

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

**RICHARD WARMAN**

**Complainant**

**- and -**

**CANADIAN HUMAN RIGHTS COMMISSION**

**Commission**

**- and -**

**GLENN BAHR AND  
WESTERN CANADA FOR US**

**Respondents**

**RULING**

MEMBER: Karen A. Jensen 2006 CHRT 15  
2006/03/22

[1] In a complaint dated June 8, 2004, Mr. Richard Warman alleged that the Respondents, Mr. Glenn Bahr and Western Canada for Us, violated sections 12(a) and 13(1) of the *Canadian Human Rights Act* by communicating and publishing hate messages. The matter is now scheduled for a hearing commencing on May 23, 2006.

[2] Mr. Bahr has filed a motion requesting that the hearing in this matter be adjourned pending the outcome of *Warman v. Marc Lemire* (T1073/5405). In that case, which also involves alleged violations of s. 13(1) of the *Act*, the Respondent has challenged the constitutionality of sections 13 and 54 of the *Act*.

[3] On December 19, 2005, a direction was provided in *Warman v. Lemire* indicating that the constitutional challenge would be dealt with in the course of the hearing into the complaint, and no longer as a preliminary matter. On February 23, 2006, the Tribunal granted interested party status to a number of organizations for the purpose of providing

their input on the constitutional question (*Warman v. Lemire*, Ruling 2006 CHRT 8). Hearing dates in this matter have not yet been set.

[4] Mr. Bahr has stated that he too intends to challenge the constitutionality of sections 13(1) and 54 of the *CHRA*. However, he has not yet served Notice of the Constitutional Questions as required by the Tribunal's *Rules of Procedure*.

[5] Mr. Bahr argues that it would be a more efficient use of resources for all concerned to have the constitutional challenge in the *Lemire* case dealt with first. Moreover, he argues that the issues raised in his complaint are now moot. The Western Canada For Us website was apparently removed in May of 2004 and has not been re-activated. As part of his bail conditions resulting from a charge under s. 319 of the *Criminal Code*, Mr. Bahr is enjoined from using the Internet in any way. Therefore, the Respondent argues, not only is the allegedly offensive material no longer available to the public, there is very little risk that any further material will be posted in the future.

[6] The Complainant and the Canadian Human Rights Commission strongly oppose the motion. They argue that s. 48.9(1) of the *Act* requires the Tribunal to proceed as expeditiously as the requirements of natural justice and procedural fairness will permit. They further argue that the Tribunal must proceed with an inquiry on the presumption that the legislation is valid until such time as a judicial determination has been made to the contrary.

[7] In *Leger v. Canadian National Railway Company*, Interim Ruling, November 26, 1999 (CHRT); stay application dismissed [2000] F.C.J. 243 (T.D.), this Tribunal held that the exercise of its discretion to grant an adjournment is governed by the rules of procedural fairness and natural justice as well as the regime of the *CHRA*, which places a premium on the expeditious resolution of discrimination complaints. The Federal Court of Canada has clearly stated that there is a strong public interest in having Human Rights Tribunals proceed as expeditiously as possible (*Bell Canada v. Communications, Energy and Paperworkers Union of Canada* (1997), 127 F.T.R. 44 at para. 44).

[8] Mr. Bahr's arguments regarding procedural fairness and natural justice would appear to be that the costs involved in mounting a constitutional challenge in the present case are prohibitive. He will be put at an unfair disadvantage if he has to muster the resources to do this given what he is facing in the criminal courts. Mr. Bahr argues, therefore, that he should be permitted to await the outcome in *Warman v. Lemire* before he proceeds with his case.

[9] I can appreciate Mr. Bahr's situation. However, there are some difficulties with the motion as it is currently framed. First of all, strictly speaking, the Tribunal's decision in the *Lemire* matter will not bind the Tribunal in the present case (Donald Lange, *The Doctrine of Res Judicata in Canada*, 2<sup>nd</sup> edition, Toronto: 2004, at p. 423). Therefore, unless the constitutional issue in *Warman v. Lemire* reaches the Federal Court or higher, the Tribunal member in the present case will be required to hear and determine the issues, including the constitutional question, on the merits of this particular case. Thus, there is no particular economy in adjourning the matter until the Tribunal renders a decision in *Warman v. Lemire*.

[10] It follows that there is no guarantee that the Tribunal's decision in *Warman v. Lemire* will provide Mr. Bahr with what he is seeking. It is only if and when a judicial decision at the Federal or Supreme Court is rendered on the constitutional question, that the Tribunal will be bound by the result and further challenges to the legislation at the Tribunal level

will be rendered moot. Adjourning the case until *Warman v. Lemire* has been conclusively determined would push the hearing dates beyond what is acceptable under the Act, in my view.

[11] For these reasons, Mr. Bahr's motion for an adjournment pending the outcome in *Warman v. Lemire* is denied.

"signed by"  
Karen A. Jensen

OTTAWA, Ontario

March 22, 2006

#### PARTIES OF RECORD

TRIBUNAL FILE:	T1087/6805 and T1088/6905
STYLE OF CAUSE:	Richard Warman v. Glenn Bahr and Western Canada for Us
RULING OF THE TRIBUNAL DATED:	March 22, 2006
APPEARANCES:	
Richard Warman	For himself
Giacomo Vigna/ Ikram Warsame	For the Canadian Human Rights Commission
Paul Fromm	For the Respondent, Glenn Bahr
Western Canada for Us	No representations made

