

CANADIAN HUMAN RIGHTS TRIBUNAL 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 18
2006/04/05

[1] This ruling addresses two requests made by the Respondent, Mr. Glenn Bahr, for documents that are allegedly relevant to the issues raised in a complaint against him and another Respondent.

[2] The complaint, filed by Mr. Richard Warman, involves allegations that the Respondents, Mr. Glenn Bahr and Western Canada For Us, communicated hate messages through an Internet website in violation of s. 13(1) of the *Canadian Human Rights Act*.

[3] The Respondent Bahr has requested that the Complainant disclose the following documents:

- (1) the Complainant's speaking notes entitled "Maximum Disruption: Stopping Neo-Nazis by (Almost) Any Means Necessary" from a speech that he gave at a conference hosted by a group called Anti-Racist Action;
- (2) the Complainant's contribution to B'Nai Brith's *2005 Audit of Anti-Semitic Incidents*;
- (3) the Complainant's contract with B'Nai Brith for these and other writings;
- (4) Other writings Mr. Warman may have done for B'Nai Brith.

[4] The Respondent Bahr states that these materials are arguably relevant because they may prove that the Complainant has a particular *animus* against Mr. Bahr that will taint the proceedings. He further states that the materials are relevant to Mr. Warman's credibility. The Respondent Bahr intends to assert that Mr. Warman's complaint was brought in bad faith and is part of a campaign to injure people whose views he opposes.

Finally, the Respondent Bahr argues that the fact that the speaking notes were disclosed and admitted into evidence in *Warman v. Winnicki* (T1021/0205) is highly suggestive of their relevance in this matter.

[5] The Complainant and the Commission argue that the material is not arguably relevant since it does not relate to a matter in issue in the complaint. The Complainant is not seeking any remedies for himself in this complaint. The issues to be determined, therefore, are limited to whether the Respondents repeatedly communicated hate messages by means of the Internet and, if so, what the appropriate remedy would be. The requested material is not arguably relevant to these issues.

[6] I find that the Respondent Bahr has not established the arguable relevance of the requested material to the issues that are raised in this case. While the threshold for arguable relevance is low and the tendency is now towards more, rather than less disclosure, the nexus between the issues to be proven and the requested material must nonetheless, be demonstrated.

[7] The first step in determining whether a document is arguably relevant is to identify the facts that are in issue in the case. The question to be asked is this: what facts must be proved in order to establish or defend against the case before the Tribunal? The central factual issue to be determined in the present case is whether the Respondents, acting individually or in concert, repeatedly communicated by means of the Internet, messages that were likely to expose people to hatred or contempt by reason of the fact that those people are identifiable on the basis of a prohibited ground of discrimination.

[8] The Respondent Bahr has argued that the Complainant's credibility is relevant to his motivation for bringing the complaint. However, at this stage of the proceedings, the Complainant's motivation for bringing the complaint is not in issue. It is the Canadian Human Rights Commission that has the power, pursuant to s. 41(1)(d), to dismiss a complaint if it is of the view that the complaint is trivial, frivolous, vexatious or made in bad faith. If the Commission does not exercise its discretion under this provision, and instead refers the complaint to the Tribunal for further inquiry, the Respondent may file an application for judicial review of the Commission's decision. However, the Tribunal does not have the authority to review the Commission's decision to refer the complaint to the Tribunal (*International Longshore & Warehouse Union (Maritime Section), Local 400 v. Oster*, 2001 FCT 1115 at para. 29). Once the complaint has been referred to the Tribunal, the Tribunal is required, by virtue of section 50(1) of the *Act* to inquire into the complaint.

[9] Thus, the Complainant's motivation for bringing the complaint is not a relevant issue at this stage in the proceedings. Moreover, the fact that the speaking notes were disclosed in *Warman v. Winnicki* does not mean that the same material must be disclosed in the present case. The arguable relevance of material must be determined on a case-by-case basis, having regard to the issues raised in each case. In *Warman v. Winnicki*, the Complainant alleged that the Respondent had engaged in retaliatory conduct. The Complainant also made a claim for personal compensation under s. 53 of the *Act*. There were, therefore, different factual issues to be determined in *Warman v. Winnicki* than in the present case. The Respondent has not established the arguable relevance of the Complainant's credibility to the issues raised in the present case.

[10] For these reasons, I decline to order the disclosure of the documents listed above. I note, however, the Complainant's suggestion in his submissions that some of the

requested material is available on the Internet. Although the Respondent is apparently enjoined from using the Internet as part of his bail conditions in a criminal matter, his representative has access to the Internet. Therefore, some of the requested material may be available without this Tribunal's intervention.

"Signed by"

Karen A. Jensen

OTTAWA, Ontario

April 5, 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:	April 5, 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

