

CANADIAN HUMAN RIGHTS TRIBUNAL TRIBUNAL CANADIEN DES
DROITS DE LA PERSONNE

RICHARD WARMAN

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

CANADIAN HERITAGE ALLIANCE

and -

MELISSA GUILLE

Respondents

RULING

MEMBER: Karen A. Jensen 2006 CHRT 31
2006/08/15

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[1] This is a ruling on a number of issues that have arisen in a complaint brought by Richard Warman against Melissa Guille and Canadian Heritage Alliance. The complaint involves the alleged communication of hate messages contrary to s. 13(1) of the *Canadian Human Rights Act*.

[2] The issues relate primarily to the disclosure of arguably relevant documents. I will deal with each in turn.

I. THE MEMBERSHIP LIST(S) FOR CANADIAN HERITAGE ALLIANCE

[3] In a letter dated July 12, 2006, the Tribunal directed the Respondents to provide the membership list or lists for Canadian Heritage Alliance during the relevant time period as this material was arguably relevant to the issues raised in the complaint. Ms. Guille requested an opportunity to argue that the Tribunal's direction be varied. The Tribunal granted Ms. Guille's request.

[4] In her submissions, Ms. Guille argues that the only significance of a membership list, if such a list exists, is that it might establish whether or not the group has members and possibly the number of members. In this statement, Ms. Guille has correctly identified the arguable relevance of the membership list to the issues in the present matter. As indicated in the Tribunal's ruling of March 13, 2006, the question of whether Canadian Heritage Alliance is "a group of persons acting in concert" within the meaning of s. 13(1) of the *Act* is one that will be determined on the basis of a full evidentiary record (*Warman v. Melissa Guille and Canadian Heritage Alliance* 2006 CHRT 12). The membership list or lists, if they exist, are relevant to this issue.

[5] Ms. Guille has stated that information regarding membership in Canadian Heritage Alliance may be elicited by other means or in the cross-examination of Ms. Guille if she chooses to testify. However, rule 6(1) of the Tribunal's Rules of Procedure stipulates that all arguably relevant documents for which no privilege is claimed, whether favourable to the parties' cases or not, must be disclosed. It does not matter whether the information might be obtained by other means. If the documents exist and are in the possession of the parties, they must be disclosed unless privilege is being claimed. Ms. Guille has not claimed that the document(s) in question are privileged.

[6] It would appear that Ms. Guille's reluctance to disclose such list(s) is based on a concern that the Complainant might use the names on the list(s) for purposes unrelated to the present litigation. However, in cases such as this where disclosure of confidential documents is ordered, the implied undertaking rule applies. The rationale for this rule is that a party to litigation should have the full right of disclosure and inspection of relevant information, including that which is confidential, as is necessary to dispose fairly of the case. Nevertheless, parties are not permitted to use the disclosed material for any purpose collateral to the litigation (*PSAC v. Canadian Museum of Civilization* 2004 CHRT 38 at para. 12). As a lawyer, the Complainant is subject to professional obligations and rules of conduct that prohibit him from using the information from the list(s) for purposes that are unrelated to the present litigation.

[7] Therefore, I order that Ms. Guille disclose the membership list or lists for Canadian Heritage Alliance in her possession for the relevant time periods.

II. THE ROLE OF MR. ALEXAN KULBASHIAN IN THE PRESENT COMPLAINT

[8] During the June 22, 2006 case conference, Ms. Guille indicated that Mr. Alexan Kulbashian might be acting as her agent and may also be a witness for the Respondents. She requested that he be provided with copies of all correspondence

regarding this matter. The Tribunal agreed to contact Mr. Kulbashian for all case management calls. The Tribunal will also provide Mr. Kulbashian with copies of all future correspondence on the file.

[9] The Canadian Human Rights Commission put Ms. Guille on notice that if Mr. Kulbashian acts as her agent during the hearing, the Commission will object to Mr. Kulbashian testifying as a witness for the Respondents. The Commission subsequently requested an order from the Tribunal preventing Mr. Kulbashian from testifying at the hearing. That request is denied. It is unclear what role, if any, Mr. Kulbashian will play in the hearing. Therefore, any such order would be inappropriate at this time.

III. THE RESPONDENTS' ALLEGED NON-COMPLIANCE WITH THE TRIBUNAL'S DIRECTIONS REGARDING DISCLOSURE

[10] In a letter dated July 21, 2006, the Commission indicated that the Respondents have failed to comply with a number of the directions provided by the Tribunal regarding disclosure in the case conference on June 22, 2006. The Commission has indicated that the following documents have yet to be disclosed:

- (1) The full resume of the Respondents' expert witness complete with background and qualifications as well as his speaking notes for the engagements specified in the report;
- (2) Documents in the Respondents' possession relating to the hosting agreement for the website, whether it is an agreement, a contract, e-mails, etc.
- (3) Documents in the Respondents' possession relating to the process used to ban individuals or to remove postings from the website.

[11] In addition, the Commission indicated that the Respondents have not provided an updated list of their witnesses complete with a more detailed statement of the proposed testimony of each of the witnesses as directed by the Tribunal. Finally, the Respondents have failed to provide an amended Statement of Particulars outlining the nature of their defense specifically as it relates to the Expert Report.

[12] Ms. Guille has indicated that she has not complied with the Tribunal's directions for further disclosure because she felt that as a result of her lack of legal experience and the Commission's failure to provide written notice of the disclosure demands, she was unable to understand what was being requested of her and to properly respond to those requests during the case conference of June 22, 2006.

[13] Under the circumstances, I am prepared to give Ms. Guille two weeks from the date of this ruling to provide submissions as to why the Tribunal's directions regarding the disclosure of the above-noted documents should be varied.

IV. THE COMPLAINANT'S ALLEGED NON-COMPLIANCE WITH THE TRIBUNAL'S DIRECTION REGARDING DISCLOSURE

[14] During a case conference on April 6, 2006, the Complainant was directed to provide any documents in his possession relating to accounts that he created on any website or forum related to the complaint. He was also directed to provide copies of any e-mails or communications that he had on these websites or forums. The Complainant responded to this direction by stating that he had no record of any postings he made on the Canadian Heritage Alliance forum or website.

[15] The Respondents allege that Mr. Warman is not being truthful about the existence of such documents or that he has intentionally destroyed the documents in order to evade the disclosure requirements. The Respondents have requested an order from the Tribunal

requiring the Complainant to answer an interrogatory in affidavit form in order to elicit full disclosure.

[16] The Tribunal's Rules of Procedure stipulate that parties are required to disclose all arguably relevant documents that are in their possession. Parties are not required to create documents for disclosure (*Gaucher v. Canadian Armed Forces* 2005 CHRT 42). Requiring the Complainant to produce an affidavit would be tantamount to requiring the Complainant to create a document for disclosure. Therefore, I deny the Respondents' motion compelling Mr. Warman to produce an affidavit.

[17] However, the Respondents are free to pose the questions in their interrogatory to the Complainant during cross-examination. In the meantime, the parties are reminded of their ongoing obligation to disclose all arguably relevant documents whether favourable to their cases or not.

"signed by"
Karen A. Jensen

OTTAWA, Ontario
August 15, 2006

PARTIES OF RECORD

TRIBUNAL FILES:	T1089/7005 and T1090/7105
STYLE OF CAUSE:	Richard Warman v. Canadian Heritage Alliance and Melissa Guille
RULING OF THE TRIBUNAL DATED:	August 15, 2006
APPEARANCES:	
Richard Warman	For himself
Ceilidh Snider	For the Canadian Human Rights Commission
Melissa Guille	For herself and for the Respondent, Canadian Heritage Alliance