

# Canadian Association for Free Expression

Box 332,

Rexdale, Ontario, M9W 5L3

Ph: 905-274-3868; FAX: 905-278-2413

Paul Fromm, B.Ed, M.A. Director

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

**Attention: Line Joyal, Registry Officer**

**Fax: 613 995-3484**

May 2, 2007

*re: CHRT File: T1073/5405 . Richard Warman and the Canadian Human Rights Commission v Marc Lemire*

## **Response to Motion Seeking Special Measures for the Safety & Security of Commission Employee Witnesses & Commission Operations**

Dear Ms Joyal:

Here are the submissions of the Interested Party the Canadian Association for Free Expression Inc. in response to the Commission's Motion seeking an "Order that the witnesses Hanya Rizk, Harvey Goldberg and Dean Steacy be allowed to testify from a different location via video and that their physical and visual appearance be seen only by the Tribunal and counsel while everyone could hear the audio of their testimony."

The Motion is outrageous, insulting and highly prejudicial to the victim/Respondent Marc Lemire.

The Prime Minister has promised open, accountable and transparent government. Secret or secretive hearings with semi-anonymous witnesses are repugnant to this vision of open government. Section 51 (1) of the Canadian Human Rights Act declares: "An inquiry shall be conducted in public ...."

The victim/Respondent and, indeed, the public should have the right to see those testifying and to observe their body language and responses in open session. The 19 days of testimony thus far have all been in public. Observers could see the victim/Respondent's face and reactions and, indeed, the faces and reactions of the other witnesses, both those for the Commission and those for the Respondent.

Some of the Commission's "evidence" borders on an attempt to deceive the Tribunal. For instance, paragraph 6 states that an "audio CD rom was a disclosure item provided by the Commission in anticipation of Mr. Fromm's cross-examination, which is now being advertized on the Freedomsite for sale to the general public." Exhibit 3-B, contrary to the Commission's assertion is not the CD-ROM for sale on the Freedomsite. Exhibit 3-B contains 12 shows. The CD ROM for sale on the Freedomsite contains 50 shows! Furthermore, the Commission has no grounds for complaint. Stormfront and I own the rights to my show -- "The Midnight Man." They were copied, without consideration of copyright by the Commission.

Equally, disturbing is the assertion that the Freedom site is selling "a DVD regarding Shane Ruttle Martinez who testified in a hearing in Penticton in *CRARR v. "www.bcwhitepride.ca" [sic; s/b ".com]* Contrary to the Commission's assertion, this is not a "DVD on Shane Ruttle Martinex -- Exposed Video." There is no video content. This was part of the Respondent's disclosure in the "www.bcwhitepride.com" case and contains entirely text, documents and photos.

In this hearing, Mr. Martinez, the Commission's witness admitted to fraudulently impersonating a woman whose pictures he presented under the persona "Rachel" in order to deceive a person he believed might have some knowledge of the "www.bcwhitepride.com" site. The Commission raises the spectre of violence and harm to the Commission witnesses. Yet, it was their own witness, Shane Martinez who was arrested for attacking free speech supporters in September, 2004 in Toronto,. It was he who shouted threats to the author that he would "set your ass on fire" and who, on August 19, in an intimidating protest outside my Port Credit town house shouted out: "We'll be back and burn you down."

In contrast, there is no evidence that victim/Respondent Marc Lemire has ever made threats against Mr. Warman or any employee of the Commission. He has attended 19 days of hearings and behaved in a quiet manner taking an active role in his own defence.

If the *Warman v. Tremaine* hearings in Ottawa are any guide, there will be three levels of security. Firstly, the hearings will take place in the Tribunal's offices, where security is entirely under their control. There will be hired security to control the door and wand attendees. The hired security will be backed up by armed members of the Ottawa Police. In addition, both Mr. Warman and Mr. Vigna will have several private bodyguards. The assertion that there is any physical threat from Mr. Lemire, his counsel or other attendees is utterly unfounded and contrary to all past experience.

The Commission has repeatedly used and exaggerated the security concern in order to seek additional secrecy.

For instance, in *CRARR v "www.bcwhitepride.com"*, the Commission sought a publication ban on the cross examination of its witness Mr. Shane Ruttle Martinez. In denying this Motion, Member Pierre DesChamps ruled:

*"[20] The evidence heard in relation to this motion shows that Mr. Martinez has already made his views publicly known about certain groups and issues and has already created animosity and resentment towards his person. Putting a ban on the publication of the content of his cross-examination will not change this state of fact.*

*[21] It must be reiterated here that Human Rights proceeding are public and it is only in exceptional circumstances that the Tribunal should hold in camera sessions or put in place publication bans.*

*[22] All things considered, on the basis of the evidence adduced, the Tribunal finds that the Commission and Mr. Martinez have failed to show that Mr. Martinez's security would be jeopardized if a publication ban was not put in place with respect to Mr. Martinez's testimony related to Mr. Fromm's cross-examination.*

*[23] It must be noted here that Mr. Martinez examination in chief took place during a public hearing and no request was made at the time that it be held in camera or that a publication ban be ordered.*

[24] This said, if in the course of Mr. Martinez's cross examination security concerns do arise, the Tribunal will deal with these concerns as they arise and, if need be, will make specific orders so as to ensure the protection of sensitive personal information from being disseminated if the Tribunal is of the view that the dissemination of the information could give rise to a serious possibility that the security of Mr. Martinez would be endangered.

[25] For the above mentioned reasons, the request to have a publication ban with respect to Mr. Martinez's testimony in the course of his cross-examination by Mr. Fromm is denied." [Underlining added.]

In these proceedings Mr. Warman has shown himself to be a near hysteric prone to wild exaggerations, about security issues and his assertions on these matters should have no credibility. The tribunal found no grounds for "personal security" threats in the issue of Mr. Kulbashian putting two flyers on chairs in the hearing room. The transcript of January 30, 2007 records:

MR. WARMAN: And the second issue is the matter of Mr. Kulbashian who, I'm informed by a member of the public who was present, has been distributing these leaflets within the hearing room. I take this very seriously... I consider it to be a threat to my personal security. (!) (Page 342)

THE CHAIRPERSON (Hadjis): I'm not convinced, Mr. Warman, from this document that there is a risk to you. (Page 352)

MR. WARMAN: I think that it wholly ignores the concerns that I expressed with regard to my personal security.

THE CHAIRPERSON: I looked into that,

Mr. Warman. I looked into my decision. I don't think it reflects the way you present it. I did not make any findings of the kind you indicated.

I read the material closely, Mr. Warman, what was on this document. I don't see it as such. It clearly relates -- it relates to statements that are alleged to be linked with you that were the object of a motion that took place in this hearing. I know exactly the message that is behind this letter. It is not this document. It is not one of violence, it is one of a specific position that they have adopted with regard to the merits of this case.

And I know exactly what's being alluded. It's done in a certain inflammatory way, but

I don't see it as a threat to you." (Pages 422-423)

Later, on February 1, Mr. Warman would claim his personal security was at stake over the Respondent's questioning about the website "WarmanBooksOnline.com". Warman refused to answer a question as to whether he lived at an obviously make-believe address: to wit,

MS KULASKZA: I would ask you to go

to the respondent's binder, tab 21. This is another

WHOIS search result for warmanbooksonline.com. You are

given as the registrant, address 123 Cares Boulevard, Utopia, Ontario, Ho Ho Ho, Canada. It was registered through godaddy.com.

The domain name registered was warmanbooksonline.com. It was created today. The administrative contact is given as "Mahone Pogue" at pogue.mahone@stormfront.org, 123 Stormfront Street, Stormfront, Ontario, K0K 1H0, Canada, telephone number 416-999-1212. Your technical contact is Cool Senator Anne, senator@cools.com. 123 Parliament Avenue, Ottawa, Ontario, Canada, K0K 1H0, Canada, telephone number, 613-555-1212.

Do you -- are you the registrant of a website called warmanbooksonline.com?

MR. WARMAN: No, I'm not.

MS KULASKZA: Is that your address?

MR. WARMAN: Again, I'm not going to answer that.

MS KULASKZA: Why not?

MR. WARMAN: Because you are asking me questions in relation to personal information regarding my address, my telephone number and various other information. And again, I've never seen this document, I can't identify it.

*THE CHAIRPERSON: Whether or not the*

*witness answers, I'm not aware again, of any town*

*called Utopia or of that postal code. (pages 600-601)*

The CHRC, in paragraphs 8 and 11, makes extensive reference to some threatening posts allegedly made on U.S. websites against Mr. Warman, a Canadian judge and Human Rights officials. None of these posts have been affirmed by affidavit or sworn evidence. Indeed, Mr. Vigna has refused to do so. A far amount of the material produced claim to be from on-line Message Boards such as Stormfront, VNN, Vanguard News and other sites. Many of the posts used by the CHRC are by anonymous posters. The very nature of these posts, call their authenticity into question (no one signs the posts, no real names used, no IP address information, no e-mail information)

In this hearing alone, it has been exposed that message boards are the favourite site for Richard Warman, police, and other agitators to post hate and entrap people. These aliases used by the complainant and the Edmonton police account for some of the most racist and hateful comments available online. During the hearing we specifically heard evidence of:

- \* Richard Warman using the name "LUCY" with Alias "Pogue Mahone" on Stormfront
- \* Richard Warman posing as "LUCY" using the alias "AxetoGrind" on VNNForum
- \* Richard Warman using alias "90sAREover" on Freedomite Message Board
- \* Edmonton Police using alias "Estate" on Stormfront

In the *CRARR v "www.bcwhitepride.com"* hearings in Penticton, Shane Ruttle Martinez, testifying for the Commission, admitted that he communicated hateful and salacious material over the Internet using such names as "swedish4life" and "swedishpride1488." Mr. Martinez proved himself to be a master of Internet seduction, deception and dirty tricks.

During the testimony next week, we are going to hear about more aliases used to attempt to entrap people online.

Material posted on message boards, without proper investigation and affidavit evidence should be given little to no weight at all, as it is without proper foundation and has no credibility. The very fact is that the alleged threats to Richard Warman could very well be the work of Mr. Warman himself (as a frequent poster to so-called neo-Nazi message boards), the Edmonton Police, anti-racist activists such as Matt Lauder, Shane Ruttle Martinez or others.

While there have been vituperative postings on U.S. sites about Mr. Warman and the CHRC for more than 10 months, there have, in fact, been no overt actions in Canada or threats against these individuals. There is no credible reason to suppose Commission personnel are in any physical danger. The nature of their self-chosen careers, which involve, to some extent, efforts to limit or remove the right of some Canadians to free speech, makes them controversial. That goes with the territory. They deserve protection of their physical safety at hearings, as do all participants. They have chosen careers that expose them to controversy. They should not be allowed to hide behind anonymity any more than victim/Respondent Marc Lemire can.

In paragraph 6, the Commission complains that the victim/Respondent Marc Lemire and I have posted extensive material and commentary about these proceedings. Far from being reprehensible, this information

sharing should be hailed as a public benefit, considering the apathy of the Canadian press in covering these proceedings. Public information and spirited discussion of proceedings that might limit freedom of speech or that might constitutionally challenge mechanisms for such limits should be welcomed in the spirit of open and transparent government rather than be castigated.

Paragraphs 29 and 30 of the Commission Motion contain defamatory and outrageous accusations against Marc Lemire. Referring to the National Security Certificate hearings held by Mr. Justice Pierre Blais in the matter of publisher Ernst Zundel, the Commission submits: "The Federal Court found that Marc Lemire ... was a close associate of Mr. Zundel. ... 'Zundel was a leader and ideologue in the White Supremacist Movement and that he intended to influence political violence by his supporters.'" The entire National Security Certificate process has been struck down and discredited by a recent Supreme Court of Canada ruling, especially as these proceedings relied on secret evidence and/or witnesses that was never disclosed to the defendant. Mr. Lemire never appeared as a witness in these proceedings and had no opportunity to explain his activities or clear his name.

The Commission's submissions are the basest of guilt-by-association smears. Marc Lemire, despite a 17 year career in politics, has no criminal record for violence or threats of violence.

To invoke the discredited claim of association with a "danger to the security of Canada" against Mr. Lemire is to smear him and taint these proceedings by suggestion that there is some source of threat or danger and that it comes from the victim/Respondent.

For all these reasons, we urge the dismissal of the Commission's Motion.

Sincerely yours,



Paul Fromm  
Direct

<b>cc:</b>	
<b>Line Joyal, Canadian Human Rights Tribunal</b>	<b>613-995-3484</b>
<b>Giacomo Vigna, Canadian Human Rights Commission</b>	<b>613-993-3089</b>
<b>Richard Warman c/o Canadian Human Rights Tribunal</b>	<b>613-993-3089</b>
<b>Barbara Kulaszka , Counsel for Respondent Marc Lemire</b>	<b>613-475-0648</b>
<b>Simon Fothergill, Attorney General of Canada,</b>	<b>613-954-1920</b>
<b>Douglas H. Christie, Canadian Free Speech League</b>	<b>250-479-3294</b>
<b>Joel Richler, per Canadian Jewish Congress,</b>	<b>416-863-2653</b>
<b>Marvin Kurz, League for Human Rights of B'nai</b>	<b>905-455-5848</b>
<b>Steven Skurka Friends of the Simon Wiesenthal Centre)</b>	<b>416 787-7788</b>