

Federal Court



Cour fédérale

Date: 20100622

Docket: T-293-07

Citation: 2010 FC 680

Ottawa, Ontario, June 22, 2010

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

RICHARD WARMAN

Complainant

and

CANADIAN HUMAN RIGHTS COMMISSION

Commission

and

TERRY TREMAINE

Respondent

REASONS FOR ORDER AND ORDER - SHOW CAUSE

[1] The Canadian Human Rights Commission has moved this Court for an order requiring Mr. Tremaine to appear to answer allegations of contempt of court.

[2] In February 2007, the Canadian Human Rights Tribunal found that Mr. Tremaine had caused to be communicated repeatedly by telecommunication matters that were likely to expose a person or persons to hatred or contempt because they were identifiable on the basis of a prohibited ground of discrimination within the meaning of the *Canadian Human Rights Act*. He was ordered to cease and desist and to pay a penalty of \$4,000.

[3] For enforcement purposes, pursuant to Section 57 of the *Canadian Human Rights Act*, that decision was registered with this Court. Mr. Tremaine sought judicial review thereof. The application was dismissed by Madam Justice Snider. Her reasons are reported at 2008 FC 1032.

[4] This motion was made in accordance with Rule 467 of the *Federal Courts Rules*. Although such a motion may be made *ex parte*, notice was given. Mr. Tremaine was present when this matter was heard in Saskatoon on 17 June 2010 and was represented by counsel, Mr. Douglas H. Christie, who participated by way of teleconference. Rule 467 provides that a show cause order may be made if the Court is satisfied that there is a *prima facie* case that contempt has been committed. I am so satisfied.

[5] The evidence consisted of two affidavits from the complainant, Richard Warman, the first dated 12 February 2009, and the second 19 March 2010. Attached to the affidavits is a great deal of material of the nature found by the Tribunal to comprise hate literature within the meaning of Section 13(1) of the Act.

[6] The evidence certainly indicates on a *prima facie* basis that Mr. Tremaine was able to remove postings from various websites, as some of the material identified in Mr. Warman's first affidavit had been removed by the time of his second affidavit. Certainly, a great deal, if not all, of the material exhibited *prima facie* falls within paragraphs 93 and 140 of the Tribunal's reasons for decision which read:

[93] It is clear that the Respondent wants nothing less than a totally white Canada. He argues that whites and non-whites, including Jews, can never live together in harmony in the same country. He considers Blacks despicable but too feeble-minded to pose a threat to whites. Jews, on the other hand, are considered more clever, but they are dangerous, amoral, vermin, conspiring to take control of the world. The most important themes running through most of his writing are the supremacy of the white race and anti-Semitism.

[140] Having looked at these messages in context, I have no doubt that they are likely to expose persons of the Jewish faith, Blacks and other non-white minorities to hatred or contempt. The underlying theme in the Respondent's messages is that Jews, Blacks and other non-whites are destroying the country and that they should either be deported or segregated. They also refer to the threat they represent for white civilization. Members of the targeted groups are described as vermin, a disease, parasites, criminals, scoundrel, embezzlers and liars. They are portrayed as dangerous and, in some cases, intellectually inferior.

MR. TREMAINE'S DEFENCE

[7] Prior to the hearing of the show cause motion, Mr. Tremaine had moved for a *Rowbotham* order, that is to say that his defence be publicly funded. In that motion, he raised a number of issues such as :

- a. Double jeopardy;

- b. Section 13(1) of the *Canadian Human Rights Act*; which was subsequently held by the Tribunal to be unconstitutional, which decision is currently before this Court by way of judicial review; and
- c. There had been no “communication” by him.

[8] That motion was dismissed. My reasons are reported at 2010 FC 679. The only defence raised at the show cause stage was that Mr. Tremaine had not “communicated”.

[9] Section 13 of the *Canadian Human Rights Act* states:

13. (1) It is a discriminatory practice for a person or a group of persons acting in concert to communicate telephonically or to cause to be so communicated, repeatedly, in whole or in part by means of the facilities of a telecommunication undertaking within the legislative authority of Parliament, any matter that is likely to expose a person or persons to hatred or contempt by reason of the fact that that person or those persons are identifiable on the basis of a prohibited ground of discrimination.

(2) For greater certainty, subsection (1) applies in respect of a matter that is communicated by means of a computer or a group of interconnected or related

13. (1) Constitue un acte discriminatoire le fait, pour une personne ou un groupe de personnes agissant d'un commun accord, d'utiliser ou de faire utiliser un téléphone de façon répétée en recourant ou en faisant recourir aux services d'une entreprise de télécommunication relevant de la compétence du Parlement pour aborder ou faire aborder des questions susceptibles d'exposer à la haine ou au mépris des personnes appartenant à un groupe identifiable sur la base des critères énoncés à l'article 3.

(2) Il demeure entendu que le paragraphe (1) s'applique à l'utilisation d'un ordinateur, d'un ensemble d'ordinateurs connectés ou reliés les uns aux autres, notamment d'Internet,

computers, including the Internet, or any similar means of communication, but does not apply in respect of a matter that is communicated in whole or in part by means of the facilities of a broadcasting undertaking.

(3) For the purposes of this section, no owner or operator of a telecommunication undertaking communicates or causes to be communicated any matter described in subsection (1) by reason only that the facilities of a telecommunication undertaking owned or operated by that person are used by other persons for the transmission of that matter.

ou de tout autre moyen de communication semblable mais qu'il ne s'applique pas dans les cas où les services d'une entreprise de radiodiffusion sont utilisés.

(3) Pour l'application du présent article, le propriétaire ou exploitant d'une entreprise de télécommunication ne commet pas un acte discriminatoire du seul fait que des tiers ont utilisé ses installations pour aborder des questions visées au paragraphe (1).

[10] As I see it, Mr. Tremaine is mounting a rear-guard collateral attack on a final decision. It is too late for that.

[11] The document issued by the Tribunal is entitled "Reasons for Decision" and has five subsections, the fifth being "Order". The order reads:

[169] For the foregoing reasons, the Tribunal finds that the complaint against Terry Tremaine is substantiated and orders that:

1. Terry Tremaine, and any other individuals who act in concert with Mr. Tremaine, cease the discriminatory practice of communicating telephonically or causing to be communicated telephonically by means of the facilities of a telecommunication undertaking within the legislative authority of Parliament, material of the type that was found

to violate section 13(1) in the present case, or any other messages of a substantially similar content, that are likely to expose a person or persons to hatred or contempt by reason of the fact that that person or persons are identifiable on the basis of a prohibited ground of discrimination, contrary to section 13(1) of the *Canadian Human Rights Act*.

2. Terry Tremaine shall pay a penalty in the amount of \$4,000. Payment of the penalty shall be made by certified cheque or money order, payable to the “Receiver General for Canada”, and must be received by the Tribunal within 120 days of Mr. Tremaine’s being notified of this decision.

[12] Mr. Christie submits that the only evidence against Mr. Tremaine comprises documents which had been downloaded from the Internet by Mr. Warman. He had not communicated telephonically with Mr. Warman or, for that matter, with anyone else, by posting matters on the Internet. He relied on such cases as *CCH Canadian Ltd. v. Law Society of Upper Canada*, 2004 SCC 13, [2004] 1 S.C.R. 339, a copyright case, and *Goldman v. R.*, [1980] 1 S.C.R. 976, which dealt with interception of communications pursuant to provisions of the *Criminal Code*.

[13] *Prima facie* there is no defence. As the Tribunal noted in its reasons for decision, the evidence against Mr. Tremaine consisted primarily of copies of postings on the Internet. The Act, as originally enacted, did not explicitly deal with the Internet. However, as a result of the *Anti-terrorism Act*, S.C. 2001, c. 41, the Act was amended to add subsection 13(2). Since section 13(2) is declaratory, there was no need to specifically refer to it in the order.

[14] The meaning of words may vary with the context in which they are used. The language of the statute prevails. Furthermore, in paragraph 149, the Tribunal specifically said: “It is therefore

ordered that the Respondent, Terry Tremaine, cease the discriminatory practice of communication or causing to be communicated, by the means described in s. 13 of the Act, namely the Internet, material of the type which was found to violate s. 13(1)”

[15] Rule 467 requires that a show cause order give a specified time and place to appear. However, it was agreed during the hearing that, since Mr. Christie is new to the file and since public funding was denied, in the event I issued a show cause order, he would need to consult with his client, and with counsel for the Commission in the hope that a date and place could be agreed on. I consider this to be a special circumstance justifying non-compliance with Rule 467(1)(a).

ORDER

FOR REASONS GIVEN;

THIS COURT ORDERS that:

1. Mr. Tremaine is required to appear before a judge at a time and place to be stipulated in a subsequent order.
2. Mr. Tremaine is to be prepared to hear proof of the Act of contempt with which he is charged, namely failing to cease and desist as ordered in the decision of the Canadian Human Rights Tribunal, dated 2 February 2007, the particulars of such failure being found in the affidavits of Richard Warman, dated 12 February 2009 and 19 March 2010, and to be prepared to present any defence that he may have.
3. This order, and the subsequent order fixing the time and place, need not be served personally on Mr. Tremaine, but are to be served upon his solicitor of record, Douglas H. Christie.

“Sean Harrington”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-293-07

STYLE OF CAUSE: Warman v. CHRC v. Tremaine

PLACE OF HEARING: Saskatoon, Saskatchewan

DATE OF HEARING: June 17, 2010

**REASONS FOR ORDER
AND ORDER – SHOW CAUSE:** Harrington J.

DATED: June 22, 2010

APPEARANCES:

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| No one appeared | FOR THE COMPLAINANT |
| Daniel Poulin | FOR THE COMMISSION |
| Douglas H. Christie | FOR THE RESPONDENT |

SOLICITORS OF RECORD:

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|--|---------------------|
| N/A | FOR THE COMPLAINANT |
| Daniel Poulin Litigation Services Division Canadian Human Rights Commission Ottawa, Ontario | FOR THE COMMISSION |
| Douglas H. Christie Barrister and Solicitor Victoria, B.C. | FOR THE RESPONDENT |