CANADIAN HUMAN RIGHTS TRIBUNAL TRIBUNAL CANADIEN DES DROITS DE LA PERSONNE

RICHARD WARMAN

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

JESSICA BEAUMONT

Respondent

RULING

MEMBER: Athanasios D. Hadjis

2009 CHRT 32
2009/10/23

[1] On October 26, 2007, I issued a decision on the merits of a complaint filed by Richard Warman against Jessica Beaumont (2007 CHRT 49). I held that the complaint alleging a breach of s. 13 of the *Canadian Human Rights Act* had been substantiated and accordingly made a remedial order. Ms. Beaumont did not seek a judicial review of my decision before the Federal Court. She was represented by an agent, Paul Fromm, during the Tribunal proceedings in her case.

[2] On September 2, 2009, the Tribunal released my decision involving another complaint, *Warman v. Lemire*, 2009 CHRT 26. As part of his defence in that case, Mr. Lemire challenged the constitutionality of s. 13 and its related remedial provisions. Incidentally, Ms. Beaumont did not bring forward a similar challenge when the complaint against her was heard. On the evidence presented and arguments submitted in Mr. Lemire's case, I ultimately concluded that these provisions of the *Act* are inconsistent with the freedoms guaranteed under s. 2(*b*) of the *Canadian Charter of Rights and Freedoms*, and that the restrictions imposed by them are not a reasonable limit within the meaning of s. 1 of the *Charter*. I therefore refused to apply the provisions for the purposes of the complaint against Mr. Lemire and did not issue any remedial order against him. On October 1, 2009, the Commission applied to the Federal Court for judicial review of this decision.

[3] After the release of the *Lemire* decision, Mr. Fromm wrote to the Tribunal requesting that, in light of those findings, I "rescind" the order that I gave Ms. Beaumont to cease and desist communicating hate messages of the type identified in the decision involving the complaint against her. He also requested that I "cancel" the special compensation award and penalty imposed on Ms. Beaumont.

[4] In effect, Mr. Fromm has asked me to reopen my final decision in Ms. Beaumont's case and reconsider my findings therein. Pursuant to the legal principle known by the term *functus officio* ("having discharged one's duty"), courts cannot, as a general rule,

reopen their final decisions except where there has been "a slip in drawing it up" or where there was an error in expressing the manifest intention of the court (*Chandler v. Alberta Association of Architects*, [1989] 2 S.C.R. 848). The Supreme Court in *Chandler* found that the *functus officio* rule applies to administrative tribunals as well, though its application may be more "flexible". Thus, a decision can be reopened if there are indications in the tribunal's enabling statute that it may do so in order to discharge its functions. In addition, a tribunal may "complete its statutory task" and reopen its decision if it failed to dispose of an issue that was fairly raised by the proceedings and of which the tribunal is empowered by its enabling statute to dispose.

[5] In *Grover v. Canada (National Research Council - NRC)*, [1994] F.C.J. No. 1000 (Q.L.), the Federal Court held that although the *Act* does not contain an express provision that allows for the Tribunal to reopen an inquiry, the wide remedial powers set out therein, coupled with the principle that the *Act* should be interpreted liberally in a manner that accords full recognition and effect to the rights protected under the *Act*, enables the Tribunal to reserve jurisdiction on certain matters in order to ensure that the remedies ordered by the Tribunal are forthcoming to complainants. The Court found in that case that the Tribunal had specifically retained jurisdiction to deal with any issues relating to the implementation of one of the remedies that it had ordered in disposing of the complaint. It was within the Tribunal's jurisdiction, therefore, to "reopen" its hearing and hear new evidence.

[6] Similarly, in *Canada (Attorney General) v. Moore*, [1998] 4 F.C. 585, the Federal Court noted that the Tribunal in that case had also explicitly stated, in issuing its remedial order, that it would retain jurisdiction in the event that the parties were unable "to work out the details" relating thereto. The Court found that the Tribunal was therefore entitled to reopen its proceedings and "revisit" its previous order.

[7] Consistent with this reasoning, the Tribunal in *Goyette v. Syndicat des employé(es) de terminus de Voyageur Colonial limitée (CSN)*, 2001 CanLII 8495 (C.H.R.T.) recognized that the rule of *functus officio* prevented it from reopening an inquiry regarding an issue in respect of which it had not reserved jurisdiction.

[8] Turning to the present case, I did not retain any jurisdiction to deal with any issue, remedial or otherwise, in my decision of October 26, 2007. The decision was clearly final.

[9] Furthermore, none of the exceptions to the *functus officio* rule articulated in *Chandler* have been established as there has been no assertion by Ms. Beaumont that the Tribunal failed to dispose of any issue that was raised in the proceedings, that there was any "slip" in how the decision was drawn up, or that there was any error in the expression of the Tribunal's manifest intention.

[10] Ms. Beaumont is basically asking me to rescind the decision because of findings made two years later in an unrelated complaint, involving a different respondent, and in which the facts and issues were dealt with and argued differently, most notably in respect of a formal constitutional challenge to the applicable provisions of the *Act*, which she

herself never brought forward in her own case. This is not a justifiable basis in law upon which a Tribunal can reopen a case to reconsider its findings.

[11] Ms. Beaumont's request is therefore denied.

"*Signed by*"

Athanasios D. Hadjis

OTTAWA, Ontario
October 23, 2009

PARTIES OF RECORD

TRIBUNAL FILE:	T1106/8705
STYLE OF CAUSE:	Richard Warman v. Jessica Beaumont
RULING OF THE TRIBUNAL DATED:	October 23, 2009
APPEARANCES:	
Richard Warman	For himself
Daniel Poulin	For the Canadian Human Rights Commission
Paul Fromm	For the Respondent