

May 2, 2007

Canadian Human Rights Tribunal,
160 Elgin St., 11th Floor,
Ottawa, ON K1A 1J4

Attention: Ms. Line Joyal, Registry Officer

Re: Warman v. Lemire, Tribunal No. T1073/5405

To the Tribunal:

The Commission has brought a motion for two orders, the first regarding the manner in which the hearing is to take place and the second with respect to the questions to be asked of the witnesses.

With respect to the second order, this is obviously a matter that can only be dealt with at the hearing. If Mr. Vigna objects to any questions, he must make his objection and the Tribunal will rule as it does in the ordinary course of events.

The Commission further asks for an order that the witnesses Hannya 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.

In support of this extraordinary and draconian request, the Commission offers the following evidence:

1. *The postings of Craig Harrison posted on the Freedomsite message board* - Most if not all of these postings form part of the case against the respondent herein and have already been entered into evidence. These postings have been in the possession of the Commission for years. Had these postings provided any real basis in fact for fearing for witness safety, particularly Mr. Warman's, the Commission would have applied for this type of order at the very commencement of these proceedings, not now. It should be noted that in the *Harrison* case itself, Mr. Warman testified in open hearing and the Commission made no attempt to ask for special security.

2. *Excerpts of the postings of the Heritage Front, CAFÉ, Canada First Immigration Reform Committee, CFAR and Radio Freedom* – The Commission provides pages of excerpts from postings from these organizations or websites. It is not stated how these pages threaten Commission witnesses. No threats are made on these pages. No mention is made of any of the Commission witnesses. There appears to be no discussion of this case whatsoever on the pages provided in Exhibit 2(b). Most of the pages deal with general

discussion of immigration, foreign aid, and other political issues. These sites are not illegal or subject to any type of criminal or human rights proceeding.

3. *DVD of Shane Martinez and CD of Paul Fromm* – The DVD and the CD provided as exhibits by the Commission are not the DVD and CD advertised for sale by CFAR and Mr. Lemire. The radio shows by Mr. Fromm are available freely on the Internet and are not the property of the Commission because they downloaded several and placed them on a CD which they gave to Mr. Fromm as part of disclosure. The radio shows were never entered into evidence at the hearing or used during cross-examination of Mr. Fromm. The DVD of Mr. Martinez provided to me has on the label “DVD on Shane Ruttle Martinez – Exposed Video”. However, the DVD I received contains only a pdf file entitled “Disclosure Documents for Shane Ruttle Martinez” which shows photos of Mr. Martinez at various demonstrations in which death threats were made to Mr. Fromm. There is no video on the disk. If the Commission chooses to work with Mr. Martinez and not see any problem with that, then the Commission itself is now sinking at an ever increasing rate into the swamp of violent street politics because of section 13 of the CHRA. People such as Mr. Lemire and Mr. Fromm, who have been the target of these violent individuals and groups, have every right to try to expose them as dangerous elements.

4. *Freedomsite indicates the location and time of hearings in Ottawa* – Mr. Lemire also announced the time and locations of the hearings in January and February on the Freedomsite. Maps were provided so that supporters could easily find the location of the hotels and attend. Many did so. There were no security problems whatsoever and all witnesses gave their testimony in open hearing. These are not secret hearings and the public is entitled to know what is occurring particularly when the hearing involves the most basic Charter right of freedom of expression. Many of Mr. Lemire’s supporters want to attend the hearings and this is an easy and convenient way for them to find the dates, times and locations. It should be noted that the Tribunal itself also announces the date and location of hearings on its website so that members of the public, if they so choose, can attend hearings.

5. *Freedomsite announces expert witnesses, provides personal information on them, photos of the witnesses* – The Commission raised objections concerning the postings on the Freedomsite concerning Dr. Karen Mock in the summer of 2006. However, during her testimony, Dr. Mock testified that she thought the cartoon contained on the site was “kind of funny.” (Transcript, Vol. 12, p. 2484) Counsel for the Attorney General, Mr. Fothergill, stated in the conference call on September 8, 2006 that what was posted on the Freedomsite about Prof. Tsesis was in fact in the public domain and therefore he had no objections concerning it. (Transcript, p. 34-35) Although the Commission objected to Freedomsite postings concerning the expert witnesses, it made no allegation that they were in danger. All witnesses gave their testimony in open hearing during January and February with no security problems.

6. *The Freedomsite has announced the testimony of the three Commission employees* – Mr. Lemire has provided for his supporters and the public a synopsis of the witnesses to be heard on the days they probably will be heard. This does not pose any danger to the

witnesses. The witnesses are public servants who will be providing evidence primarily on the constitutional issue.

7. *The Physical appearance of the Commission employees will be disseminated widely on the Internet (para. 8 of motion)* – The Commission has already called two witnesses at this hearing. No photographs of those witnesses from the hearing room or the vicinity of the hearing room have been posted on the Freedom site. The Commission has not tendered any evidence of such photos being disseminated on the Internet at all. The only photos from the hearing are those of Mr. Lemire, his counsel, Paul Fromm and Mr. Bernard Klatt, the expert called by Mr. Lemire. The Commission therefore has no grounds to support allegation that photographs of the Commission employees will be disseminated widely on the Internet. It should be noted that Mr. Harvey Goldberg's photograph can easily be found on the Internet. For example, his photo appears accepting a copy of *Digital Hate 2006* from the Friends of Simon Wiesenthal Centre at monitor.ca. [See attached] Mr. Goldberg is very active publicly, attending such conferences as the Third International Symposium on Hate last year where he, Mr. Kurz and Mr. Warman all appeared together at one workshop. He served on the Advisory Board a well.

8. *The postings of Bill White on Overthrow.com* – The Commission relies on the postings of a Bill White in the United States to justify the order requested. Mr. White does not live in Canada. His writings are directed against Mr. Warman, not against the witnesses in question. His writings against Mr. Warman date from at least 2006 yet the Commission, again, never requested any special security precautions for his testimony in January. There have been allegations in the United States that Mr. White is an FBI agent provocateur, fulfilling the same role that CSIS human resource Grant Bristow played in the Heritage Front. Bill White shows all the signs of being such an agent provocateur. His writings have already been used by Mr. Warman to try to obtain rulings from the CRTC authorizing Canada's telecommunications carriers to voluntarily block sites. The Commission has summarized his application to the CRTC regarding Bill Whites' website, overthrow.com, as follows:

“As a result, the CRTC was not involved in any matters dealing with hate on the Internet until August 22, 2006, when Mr. Richard Warman applied to the CRTC for interim approval under section 36 of the *Telecommunications Act* to allow Canadian carriers to block two websites that contained information, including death threats, which Mr. Warman believed contravened the *Criminal Code* of Canada. In a [*Letter of Decision*](#) dated August 24, 2006, the CRTC dismissed the application citing technical faults in the application and the need for broader discussion on whether section 36 could be used to block websites such as those cited by Warman.” [*Regarding Hate On The Internet and The Canadian Human Rights Commission Questions and Answers, CHRC, http://www.chrc-ccdp.ca/discrimination/watch_on_hate-en.asp, 2007*]

His writings are now being used in an attempt to justify the imposition of severe restrictions on the respondent's right to a fair and open hearing. We cannot know who Bill White is or who he possibly works for. To justify the order requested, there must be

real evidence of potential harm to the witnesses, not simply the blog rantings of an unknown person in the United States who doesn't like Mr. Warman. Likewise, the Commission appears to rely on a report by Matthew Lauder. This is the same Lauder whose writings appear on the Freedom site. Mr. Warman chose not to bring any complaint against Mr. Lauder as Mr. Lauder is his friend. It is submitted that the Lauder report is as trustworthy as his writings on the Freedom site. Which were real and which weren't? Which were true and which weren't? In the world of deception and trickery inherent in the world in which both Mr. Warman and Mr. Lauder live, taking on personas which are not their own and voicing words which are part of the deception, it would be very dangerous for the Tribunal to take anything these individuals say as credible.

9. Threats against Federal Court judges and Tribunal member Julie Lloyd – The Commission has produced anonymous postings by unknown individuals making these statements. There is no way of knowing who has made the postings. The Commission has been in possession of this material for months, in the case of Member Julie Lloyd, yet did not use any of this material at the commencement of this hearing to protect its witnesses, particularly Mr. Warman, against whom most of the statements are directed. It should be noted that Member Julie Lloyd, against whom these statements were made, hears cases in open hearing and has not been prevented from fulfilling her duties.

With respect to this motion, Marc Lemire has made no threats to any person and has acted as a responsible citizen of Canada. The Commission refers to the decision of Mr. Justice Blais in *Re Zundel* [2005] FCJ 314. This decision was made on the basis of a law that has been found to be unconstitutional by the Supreme Court of Canada in *Charkaoui v. Canada (Citizenship and Immigration)* [2007] SCC 9. Mr. Justice Blais made findings based on secret evidence that Mr. Zundel did not see or hear. He did not know who testified against him. Marc Lemire was never called to testify. In these circumstances, the findings of the *Zundel* decision cannot be relied upon. The secrecy of the hearings and the inability of a respondent to hear or respond to the evidence was one of the major grounds of the Supreme Court in finding the law to be unconstitutional.

The Tribunal has already ruled that security will be maintained inside and outside the hearing room. In the February 22, 2006 ruling on Venue, this Tribunal held:

[6] ... The parties can also be rest assured that any disturbance or intimidation, inside or outside the hearing room, will not be tolerated by the Tribunal, and appropriate measures will be taken to deal with any problem that may arise.

Subsection 52 (1) of the *Canadian Human Rights Act* provides that “An inquiry shall be conducted in public.” To justify the orders requested, the Commission must show pursuant to subsection 52(2)(d) that “there is a serious possibility that the life, liberty or security of a person will be endangered.” No such evidence has been tendered.

The respondent relies on the recent ruling in *Centre for Research Action on Race Relations v. BCWhitePride.com* [2007] CHRT 11, in which the Commission applied for a ruling that the cross-examination of its witness, Mr. Shane Ruttle Martinez, by Mr.

Fromm should be held *in camera* and a publication ban imposed, preventing the dissemination of the content of his cross-examination on the web. The application was rejected. In doing so the Tribunal ruled:

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

It held that the evidence did not constitute a direct and immediate threat to Mr. Martinez and refused to make the orders requested.

It is submitted that in this case no such threats have been made to the three witnesses being called in Ottawa next week. These witnesses will be testifying at the offices of the Tribunal where security can be provided as necessary.

Mr. Lemire has proven over the course of the several years of this case including four weeks of hearings, that he is responsible, dedicated to the process of defending himself with evidence and expert witnesses, hard-working in the preparation of binders and documents, and crucial in instructing and assisting counsel in the hearing and outside of it.

The order requested by the Commission means that Mr. Lemire would be unable to instruct or assist counsel during the cross-examination of these witnesses. Mr. Lemire participates actively in the hearing by assisting counsel and obtaining documents and binders needed during the testimony. He is entitled to see the witnesses and their reactions to questions and to instruct counsel regarding any matters which arise during their testimony.

The position of the Commission is that section 13 is strictly a remedial provision for the eradication of discrimination, yet it acts as if it is part of CSIS and that its operations are part of a national security system. This can be the only explanation for the submissions made by the Commission in this motion.

It is submitted that the motion be dismissed.