

Federal Court



Cour fédérale

Date: 20080115

Docket: T-860-07

Toronto, Ontario, January 15, 2008

PRESENT: The Honourable Madam Justice Layden-Stevenson

BETWEEN:

MARC LEMIRE

Applicant

and

**RICHARD WARMAN, CANADIAN HUMAN RIGHTS COMMISSION,
ATTORNEY GENERAL OF CANADA, CANADIAN FREE SPEECH LEAGUE,
CANADIAN ASSOCIATION FOR FREE EXPRESSION INC., CANADIAN
JEWISH CONGRESS, THE LEAGUE FOR HUMAN RIGHTS OF B'NAI B'RITH,
FRIENDS OF SIMON WIESENTHAL CENTRE FOR HOLOCAUST STUDIES**

Respondents

ORDER

UPON the return of the applicant's application pursuant to section 37 of the *Canada Evidence Act*, R.S.C. 1985, c. C-5 (CEA);

AND UPON counsel for the applicant and the respondent, Canadian Human Rights Commission (CHRC), appearing before me at Toronto on today's date;

AND UPON the respondent CHRC seeking leave to file supplemental evidence;

AND UPON the Attorney-General having provided written consent and the applicant having consented, at the hearing, to the CHRC's request regarding the supplemental evidence;

AND UPON noting that the remaining respondents, although served with the documentation in relation to this matter, neither filed submissions nor appeared at the hearing;

AND UPON being satisfied that leave to file the supplemental evidence ought to be granted;

AND UPON noting that, with one exception (to be addressed below), the information that is the subject of this application has been disclosed to the applicant;

AND UPON further noting that the applicant strenuously objects to the manner in which the respondent CHRC proposes to tender the now-disclosed information to the Canadian Human Rights Tribunal (CHRT);

AND UPON determining, notwithstanding the applicant's position, that the information, having been disclosed, cannot properly be considered to be the subject of a CEA section 37 application;

AND UPON being satisfied that the propriety and fairness of the CHRC's proposal regarding the CHRT's reception into evidence of the disclosed information is a matter falling within the exclusive purview of the CHRT;

AND UPON noting that in relation to the "subpoena of Bell Canada", this Court is not sitting on judicial review of the CHRT's ruling. Notwithstanding, the CHRC has undertaken to the applicant (without prejudice to its position regarding relevance or necessity) to withdraw its CEA section 37 objection to the issuance of the subpoena of Bell Canada thereby enabling the CHRT to revisit the issue of the requested subpoena;

AND UPON noting and considering the submissions of counsel for the applicant and the CHRC regarding the applicant's request for costs;

THIS COURT ORDERS that:

- (a) The respondent Canadian Human Rights Commission's request to file supplemental evidence is granted;
- (b) The applicant's application is dismissed;
- (c) Costs are awarded to the applicant, payable by the Canadian Human Rights Commission, in the all-inclusive amount of \$1,500.

"Carolyn Layden-Stevenson"
Judge