

Canadian Human
Rights Tribunal



Tribunal canadien
des droits de la personne

Between:

Harry Abrams

- and -

The League for Human Rights of B'nai Brith Canada

Complainants

- and -

Canadian Human Rights Commission

Commission

- and -

Arthur Topham

- and -

radicalpress.com

Respondents

Ruling

Member: Karen A. Jensen

Date: June 2, 2009

Citation: 2009 CHRT 18

[1] The Canadian Free Speech League (CFSL) has brought another motion requesting interested party status in the present matter. In a previous ruling, I held that the CFSL had not provided information about the extent of its proposed participation in the present matter. Therefore, I was not in a position to determine how its expertise would be of assistance in the determination of the issues.

[2] The CFSL now submits that it wishes to cross-examine witnesses and to make final submissions on the constitutional issues. The CFSL does not seek the right to call evidence.

[3] The CFSL further submits that it was founded by letters patent on February 20, 1986. Its objects are, *inter alia*:

- (1) To inform the public in regard to matters of freedom of expression, thought, belief and opinion, and the dangers of state control of expression;
- (2) To educate the public on the dangers of tyranny and government control of the right to speak and think.
- (3) To work for public awareness of the danger of laws which destroy or otherwise limit freedom of speech to those utterances which are socially unacceptable in the eyes of Judges.
- (4) To employ a spokesman for the purpose of carrying out the foregoing objects.

[4] Mr. Christie, counsel for the CFSL, stated in his application that the CFSL has many supporters. It publishes the *Friends of Freedom* newsletter and distributes it worldwide.

[5] Mr. Christie has represented a number of litigants in matters involving freedom of speech at all levels of court and tribunal. He states that the purpose of his representation in the present case would be to assist in representing the free speech argument from a different perspective than that of the parties. He would point to areas of common interest in the widest range of discourse on public matters and the areas of the law which support this contention.

[6] The Commission and the Respondent did not provide any submissions on this motion. However, the Respondent supported the previous motion by the CFSL to intervene. In response to the previous motion, the Commission stated that they would not add anything to the submissions filed by the Complainants.

[7] The Complainants opposed the present motion. They stated that the CFSL's motion is really a disguised attempt on the part of Mr. Christie to intervene personally. The Complainants argued that the test for personal intervention is based on the requirement that the individual have a personal stake in the outcome of the case. Given that Mr. Christie has not demonstrated such a personal interest, his request should be denied. The Complainants further argued that Mr. Christie's personal experience in representing clients in freedom of speech cases should not be attributed to the CFSL. Mr. Christie has therefore, not demonstrated that the CFSL has any particular expertise to contribute to the present case. Moreover, Mr. Christie has not demonstrated how the CFSL is able to provide a unique perspective that cannot be provided by one of the parties.

[8] Section 50 of the *Canadian Human Rights Act* gives the Tribunal discretion to grant interested party status. The onus is on the applicant to demonstrate how its expertise will be of assistance in the determination of the issues. Interested party status will not be granted if it does not add significantly to the legal positions of the parties representing a similar viewpoint: *Schnell v. Machiavelli and Associates Emprize Inc.*, [2001] C.H.R.D. No. 14 at para. 6 (C.H.R.T.) (QL); *Nkwazi v. Canada (Correctional Service)*, [2002] C.H.R.D. No. 15 at para. 22 (C.H.R.T.)(QL); *Warman v. Lemire* 2006 CHRT 8.

[9] I am satisfied that the CFSL will add significantly to the legal positions of the parties in the present case. The CFSL intends to present a broader perspective on the constitutional issues raised in this case than may be presented by the Respondent. Counsel for the CFSL will draw on his experiences and knowledge in representing other litigants in similar matters and the CFSL's experience in raising public awareness about the issues raised in the complaint. In my view, this experience and knowledge will assist in stimulating a vigorous debate on the constitutional

issues raised in the complaint. The fact that Mr. Christie is bringing his own experience and knowledge to bear on the debate is not of concern to me. The members of organizations do bring their personal knowledge, as well as their experience in the organization to discussions about issues that are of concern to the organization.

[10] Therefore, the CFSL's request for interested party status is granted. The CFSL will have the right to cross-examine witnesses and to make final submissions on the constitutional issues only. The CFSL should consult with the Respondent regularly to ensure that there is no duplication in their efforts.

Signed by

Karen A. Jensen
Tribunal Member

Ottawa, Ontario
June 2, 2009

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T1360/9008

Style of Cause: Harry Abrams and the League for Human Rights of B’Nai Brith Canada v.
Arthur Topham and RadicalPress.com

Ruling of the Tribunal Dated: June 2, 2009

Appearances:

Marvin Kurz, for the Complainants

Daniel Poulin, for the Canadian Human Rights Commission

Arthur Topham, for the Respondents

Douglas H. Christie, for the Canadian Free Speech League