

# BLAKE, CASSELS & GRAYDON LLP

BARRISTERS & SOLICITORS | PATENT & TRADE-MARK AGENTS

Box 25, Commerce Court West  
199 Bay Street  
Toronto, Ontario, Canada  
M5L 1A9

Deliveries: 28<sup>th</sup> Floor  
Telephone: 416.863.2400  
Facsimile: 416.863.2653  
www.blakes.com

Courtney Harris  
Direct Dial: 416.863.2397  
E-Mail: courtney.harris@blakes.com

Reference: 00051371/000009

April 24, 2006

## VIA FACSIMILE

Canadian Human Rights Tribunal  
160 Elgin Street, 11th Floor  
Ottawa, Ontario

Canadian Human Rights Commission  
344 Slater Street  
Ottawa, Ontario K1A 1E1

Barbara Kulaszka  
PO Box 1635, 9 Cheer Drive  
Brighton, Ontario K0K 1H0

Department of Justice Canada  
Civil Litigation Section  
234 Wellington Street  
East Tower, Room 1144  
Ottawa, Ontario K1A 0H8

Richard Warman  
c/o Canadian Human Rights Tribunal

Douglas H. Christie  
PO Box 101, 255 Menzies Street  
Victoria, British Columbia V8V 2G6

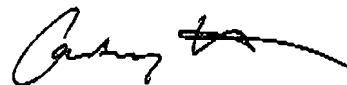
Paul Fromm  
Box 332  
Rexdale, Ontario M9W 5L3

Dear Sirs/Madam:

***Re: Warman v. Canadian Human Rights Commission***

Please find enclosed the Statement of Particulars of the Interested Parties, the League of Human Rights of B'nai Brith Canada, Canadian Jewish Congress and Friends of Simon Wiesenthal Center for Holocaust Studies.

Yours very truly,



Courtney Harris

CTH:jt  
encl

c: Marvin Kurz, Dale Steiman & Kurz LLP  
480 Main Street North, Brampton, Ontario L6V 1P8  
Steven Skurka, Skurka Spina Cugliari LLP  
970 Lawrence Avenue West, Suite 305, Toronto, Ontario M6A 3B6  
Joel Richler, Blake, Cassels & Graydon LLP

21520744.1

CHRT Nos.: T1073/5405 and T1074/5505

**CANADIAN HUMAN RIGHTS TRIBUNAL**

**BETWEEN:**

**RICHARD WARMAN**

**Complainant**

- and -

**CANADIAN HUMAN RIGHTS COMMISSION**

**Commission**

- and -

**MARC LEMIRE and THE FREEDOMSITE**

**Respondents**

- and -

**ATTORNEY GENERAL OF CANADA,  
 CANADIAN ASSOCIATION FOR FREE EXPRESSION INC.,  
 CANADIAN FREE SPEECH LEAGUE,  
 LEAGUE OF HUMAN RIGHTS OF B'NAI BRITH CANADA,  
 CANADIAN JEWISH CONGRESS,  
 FRIENDS OF THE SIMON WIESENTHAL CENTER FOR HOLOCAUST STUDIES**  
**Interested Parties**

**STATEMENT OF PARTICULARS  
 OF THE INTERESTED PARTIES  
 LEAGUE OF HUMAN RIGHTS OF B'NAI BRITH CANADA  
 CANADIAN JEWISH CONGRESS  
 FRIENDS OF THE SIMON WIESENTHAL CENTER FOR HOLOCAUST STUDIES  
 (Notice of Constitutional Question)**

April 24, 2006

**BLAKE, CASSELS & GRAYDON LLP**  
 Barristers and Solicitors  
 Box 25, Commerce Court West  
 Toronto, Ontario M5L 1A9

Joel Richler and Courtney Harris  
 Tel: 416.863.2400  
 Fax: 416.863.2653

-ii-

**DALE STEIMAN & KURZ LLP**  
Barristers and Solicitors  
480 Main Street North  
Brampton, Ontario L6V 1P8

Marvin Kurz  
Tel: 905.455.7300  
Fax: 905.455.4858

**SKURKA SPINA CUGLIARI LLP**  
970 Lawrence Avenue West, Suite 305  
Toronto, Ontario M6A 3B6

Steven Skurka  
Tel: 416.787.6529  
Fax: 416.787.7788

Solicitors for the Interested Parties

**TO: CANADIAN HUMAN RIGHTS TRIBUNAL**  
160 Elgin Street, 11<sup>th</sup> Floor  
Ottawa, Ontario

Gwen Zappa, Manager, Registry Operations  
Fax: 613.995.3484

**AND TO: CANADIAN HUMAN RIGHTS COMMISSION**  
344 Slater Street  
Ottawa, Ontario K1A 1E1

Giacomo Vigna and Ikram Warsame  
Tel: 613.943.9152  
Fax: 613.993.3089

**AND TO: Richard Warman**  
c/o Canadian Human Rights Tribunal

**AND TO: Barbara Kulaszka**  
P.O. Box 1635  
9 Cheer Drive  
Brighton, Ontario K0K 1H0

Tel: 613.475.3150  
Fax: 613.475.0648

Solicitor for Marc Lemire, Respondent

**AND TO: DEPARTMENT OF JUSTICE CANADA**  
Civil Litigation Section  
234 Wellington Street  
East Tower, Room 1144  
Ottawa, Ontario K1A 0H8

Simon Fothergill  
Tel: 613.941.4090  
Fax: 613.954.1920

**AND TO: PAUL FROMM**  
Box 332  
Rexdale, Ontario M9W 5L3

Fax: 905.278.2413

Representing Canadian Association for Free Expression

**AND TO: DOUGLAS H. CHRISTIE**  
PO Box 101, 255 Menzies Street  
Victoria, British Columbia V8V 2G6

Tel: 250.385.1022  
Fax: 250.479.3294

Solicitor for Canadian Free Speech League

## **INTRODUCTION**

1. This Statement of Particulars is filed on behalf of the League of Human Rights of B'nai Brith Canada, Canadian Jewish Congress and Friends of the Simon Wiesenthal Center for Holocaust Studies, (the "Interested Parties") pursuant to Rule 6 of the Canadian Human Rights Tribunal's *Rules of Procedure*.

2. The Interested Parties will address the constitutional validity of sections 13, 54(1) and 54(1.1) of the *Canadian Human Rights Act*, R.S. 1985, c. H-6 ("*CHRA*").

## **MATERIAL FACTS**

3. The purpose of section 13 of the *CHRA* and its related provisions is to prevent the dissemination of messages of hatred and contempt directed at identifiable groups that undermine the dignity and self-worth of those individuals. This purpose is one of pressing and substantial importance. Significant and substantial harm can result from the propagation of hate, both to identifiable groups that are victimized and to society at large.

4. Sections 13, 54(1) and 54(1.1) of the *CHRA* are proportional to this purpose. They are rationally connected to the stated purpose, minimally impair the rights and freedoms of the Respondent and their salutary effects outweigh any deleterious effect on the Respondent's rights under the *Charter*.

5. Hate propaganda does nothing to advance the underlying values of freedom of expression. It is harmful to both the identifiable groups against whom it is targeted as well as society as a whole. The internet is a particularly dangerous and insidious method of communicating hate propaganda. The internet has a vast, unlimited audience, is easily accessible and is difficult to monitor and control.

## **POSITION ON LEGAL ISSUES**

6. It is the position of the Interested Parties that:

- (a) Sections 13(1), 54(1) and 54(1.1) of the *CHRA* are constitutionally valid;

(b) The Supreme Court has tested and confirmed the constitutional validity of section 13(1) of the *CHRA*;<sup>1</sup>

(c) Amendments made to the impugned sections do not effect the constitutionality of these sections;<sup>2</sup>

(d) Section 13 of the *CHRA* is a reasonable limit on s. 2(b) of the *Charter* and can be demonstrably justified in a free and democratic society;

(e) The objective of section 13(1) of the *CHRA* is sufficiently important to warrant overriding a constitutionally protected right. The Supreme Court has found that the purpose of section 13 of the *CHRA* was one of pressing and substantial importance. That finding holds true today;<sup>3</sup>

(f) Section 13 of the *CHRA* and its related provision s. 54(1) and s. 54(1.1) operate to suppress hate speech and its harmful consequences. They are effective in reducing the prevalence of hate propaganda in Canada and accordingly, are rationally connected to Parliament's objective;

(g) The impugned legislative measures are carefully circumscribed to appropriately balance freedom of expression and the societal interest in suppressing hate propaganda;

(h) The amendments to section 13(1) of the *CHRA* which apply it to new technologies and media, like the internet, do not lessen the minimal impairment of the provision;

(i) The amendments to sections 54(1) and 54(1.1) are, in effect, of small difference to their predecessor administrative penalty provisions. These sections continue to be an effective tool in meeting Parliament's objective with minimal impairment of the Respondent's rights and freedoms;

---

<sup>1</sup> *Canada (Human Rights Commission) v. Taylor*, [1990] 3 S.C.R. 892

<sup>2</sup> *Citron v. Zundel*, [2002] 41 C.H.R.R. D/274 T.D. 1/02 (CHRT), [2002] C.H.R.D. No. 1 cited to C.H.R.D. at para. 257

<sup>3</sup> *Taylor; Citron v. Zundel* at para. 232

(j) Hate propaganda is far removed from the values of free expression enshrined in section 2(b) of the *Charter*. The effects of sections 13(1), 54(1) and 54(1.1) of the *CHRA* are not so deleterious that they outweigh the important benefits to the furtherance of tolerance, multiculturalism and dignity that must flourish in a society which is committed to the idea of equality;

(k) Sections 13, 54(1) and 54(1.1) of the *CHRA* do not contravene the rights and freedoms found in sections 2(a) and 7 of the *Charter*;

(l) Section 54(1.1) of the *CHRA* imposes only the penalty of a fine. A penalty of a fine is not a deprivation of liberty and need not conform to the principles of fundamental justice as enshrined in s. 7 of the *Charter*; and

(m) The position of the Attorney General of Canada as articulated in the statement of particulars is correct and the Interested Parties rely and adopt the facts and legal position stated therein.

#### **RELIEF SOUGHT**

7. The Interested Parties seek an order dismissing the constitutional challenge brought on behalf of the Respondent, Marc Lemire.

#### **LIST OF DOCUMENTS**

8. A list of documents in the Interested Parties' possession that relate to internet hate is attached as Schedule A. Schedule B lists documents for which privilege is claimed.

#### **LIST OF WITNESSES**

9. The Interested Parties may call:


- (a) Bernie Farber, Canadian Jewish Congress;
- (b) Ruth Klein, League for Human Rights, B'nai Brith Canada;
- (c) Anita Bromberg, League for Human Rights, B'nai Brith Canada;

- (d) Leo Adler, Friends of Simon Wiesenthal Center for Holocaust Studies; and
- (e) Detective James Hogan, Hate Crimes Unit, Toronto Police Services.


April 24, 2006

  
BLAKE, CASSELS & GRAYDON LLP  
Barristers & Solicitors  
Box 25, Commerce Court West  
Toronto, Ontario M5L 1A9

Joel Richler and Courtney Harris  
Tel: 416.863.2400  
Fax: (416) 863-2653

 DALE STEIMAN & KURZ LLP  
Barristers and Solicitors  
480 Main Street North  
Brampton, Ontario L6V 1P8

Marvin Kurz  
Tel: 905.455.7300  
Fax: 905.455.4858

 SKURKA SPINA CUGLIARI LLP  
970 Lawrence Avenue West, Suite 305  
Toronto, Ontario M6A 3B6

Steven Skurka  
Tel: 416.787.6529  
Fax: 416.787.7788

Solicitors for the Interested Parties

## Schedule A

<b>No.</b>	<b>Date</b>	<b>Description</b>
1.	various dates	Simon Wiesenthal Center, <i>Annual Reports</i>
2.	various dates	League of Human Rights of B'nai Brith Canada, <i>Audit of Antisemitic Incidents: Patterns of Prejudice in Canada</i>
3.	1995	Bernie Farber (ed.), <i>The Internet: A New Users Guide to Understanding Hate in Cyberspace</i>
4.	1996	American Anti-Defamation League, <i>Web of Hate: Extremists Exploit the Internet</i>
5.	1997	Bernie Farber (ed.), <i>From Marches to Modems: A Report on Organized Hate in Toronto</i>
6.	2001	Canadian Jewish Congress, <i>Promoting Equality in the Information Age: Dealing with Internet Hate</i>
7.	2001	Simon Wiesenthal Center, <i>New Lexicon of Hate</i>
8.	2005	Simon Wiesenthal Center, <i>Digital Terrorism and Hate</i>
9.	2006	Simon Wiesenthal Center, <i>Digital Terrorism and Hate</i>

**SCHEDULE B**

The Interested Parties claim privilege over:

(a) documents containing or reflecting confidential professional communications passing between the Interested Parties and their legal advisers directly related to the seeking or receiving of legal advice or legal assistance; and,

(b) documents comprised of notes, memoranda and confidential correspondence and copies thereof, prepared for the purposes of obtaining or providing advice concerning this complaint and the constitutional challenge, and of obtaining or providing information and evidence to be used in this complaint and the constitutional challenge and preparation thereof.

APR. 24. 2006 4:38PM

NO. 0549 P. 1

# BLAKE, CASSELS & GRAYDON LLP

BARRISTERS & SOLICITORS | PATENT & TRADE-MARK AGENTS

**Facsimile: 416.863.2653**  
Box 25, Commerce Court West  
199 Bay Street  
Toronto, Ontario, Canada  
M5L 1A9

**NUMBER OF PAGES INCLUDING COVER PAGE:**

**DATE:** April 24, 2006

**TO: (Name, Company, City & Country)**

**FACSIMILE:**

**TELEPHONE:**

Gwen Zappa, Canadian Human Rights Tribunal,  
Ottawa, Ontario, Canada

613.995.3484

Giacomo Vigna, Canadian Human Rights Commission,  
Ottawa, Ontario, Canada

613.993.3089

613.943.9152

Richard Warman, c/o Canadian Human Rights  
Tribunal, Ottawa, Ontario, Canada

613.993.3089

Barbara Kulaszka, Brighton, Ontario, Canada

613.475.0648

613.475.3150

Simon Fothergill, Attorney General of Canada, Ottawa,  
Ontario, Canada

613.954.1920

Paul Fromm, Toronto, Ontario, Canada

905.278.2413

Douglas H. Christie, Victoria, British Columbia,  
Canada

250.479.3294

250.385.1022

**FROM:** Courtney Harris

**BUSINESS PHONE:**

416.863.2397

**SECRETARY PHONE:**

416.863.2451

**MESSAGE:**

**ORIGINALS SENT BY: (check one)**  MAIL  COURIER  NOT SENT

(please specify)

**ANY PROBLEMS? Please contact your Fax Operator or the Blakes Fax Operator at 416.863.2178**

**CONFIDENTIALITY NOTE:**

This message is **CONFIDENTIAL** and is legally privileged. It is intended only for the person(s) or organization(s) named above and any other use or disclosure is strictly forbidden. If this message is received by anyone else, please notify us at once by telephone and return the original by mail to the above address. Thank You.

**FILE REFERENCE:** 00051371/000009

**TIME IN:**

**TIME SENT:**

**OPERATOR:**

21501403.1