

**CANADIAN HUMAN RIGHTS TRIBUNAL TRIBUNAL CANADIEN DES  
DROITS DE LA PERSONNE**

**CENTER FOR RESEARCH-ACTION ON RACE RELATIONS**

**Complainant**

**- and -**

**CANADIAN HUMAN RIGHTS COMMISSION**

**Commission**

**- and -**

**WWW.BCWHITEPRIDE.COM**

**Respondent**

**RULING**

MEMBER: Pierre Deschamps 2007 CHRT 11  
2007/04/12

[1] At the beginning of Mr. Martinez's cross-examination by Mr. Fromm, Mr. Vigna raised a security issue with respect to a question put to Mr. Martinez by Mr. Fromm in relation to his educational background, more specifically with respect to the university from which he had obtained his BA degree.

[2] Mr. Martinez testified that if he was to provide this information, this would impact on his security. He expressed the fear that this information could find its way onto the web and could be used in order to access additional personal information on him, information that could be used to his detriment.

[3] Amongst other things, Mr. Martinez referred to the fact that Mr. Fromm, in a nightly radio-show aired on the Stormfront website, had already referred to Mr. Martinez's testimony in the present proceedings.

[4] This specific security issue gave way to a more general issue as to the cross-examination of Mr. Martinez, more specifically as to whether or not his cross-examination should be held in camera or be the object of a publication ban.

[5] After hearing from the parties on the above mentioned issues, Mr. Vigna suggested that, in order to deal with the security issue raised by himself and Mr. Martinez, the Tribunal view the DVD which had been disclosed to Mr. Vigna by Mr. Fromm and that Mr. Fromm intended to use in the course of his cross-examination of Mr. Martinez. The Tribunal agreed and viewed the DVD in question in the presence of all the parties in an *in camera* session.

[6] The DVD that the Tribunal viewed, marked Exhibit V-1, contains footage from different events pertaining to rallies or protests held in 2004 by Mr. Fromm's group (Canadian Association for Free Expression) in support of Ernst Zundel's release from prison. The first two segments were filmed by Mr. Jurgen Neumann. The third one was produced by the CBC and was aired on the NERVE, a CBC television show. Two other segments deal with other protests involving the ARA (Anti-Racist Action).

[7] It was stated by Mr. Fromm that the DVD was created and edited by Mr. Marc Lemire. At the outset of the DVD, Mr. Martinez's name appears. He is depicted as a zealot, a fanatic and a terrorist.

[8] The footage screened shows, amongst other things, Mr. Fromm addressing a crowd of people demonstrating in support of Ernst Zundel's release from prison as well as opponents to the protests. Mr. Martinez is seen, with part of his face hidden, demonstrating with the ARA (Anti Racist Action) group.

[9] In addition to the DVD, Mr. Vigna tendered in evidence excerpts from different websites (Exhibits V-2 to V-6).

[10] Exhibit V-2 contains three pictures of Mr. Martinez, pictures that were part of the DVD viewed by the Tribunal. These pictures were posted on the Canadian Redwatch website.

[11] As for Exhibits V-3 to V-6, they contain postings on the Stormfront website. Some of the postings are from Mr. Fromm. These postings refer to Mr. Martinez in unflattering terms. Exhibit V-5 advertises a DVD on Shane Ruttle Martinez. Mr. Martinez is depicted as an ARA leader, a communist and a terrorist. It is stated that the DVD can be bought at a cost of \$20.

[12] The Tribunal has to decide with respect to the issue of security raised by Mr. Vigna and Mr. Martinez in the course of Mr. Martinez's cross-examination by Mr. Fromm whether or not Mr. Martinez's cross-examination should be held *in camera* or whether or not a publication ban should be imposed, preventing the dissemination of the content of his cross-examination on the web.

[13] At the hearing, in relation to the issue that the Tribunal has to decide, Mr. Vigna referred to section 52, paragraph (1), subparagraphs (c) and (d) of the CHRA which read as follows:

**An inquiry shall be conducted in public**, but the member or panel conducting the inquiry may, on application, take any measures and make any order that the member or panel considers necessary **to ensure the confidentiality of the inquiry** if the member or panel is satisfied, during the inquiry or as a result of the inquiry being conducted in public, that

(c) there is a real and substantial risk that the **disclosure of personal or other matters** will cause undue hardship to the persons involved such that the **need to prevent disclosure** outweighs the **societal interest** that the inquiry be conducted in public; or

(d) there is a **serious possibility** that the life, liberty or **security of a person will be endangered**.

[14] The evidence shows Mr. Martinez to be a human rights activist with the ARA who was present in the past at rallies and protests organized by groups supporting free speech in relation to Ernst Zundel. The footage viewed by the Tribunal shows Mr. Martinez being an active participant at those events, not afraid to make his views known publicly.

[15] The evidence also shows that Mr. Martinez has been the object of many postings on websites. The postings are not very flattering towards Mr. Martinez. Mr. Martinez stated he felt offended and degraded by the content of these postings. Mr. Martinez sees them as insulting and defamatory.

[16] Mr. Martinez acknowledged however that, per se, the postings did not contain any direct threat to his security but that nonetheless he felt that his security would be jeopardize or compromised if his cross-examination was posted on the web given the information on him already on different websites.

[17] The Tribunal is of the view that the posting do not constitute a direct and immediate threat to Mr. Martinez security so that their existence would justify a publication ban with respect to Mr. Martinez's testimony in the course of his cross-examination by Mr. Fromm.

[18] As stated previously, the DVD's viewed by the Tribunal refers to Mr. Martinez, in its introduction, as a zealot, a fanatic as well as a terrorist. This, it appears, raises concerns about Mr. Martinez's security.

[19] It must be stated here that what is at issue in relation to the publication ban's request is not the dissemination of the DVD but any publication of Mr. Martinez's testimony associated with his cross-examination by Mr. Fromm.

[20] The evidence heard in relation to this motion shows that Mr. Martinez has already made his views publicly known about certain groups and issues and has already created animosity and resentment towards his person. Putting a ban on the publication of the content of his cross-examination will not change this state of fact.

[21] It must be reiterated here that Human Rights proceeding are public and it is only in exceptional circumstances that the Tribunal should hold *in camera* sessions or put in place publication bans.

[22] All things considered, on the basis of the evidence adduced, the Tribunal finds that the Commission and Mr. Martinez have failed to show that Mr. Martinez's security would be jeopardized if a publication ban was not put in place with respect to Mr. Martinez's testimony related to Mr. Fromm's cross-examination.

[23] It must be noted here that Mr. Martinez examination in chief took place during a **public hearing** and no request was made at the time that it be held in camera or that a publication ban be ordered.

[24] This said, if in the course of Mr. Martinez's cross examination security concerns do arise, the Tribunal will deal with these concerns as they arise and, if need be, will make specific orders so as to ensure the protection of sensitive personal information from being disseminated if the Tribunal is of the view that the dissemination of the information could give rise to a serious possibility that the security of Mr. Martinez **would** be endangered.

[25] For the above mentioned reasons, the request to have a publication ban with respect to Mr. Martinez's testimony in the course of his cross-examination by Mr. Fromm is denied.

*"Signed by"*

Pierre Deschamps

OTTAWA, Ontario  
April 12, 2007

**PARTIES OF RECORD**

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APPEARANCES:	
Fo Niemi	For the Complainant
Giacomo Vigna	For the Canadian Human Rights Commission
Paul Fromm	For the Respondent