

**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

RULING

MEMBER: Athanasios D. Hadjis

2006 CHRT 53

2006/11/29

[1] The Canadian Human Rights Commission has made a motion containing essentially two requests for additional disclosure of documents and material that are allegedly in Mr. Lemire's possession.

The First Request

[2] The first disclosure request is set out as follows:

"All information within the possession of Marc Lemire without exception of entire contents of his website which he administers, as well as all the literature (books) referred

to on this website and the entire website including all additions (such as information regarding the Commission's announced expert) to it since September 24, 1999 and up to date on the date of the hearing" (*sic* throughout).

[3] This paragraph can be broken down into two sections:

- (i) The "...entire contents of [Mr. Lemire's] website which he administers... from September 24, 1999 ... to ... the date of the hearing".

[4] According to Mr. Warman's complaint, the matter that is alleged to be in violation of s. 13 of the *Canadian Human Rights Act* is found on the website known as "freedomsite.org", which includes the website's message board "chat.freedomsite.org". The complaint alleges that Mr. Lemire is the "registered owner" of the website. The content of this website therefore clearly relates to a fact or issue in this case, within the meaning of Rule 6 (1)(d) of the Tribunal's Rules of Procedure. Consequently, any "documents" that relate to this content, which are within Mr. Lemire's possession, are subject to disclosure, pursuant to this Rule. I take the term "documents" to include any text or other information stored or recorded in electronic format.

[5] The complaint also states that the dates of the alleged discriminatory practices are "24 September 1999 and ongoing". Evidence relating to the ongoing nature of alleged violations of the *Act* that post-date a complaint can be considered by a Tribunal inquiring into the complaint (*Warman v. Kouba*, 2006 CHRT 50 at paras. 17-19).

[6] Mr. Lemire is therefore ordered to disclose to the Commission and Mr. Warman, by December 15, 2006, any content of the above-noted website of which Mr. Lemire is still in possession, for the period commencing on September 24, 1999, and onwards.

[7] The Commission indicated in its submissions that it is willing to receive all of this material in electronic format, on CD-ROM, thereby sparing Mr. Lemire from the necessity of making physical or "hard" copies of the material. Mr. Lemire may disclose the material in this manner if he so chooses.

[8] In his own submissions, Mr. Lemire contends that the Commission already downloaded at least some of the website's content, in January 2004, and that the Commission did not disclose this downloaded material to him. He asks that a CD-ROM copy of this downloaded material be produced. In my view, this material relates to the issues and facts of this case and if it exists and is still in the Commission's possession, it must be disclosed to Mr. Lemire, by December 7, 2006. Thereafter, Mr. Lemire will only be required to disclose any of the website content that is not already present on this CD-ROM.

(ii) "...all the literature (books) referred to on this website...".

[9] With respect to this request, the Commission is seeking disclosure of "advertised literature sold on [the] website". The Commission contends that references on websites to external "literature" may indirectly expose a person or persons to hatred or contempt, within the meaning of s. 13 of the *Act*. This argument does not strike me as implausible. Much will depend, it would seem, on the specific circumstances of the case. The material is therefore arguably relevant to an issue in the case and consequently is subject to disclosure.

[10] That said, there is nothing in the schedule attached to the Commission's submissions to indicate that any such external literature was in fact being sold on the website. Rather, it appears to be a list of titles of articles or books. All of the titles are underlined, which when visiting websites often means that by clicking the underlined word or phrase, one

can be redirected to a new web page. This raises the possibility that some or all of the "literature's" content is available, through these links, on the website itself. Pursuant to the preceding disclosure order in this ruling, that material will be disclosed.

[11] If, however, any of this "literature" is not available on the website itself, and Mr. Lemire is in possession of this material, he must disclose it to the Commission and the Complainant. The Commission recognizes, in its submissions, that making copies of this material could prove to be a very onerous and costly task for Mr. Lemire. The Commission therefore suggests that Mr. Lemire simply be required to make these documents available for viewing. This is a reasonable option. Mr. Lemire is therefore required to provide the material to his counsel, Ms. Kulaska, who will in turn make the documents available for viewing by the Commission and Mr. Warman. The parties are expected to cooperate with each other in this regard in order to ensure that this disclosure is completed by December 31, 2006.

The Second Request

[12] The second disclosure request is set out as follows:

"All materials, transcripts, statements, speeches from other hearings or from elsewhere that the Respondent has in his possession".

[13] This disclosure request is not granted. As I mentioned in a previous decision regarding disclosure in this case (*Warman v. Lemire*, 2006 CHRT 32, at paras. 40-42), requests such as this, which are over-reaching and lacking in specificity, will be denied.

[14] It appears from the Commission's submissions that its intent, in making this request, was to ensure that Mr. Lemire discloses all information and material related to all the issues and facts of this case. However, Rule 6 of the Tribunal's Rules of Procedure already requires this level of disclosure from all parties. A specific order against one of the parties simply reiterating this requirement is therefore unnecessary.

"Signed by"

Athanasios D. Hadjis

OTTAWA, Ontario
November 29, 2006

PARTIES OF RECORD

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| TRIBUNAL FILE: | T1073/5405 |
| STYLE OF CAUSE: | Richard Warman v. Marc Lemire |
| RULING OF THE TRIBUNAL DATED: | November 29, 2006 |
| APPEARANCES: | |

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|-------------------------------|--|
| Richard Warman | For himself |
| Giacomo Vigna / Ikram Warsame | For the Canadian Human Rights Commission |
| Barbara Kulaska | For the Respondent |