

CANADIAN HUMAN RIGHTS TRIBUNAL TRIBUNAL CANADIEN DES
DROITS DE LA PERSONNE

CENTRE FOR RESEARCH-ACTION ON RACE RELATIONS

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

WWW.BCWHITEPRIDE.COM

Respondent

RULING

MEMBER: Karen A. Jensen 2006 CHRT 29
2006/06/26

[1] This is a ruling on two motions. The first motion was brought by the Canadian Human Rights Commission to change the name of the Respondent from "www.bcwhitepride.com" to "BC White Pride Group associated with website www.bcwhitepride.com", and to add two new Respondents, Mr. John Beck and White Renegade Group. The second motion is a request by Mr. Beck to dismiss the complaint against www.bcwhitepride.com without a hearing. Although Mr. Beck was not named as a respondent to the complaint, the Commission identified him as the appropriate individual to whom the Tribunal should send correspondence intended for the responding party.

[2] In his motion, Mr. Beck argues that www.bcwhitepride.com is not "a person or group of persons" within the meaning of section 13(1) of the *Canadian Human Rights Act*. He argues that the complaint therefore should be dismissed without a hearing. The complainant, Centre for Research-Action on Race Relations, did not make any submissions on the motions.

[3] For the reasons that follow, I have decided to adjourn the motions without prejudice to, or in any other way affecting the rights of the parties to bring these motions again at any time during the hearing.

[4] Firstly, the fact that the Respondent's name includes ".com" does not, on its own, constitute grounds for an automatic dismissal of the complaint against that Respondent.

Rather, the question is whether there is any evidence to indicate that www.bcwhitepride.com is the name of "a person or group of persons acting in concert". In *Warman v. Kulbashian* 2006 CHRT 11, the Tribunal found, on the basis of the evidence presented during the hearing, that despite the presence of ".com" in its name, the respondent Affordable Space.com was a "person" within the meaning of s. 13(1) of the *Act*. There was evidence that Affordable Space.com was a firm that provided web services that enabled the impugned messages in that case to be disseminated over the Internet. In contrast, in that same case the Tribunal found no evidence to indicate that the named respondent www.tricityskins.com was anything more than the name of a website. As a result, the complaint against www.tricityskins.com was dismissed.

[5] In the present case, there are conflicting facts and issues that require further inquiry before a determination can be made regarding the nature of the Respondent www.bcwhitepride.com. The Commission has filed the affidavit of Mr. Shane Martinez in support of its position on the motions. In his affidavit, Mr. Martinez deposes that, as part of his work in the area of human rights and social justice activism, he monitors the Internet. During the course of his monitoring activities, Mr. Martinez became aware of www.bcwhitepride.com and www.whiterenegade.com. Mr. Martinez deposed that he communicated directly with Mr. Beck regarding the websites. On the basis of those communications, Mr. Martinez asserts that BC White Pride is a group that was co-founded by Mr. John Beck and that Mr. Beck wrote much of the content of the group's website found at www.bcwhitepride.com.

[6] On behalf of Mr. Beck, it is argued that Mr. Martinez's affidavit evidence is highly questionable and does not establish that there is "a person" or "groups of persons acting in concert" by the name of BC White Pride Group or www.bcwhitepride.com. Mr. Beck did not submit an affidavit and to date, there has been no cross-examination on the Martinez affidavit.

[7] In my view, the evidentiary record before me at this time is insufficient to resolve the factual and legal issues that are necessary to determine whether the Respondent www.bcwhitepride.com is "a person or group of persons acting in concert" within the meaning of s. 13(1) of the *Act*.

[8] The second reason to adjourn the present motions until the hearing relates to the Tribunal's concerns about dismissing a complaint without a hearing. Section 50(1) of the *Act* stipulates that after notice has been given to the appropriate parties, the member or panel shall inquire into the complaint and shall give all parties a full and ample opportunity to appear at the inquiry, present evidence and make representations. In fact, the Tribunal has dismissed complaints without a hearing in very few cases and then only on the basis of the doctrines of issue estoppel or abuse of process (*Cremasco v. Canada Post Corporation* 2002/09/30 - Ruling No. 1, aff'd 2004 FCA 363; *Toth v. Kitchener Aero Avionics* 2005 CHRT 19; *O'Connor v. Canadian National Railway* 2006 CHRT 05). In those cases, the Tribunal held that the issues raised in the complaint had been the subject of a final judicial determination in another forum. Therefore, it was determined that a full and ample opportunity had been provided to all concerned to raise the human rights issues in another forum. The Tribunal has stated that it is only in the clearest of cases that a complaint may be dismissed without a hearing on the basis of the doctrines of issue estoppel or abuse of process (*Cremasco, supra*, at para. 106).

[9] Such is not the case in the present matter. There has been no prior determination of the issues raised in this case. In fact, the circumstances in this case are more akin to those in *Bozek v. MCL Ryder* [2002] C.H.R.D. No. 34, where the respondent sought to have the complaint dismissed without a hearing on the basis of delay and the prejudice arising from that delay. In that case, the Tribunal ruled that there were facts and issues in dispute that required that there be a full evidentiary record before a decision could be made as to whether the complaint should be dismissed on the basis of delay. Therefore, the Tribunal ruled that the motions would be adjourned until the hearing of the complaint.

[10] Similarly, in the present case, there are facts and issues in dispute that require further inquiry. In response to Mr. Beck's assertion that there is no evidence to suggest that www.bcwhitepride.com is a "person or group of persons acting in concert", the Commission argues that to dismiss the complaint without a hearing on the basis of the technical objection that the Respondent may not have been properly named would defeat the purpose of the *Act*. All that may be needed is to substitute the named Respondent www.bcwhitepride.com with "BC White Pride Group associated with the website www.bcwhitepride.com". However, the question of whether the Tribunal has the authority to make such a substitution has not been argued. Moreover, the parties disagree as to whether an evidentiary basis exists for such a change to be made.

[11] In the circumstances of the case, I do not see how this Tribunal can decide the Respondent's motion to dismiss the complaint at this time. Similarly, I do not see how the Tribunal can determine at this time, whether "BC White Pride Group associated with the website www.bcwhitepride.com" can be substituted for the currently named Respondent. The two issues are related and must, in my view, be determined on the basis of a proper evidentiary record.

[12] With regard to the addition of the two other parties, White Renegade Group and John Beck, the Commission is free to raise this issue at the hearing if it so chooses.

"Signed by"

Karen A. Jensen

OTTAWA, Ontario

June 26, 2006

PARTIES OF RECORD

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| TRIBUNAL FILE: | T1120/0206 |
| STYLE OF CAUSE: | Centre for Research-Action on Race Relations v. |

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| | "www.bcwhitepride.com" |
| RULING OF THE TRIBUNAL DATED: | June 26, 2006 |
| APPEARANCES: | |
| No submissions made | For the Complainant |
| Giacomo Vigna | For the Canadian Human Rights Commission |
| Paul Fromm | For the Respondent |