

Tribunal File No.:T1073/5405

CANADIAN HUMAN RIGHTS TRIBUNAL

BETWEEN:

RICHARD WARMAN

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

-and-

MARC LEMIRE

Respondent

-and-

ATTORNEY GENERAL OF CANADA  
CANADIAN ASSOCIATION FOR FREE EXPRESSION  
CANADIAN FREE SPEECH LEAGUE  
B'NAI BRITH GROUP  
SIMON WIESENTHAL CENTRE  
CANADIAN JEWISH CONGRESS

Interveners

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**REPLY & RESPONSE TO COUNTER-MOTION**

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**INTRODUCTION**

1. The Commission will reply and respond to the counter-motion with one unified written submissions since both are inter-related. We will deal with the Reply to the Response and respond to the Counter-Motion in a concurrent manner.

## **PART I - REPLY AND RESPONSE TO COUNTER-CLAIM**

2. This is a complaint in which it is alleged that Mr. Marc Lemire communicated or caused to be communicated messages on his website which he administers that would likely expose persons to hatred and/or contempt on the basis of religion, race, colour, and national or ethnic origin, contrary to subsection 13(1) of the *Canadian Human Rights Act* (hereinafter referred to as "the CHRA")
3. The Commission contends that the entire website and its contents constitutes a violation of section 13 of the *Canadian Human Rights Act*. Though some aspects of the website are more blatantly a violation than others, it is respectfully submitted that the contents of the entire website can not be dissected in parcels to be adjudicated in a vacuum. It is only by assessing each aspect/element of the website juxtaposed with other aspects that the Tribunal can get the full picture and ultimately make a proper, full and relevant determination.
4. The continuous obligations of disclosure of the parties are not conditional on whether the FreedomSite is freely available to the Commission. It must be reminded that this website, since the time of the complaint and for a period ongoing, has been and is being continuously updated by the Respondent. The Commission can not continuously be aware and on the look out on whether the Respondent has added other material, such as for example the information regarding the anticipated witnesses. The Respondent continues to have such obligations of disclosure independent of 'availability' and being best placed to know what it adds on its website should be ordered to respect the long established principles of continuous obligation of disclosure.
5. For further clarity, when we stated : '*The Commission requests all materials, transcripts, statements, speeches from other hearings or from elsewhere that the Respondent has in his possession*', we are simply arguing that if the Respondent has this material because it considers it arguably relevant, it must be disclosed. Above-all, if this material is not disclosed and is sprung on the parties at the hearing in defense to the complaint, there will be strong objections to it being used in evidence or used to cross-examine.
6. The Commission is not seeking that the Respondent create documents which do not exist, it is simply requesting that all relevant documents/materials and

































