



*Charter of Rights and Freedoms*. The Tribunal ordered Ms. Guille to provide further particulars of the constitutional challenge by July 11, 2006. This was not done.

[3] On August 27, 2007, during the hearing into the complaint, Member Deschamps directed that the hearing on the constitutional question be deferred to a later date after the merits of the complaint had been determined. At the time that the direction was issued, another member of the Tribunal was hearing the complaint of *Warman v. Lemire*, also involving s. 13(1) of the *CHRA*. The respondent in that case, Mr. Lemire had also challenged the constitutionality of ss. 13 and 54.

[4] The *Warman v. Lemire* hearing lasted 30 days, involving the full participation of both the Canadian Human Rights Commission and the Attorney General of Canada in the constitutional questions. Five additional parties were granted interested party status for the constitutional issues. The decision in *Warman v. Lemire* is under reserve.

[5] In a decision dated May 8, 2008, in *Warman v. Northern Alliance and Jason Ouwendyk* 2008 CHRT 14, the Tribunal deferred the hearing on the constitutional validity of ss. 13 and 54 of the *CHRA* pending the outcome in *Warman v. Lemire*. The Tribunal stated:

The hearing on the question of the constitutional validity of the impugned sections of the *Act* will be deferred pending the outcome in *Lemire*. If the complaint is substantiated, the Tribunal will not issue any order until the final determination by the Courts of the constitutional question.

[6] On September 12, 2008, former Tribunal Member Pierre Deschamps issued a decision on the merits of the complaint in the present case. Member Deschamps found that the Respondent had breached s. 13(1) of the *Canadian Human Rights Act* and ordered that the Respondents cease communicating material of the type that was found to violate s. 13(1) or any other messages of a substantially similar content that are likely to expose people to hatred or contempt on the basis of a prohibited ground of discrimination.

[7] With regard to the constitutional question, Member Deschamps stated the following in his September 12, 2008 decision:

Given the notice of constitutional challenge presented by the Respondent, Melissa Guille, and the previous directives issued by the Tribunal, on November 20, 2007, as to the proper time to present such challenge, the Tribunal orders that the execution of the present decision be suspended for a period of 30 days in order to allow the Respondent, Melissa Guille, if she so wishes, to present a motion that sets out the basis of her constitutional challenge to which the Commission and the Complaint will be entitled to respond or to object.

[8] Thus, in contrast to the ruling in *Warman v. Northern Alliance and Jason Ouwendyk*, the ruling in the present case simply suspended the Tribunal's cease and desist order for 30 days pending the motion on the constitutional challenge. After the 30 day period has elapsed (which is presently the case), the cease and desist order comes into effect.

[9] Ms. Guille and the Canadian Heritage Alliance are therefore subject to an order of this Tribunal to cease communicating the material that was found to be contrary to s. 13 of the *Act* and any material that is similar in content.

[10] Although Ms. Guille may not have provided particulars of the constitutional question at the appropriate time in the process, the Tribunal nonetheless, did not rule that she was prevented from presenting the constitutional challenge. Indeed, in its decision of September 12, 2008, the Tribunal indicated that the possibility of presenting the challenge was still very much alive.

[11] I disagree with the Commission that there would be no prejudice to Ms. Guille in adjourning the matter *sine die*. Ms. Guille is currently subject to a Tribunal order which she contends was made on the basis of legislation that is unconstitutional. An indefinite suspension of her right to challenge that legislation, and thereby the validity of the order, would constitute a significant prejudice in my view.

[12] The hearing on the constitutional challenge will proceed. A registry officer will contact the parties to schedule a case management conference on this matter shortly.

*"Signed by"*  
Karen Jensen

OTTAWA, Ontario

April 21, 2009