topham & RadicalPress.com
RULING OF THE TRIBUNAL DATED:	May 27, 2010
APPEARANCES:	
Harry Abrams Marvin Kurz Anita Bromberg	For the Complainants
Daniel Poulin	For the Canadian Human Rights Commission
Arthur Topham	For himself and the Respondent RadicalPress.com
Douglas H. Christie	For the Interested Party, Canadian Free Speech League
Paul Fromm	For the Interested Party, Canadian Association for Free Expression