

FEDERAL COURT OF APPEAL

Marc Lemire

Appellant

and

Canadian Human Rights Commission
The Attorney General of Canada
Richard Warman

Respondents

NOTICE OF APPEAL

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the appellant. The relief claimed by the appellant appears on the following page.

THIS APPEAL will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court directs otherwise, the place of hearing will be as requested by the appellant. The appellant requests that this appeal be heard at (place where Federal Court of Appeal (or Federal Court) ordinarily sits).

IF YOU WISH TO OPPOSE THIS APPEAL, to receive notice of any step in the appeal or to be served with any documents in the appeal, you or a solicitor acting for you must prepare a notice of appearance in Form 341 prescribed by the Federal Courts Rules and serve it on the appellant's solicitor, or where the appellant is self-represented, on the appellant, WITHIN 10 DAYS of being served with this notice of appeal.

IF YOU INTEND TO SEEK A DIFFERENT DISPOSITION of the order appealed from, you must serve and file a notice of cross-appeal in Form 341 prescribed by the Federal Courts Rules instead of serving and filing a notice of appearance.

Copies of the Federal Courts Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPEAL, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

October 30, 2012

**ALICE PRODAN GIL
REGISTRY OFFICER
AGENT DU GREFFE**

Issued by: _____
(Registry Officer)

Address of local office: _____

TO:

Margot Blight
Borden Ladner Gervais LLP
Barristers and Solicitors
Scotia Plaza
40 King Street West
Toronto, Ontario
M5H 3Y4
Phone 416.367.6114
Fax 416.361.2427

**180 Queen Street West 180, rue Queen Ouest
Suite 200 bureau 200
Toronto, Ontario Toronto, Ontario
M5V 3L6 M5V 3L6**

Lawyer for the respondent
Canadian Human Rights Commission

AND TO:

Richard Warman
c/o James Cameron
Raven, Cameron, Ballantyne & Yazbeck LLP
220 Laurier Ave W, Suite 1600
Ottawa, ON K1P 5Z9

Phone 613.567-2901
Fax 613.567.2921

Acting on his own behalf

AND TO:

Attorney General of Canada,
Department of Justice
234 Wellington St.,
Ottawa, ON K1A 0H8

AND TO:

Doug Christie
PO Box 101, 255 Menzies St.
Victoria, BC V8V 2G6
Phone 250 590-2979
Fax 250 479-3294

Lawyer for the Canadian Free Speech League

AND TO:

Gerald Langlois
Charron Langlois LLP
471 McGill St.
Hawkesbury, ON
K6A 1R1
Phone 613 632-8600
Fax 613 632-5274

Lawyers for the Canadian Association for Free Expression Inc.

AND TO:

Marvin Kurz
Dale Steiman & Kurz LLP
480 Main St. N
Brampton, ON
L6V 1P8
Phone 905 466-7300
Fax 905 466-4858

Lawyers for the League for Human Rights of B'nai Brith Canada

AND TO:

Steven Skurka
1100-20 Dundas St. W.
Toronto, Ontario M5G 2G8
Phone 416-596-9797
Fax 416-596-9794

Lawyer for the Friends of Simon Wiesenthal Centre for Holocaust Studies

AND TO:

Joel Richler and Ryder Gilliland
Blake Cassels & Graydon
Box 25
199 Bay St.
Toronto, ON M5L 1A9
Phone 416 863-2735
Fax 416 863-2653

Lawyers for the Canadian Jewish Congress

AND TO:

Ed Morgan and Megan R. Forward
African Canadian Legal Clinic
18 King Street East, Suite 901
Toronto, ON M5C 1C4
Phone 416 214-4747
Fax 416 214-4748

Lawyers for the African Canadian Legal Clinic

APPEAL

THE APPELLANT APPEALS to the Federal Court of Appeal from the judgment of Mr. Justice Richard Mosley of the Federal Court dated October 2, 2012 in which he allowed the application by the Canadian Human Rights Commission for judicial review of the decision of the Canadian Human Rights Tribunal dated September 2, 2009 [2009 CHRT 26] in the matter of a complaint by Richard Warman against Marc Lemire under section 13 of the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6 (“Canadian Human Rights Act”). T-1640-09

THE APPELLANT ASKS that:

- a) The appeal is allowed and the decision of the Federal Court set aside;
- b) This Honourable Court declare that sections 13 and 54 (1) and (1.1) of the *Canadian Human Rights Act* are a violation of subsections 2 (b) of the *Canadian Charter of Rights and Freedoms* , are not saved by section 1 thereof, and as such, are of no force or effect pursuant to sections 24 (1) and 52(1) of the *Constitution Act*, 1982;
- c) An order dismissing the complaint against the appellant by Richard Warman under s. 13 of the *Canadian Human Rights Act*;
- d) An order staying the judgment of Mr. Justice Mosley until the final determination of this appeal;
- e) An order for costs to the appellant of this appeal and below;
- f) Such further and other order as this Honourable Court may make.

THE GROUNDS OF APPEAL are as follows:

1. Mr. Justice Mosley erred in applying the doctrine of severance in upholding s. 13 and ss. 54(1)(a) and (b) of the *Canadian Human Rights Act*;
2. Mr. Justice Mosley erred in basing his decision on a misreading of the *Canadian Human Rights Act* as it existed at the time s. 13 was upheld as a reasonable limit on freedom of expression under s. 1 of the *Canadian Charter of Rights and Freedoms* by the Supreme Court of Canada in *Canada (Human Rights Commission) v. Taylor*,

[1990] 3 S.C.R. 892; this misreading of the Act informed the reasons given by Mr. Justice Mosley and led him into further error in upholding the constitutionality of s. 13 and 54(1)(a) and (b) of the *Canadian Human Rights Act*;

3. Pursuant to s. 50(2) of the *Canadian Human Rights Act*; the Tribunal was entitled to examine the real and factual context in which s. 13 and s. 54 existed in determining whether the provisions remained a reasonable limit on freedom of expression within the meaning of s. 1 of the *Charter*, including the manner in which complaints were prosecuted and the practical operation of the statutory scheme. The decision of the Tribunal that this evidence showed that ss. 13 and 54 were no longer a reasonable limit on freedom of expression was correct;
4. The extension in 2001 in the *Anti- Terrorism Act*, S.C. 2001, c. 41 of the application of s. 13 of the *Canadian Human Rights Act* from telephone answering machines, as considered in *Taylor*, to computer networks, including the Internet, has rendered s. 13 an unreasonable and unjustifiable limit on freedom of expression within the meaning of s. 1 of the *Charter*;
5. The allegation of “hatred” in s. 13 of the Act imports moral blameworthiness and stigma which renders the provision an unreasonable and unjustifiable limit on freedom of expression pursuant to s. 1 of the *Charter*;
6. The words “hatred” and “contempt” in s. 13 are vague, overbroad and highly subjective, rendering the provision an unreasonable and unjustifiable limit on freedom of expression within the meaning of s. 1 of the *Charter*;
7. There is no rational, non-arbitrary or fair connection between s. 13 and the objectives of the *Canadian Human Rights Act*, rendering the provision an unreasonable and unjustifiable limit on freedom of expression within the meaning of s. 1 of the *Charter*;
8. Mr. Justice Mosley erred in challenging and reversing findings of fact made by the Tribunal to which he owed deference;

9. Mr. Justice Mosley erred in failing to respect and defer to Parliament's repeal of s. 13 and s. 54(1) and (1.1) in Bill C-304, which passed the House of Commons on June 6, 2012 to protect freedom of expression;
10. The applicant pleads and relies upon the following: *An Act to amend the Canada Evidence Act and the Criminal Code in respect of persons with disabilities, to amend the Canadian Human Rights Act in respect of persons with disabilities and other matters and to make consequential amendments to other Acts*, S.C., 1998, c. 9, s. 28;
11. *Anti-terrorism Act*, S.C. 2001, c. 41.
12. *Federal Courts Act*, R.S.C., 1985, c. F-7, s. 27(1); *Federal Courts Rules*, Rule 400
13. Such further and other grounds as the appellant may raise and the Honourable Court may allow.

October 30, 2012



Barbara Kulaszka
P.O. Box 1635, 41 Kingsley Ave.,
Brighton, ON K0K 1H0
Tel: 613-475-3150
Fax: 613-475-0648

Lawyer for the Appellant Marc Lemire