

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

RICHARD WARMAN

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

MARC LEMIRE

Respondent

- and -

ATTORNEY GENERAL OF CANADA

CANADIAN ASSOCIATION FOR FREE EXPRESSION

CANADIAN FREE SPEECH LEAGUE

CANADIAN JEWISH CONGRESS

FRIENDS OF SIMON WIESENTHAL CENTER FOR HOLOCAUST STUDIES

LEAGUE FOR HUMAN RIGHTS OF B'NAI BRITH

Interested Parties

MEMBER: Athanasios D. Hadjis

2008 CHRT 17

2008/05/16

[1] The Canadian Constitution Foundation (CCF) has requested that the Tribunal issue an order, pursuant to Rule 8 of the Canadian Human Rights Tribunal *Rules of Procedure*, granting it intervener status in the present case.

[2] The CCF stated that it intends to advance a number of arguments demonstrating that any limitations placed on freedom of expression by s. 13 of the *Canadian Human Rights Act* infringe upon constitutional rights, and that due to the flaws in the provision's application and composition, the infringement cannot be justified under s. 1 of the *Canadian Charter of Rights and Freedoms*. Similar positions have been advanced by the Respondent as well as by two of the groups that were granted intervener status in February 2006, the Canadian Association for Free Expression and the Canadian Free Speech League.

[3] The CCF indicates in its motion that it is a "citizen-based organization with supporters across Canada". It is a non-profit corporation and a registered charitable organization. Its objects include the promotion of human and civil rights through the sponsoring of selective litigation with the goal of securing enforcement of the Constitution of Canada and the *Charter* set out therein.

[4] The CCF's request comes extremely late in this hearing's process and the CCF has not provided a satisfactory explanation for the lateness of its request. The complaint was referred to the Tribunal on August 24, 2005. By February 2006, five groups had applied to the Tribunal seeking leave to appear as interested parties at the inquiry. The Tribunal, by ruling dated February 23, 2006, granted all of them permission to participate (*Warman v. Lemire*, 2006 CHRT 8). The groups were granted intervener party status but solely with respect to the constitutionality of s. 13 and any related provisions thereof. In addition, given the constitutional issue raised by the Respondent, the Attorney General exercised its rights, pursuant to s. 57 of the *Federal Courts Act*, R.S.C. 1985, c. F-7, to participate and adduce evidence at the hearing, and make submissions in respect of the constitutional question.

[5] The hearing of evidence in this case began on January 31, 2007, and most of the testimonial evidence was adduced over a total of four weeks, ending on March 1, 2007. Three additional witnesses were heard over a total of five days in May-June 2007 and one day in March 2008.

[6] The Tribunal has wide discretion with respect to the granting of interested party status (*Nkwazi v. Canada (Correctional Service)*, [2000] C.H.R.D. No. 15 at para. 22 (Q.L.)). The administration of this case has been to say the least, unwieldy and challenging. Each of the parties is represented by legal counsel or agent. Dates for final oral submissions, to be made over the course of three days, have been set and a tiered schedule for the exchange of written arguments between the parties has been established. Most of the evidence adduced during the hearing has related exclusively to the constitutional issue. A party seeking to now join the case and to make submissions will not have had the benefit of viewing that evidence first hand, which could potentially limit the relevance and accuracy of its submissions.

[7] The addition of a tenth party to this hearing will further weigh down and complicate these proceedings, which the Tribunal is, after all, mandated by s. 48.9 (1) of the *Act*, to conduct as informally and expeditiously as the requirements of natural justice and rules of procedure allow. In particular, permitting the CCF to participate may require additional submissions to be made by all other participants who are adverse in interest.

[8] Furthermore, as the Tribunal in *Schnell v. Machiavelli and Associates Emprize Inc.* [2001] C.H.R.D. No. 14 at para. 6 (CHRT) (QL) noted, interested party status will not be granted if it does not add significantly to the legal positions of the parties representing a

similar viewpoint. As I have already indicated, the CCF's conclusions with regard to s. 13 of the *Act* reflect those of at least three of the parties already participating in this case. If the CCF has any specific arguments that it feels may be relevant to the constitutional issue, nothing prevents it from sharing them with the Respondent and any of the existing interveners so that they may be put before the Tribunal by these participants' more than able counsel and agents.

[9] Finally, while I note that none of the participants has objected to the proposed intervention of the CCF, I believe that the absence of an objection is not determinative to the disposition of a motion that will impact on the efficient management of the hearing.

[10] For these reasons, the CCF's request is denied.

"Signed by"

Athanasios D. Hadjis

OTTAWA, Ontario

May 16, 2008

PARTIES OF RECORD

TRIBUNAL FILE:	T1073/5405
STYLE OF CAUSE:	Richard Warman v. Marc Lemire
RULING OF THE TRIBUNAL DATED:	May 16, 2008
APPEARANCES:	
Richard Warman	For himself
Margot Blight	For the Canadian Human Rights Commission
Barbara Kulaszka	For the Respondent
Simon Fothergill	For the Attorney General of Canada
Paul Fromm	For the Canadian Association for Free Expression
Douglas Christie	For the Canadian Free Speech League
Joel Richler	For the Canadian Jewish Congress

Steven Skurka	For the Friends of Simon Wiesenthal Center for Holocaust Studies
Marvin Kurz	For the League for Human Rights of B'nai Brith