

*Marc
Lemire's
Defence*

*Before the Canadian Human
Rights Tribunal*

AMENDED STATEMENT OF PARTICULARS
DATED: December 18, 2006

RESPONDENT'S AMENDED STATEMENT OF PARTICULARS

1. On March 25, 2004, Mr. Lemire received a letter from the Canadian Human Rights Commission informing him that it had received a complaint from Richard Warman alleging that the website www.freedomsite.org, including <http://chat.freedomsite.org> were discriminating against persons or groups of persons because of religion and national or ethnic origin by repeatedly communicating messages through Internet websites that would likely expose Italians, Mexicans, Puerto Ricans, Haitians, francophones, blacks, First Nations persons, East Asians, non-whites and Jews to hatred and/or contempt contrary to section 13(1) of the Canadian Human Rights Act.
2. Attached to the letter was a Complaint Summary dated November 24, 2003 with File Number 20031961. The date of the alleged conduct was September 24, 1999 and ongoing.
3. The particulars of the alleged conduct stated that Richard Warman had visited the Freedomsite website message board on November 11, 15, and 23, 2003 and found jokes and other entries which he alleged were discriminatory. The complaint alleged that “material contained in other sections on the message board is replete with further bigoted commentary.” Further particulars from the message board were set out.
4. Only one message from Freedomsite.org, the website, was included in the complaint. This was an article by Kevin Strom entitled “AIDS Secrets: What the Government and the Media Don’t Want You to Know.”
5. The complaint alleged that Marc Lemire was responsible for the chat room because he was the webmaster of the website hosting the message board. Mr. Warman also alleged that Mr. Lemire was responsible for posting the article “AIDS Secrets” to the Freedomsite itself and of posting an article by Ian MacDonald to the message board.
6. No writings by Marc Lemire himself were alleged to be discriminatory.
7. The respondent Marc Lemire, is the owner and webmaster of the Internet website, Freedomsite.org.
8. The message board formerly available at <http://chat.freedomsite.org> was permanently removed by Mr. Lemire on January 1, 2004, prior to receiving any notice of the complaint.
9. After receiving notification of the complaint, Mr. Lemire voluntarily removed the only message complained of which was still on the website, that of “AIDS Secrets.” He did so in the interests of settling the complaint.

10. The Freedomsite.org is a website devoted primarily to the discussion of the immigration policies of Canada and the restrictions of speech in Canada. There is extensive coverage of the case of Ernst Zundel, including commentaries and photographs of demonstrations held in support of Mr. Zundel which did not appear in the mainstream Canadian media. The website is a major alternative source for news and commentary for Canadians. It has been in operation since 1995 and has received over 10 million visits in that time.

11. The complaint by Mr. Warman was the first complaint received by Mr. Lemire concerning the site since its inception.

12. Mr. Warman did not contact or complain to Mr. Lemire prior to laying his complaint with the Commission.

13. The message board of the Freedomsite was not accessible to the public generally. To participate and to read messages, a person had to fill out a form to create a “new user profile.” This required a login name, first name, last name and email address. Optional information to be provided was city, province, and home page. The board required email address verification, meaning that a password to the message board was sent to the email address specified. The password was required to gain access to the board.

14. Once registered with the message board, the user was instructed on how to use it and how to change password or user settings.

15. The rules for use of the message board were: “Keep discussion civil. Post only to appropriate conferences. DO NOT advocate or suggest any activity which is illegal under Canadian law.”

16. The conferences available on the message board included Freedom-Site and ZGram mailing lists, Canadian Heritage Alliance, Movement Activists Chat, News, General Messages, Heritage Front, Immigration, Free Speech, History and Historical Revisionism, Religion, Enemies of Freedom, Jokes and trivia, Media Propaganda, Music and Singles-Companionship.

16a. The purpose of the message board, like all message boards, was to provide an Internet forum for ordinary people to discuss issues of concern to them, to have conversations with others, to argue over issues, to exchange information, to vent emotions with others, to inform others, to share knowledge, to participate in a forum on various topics of interest to them. Many different, often contrary, viewpoints were expressed on the message board by the people who conversed therein. The message board was set up using standard message board software used by message board hosts on the Internet.

17. All of the matters initially complained about, with the exception of the “AIDS Secret” document, were messages posted on the “Jokes and Trivia” conference on the message board. The vast majority of these were written by a man named “Craig Harrison” according to Mr. Warman.

18. Mr. Lemire does not know Mr. Harrison, and has never met him or spoken with him. He is not sure if “Craig Harrison” is a real name.

19. Mr. Lemire did not monitor the message board regularly. There was an option to complain about posts on the message board but he did not receive any complaints. Mr. Lemire himself posted messages only infrequently.

20. Mr. Lemire relied strongly on the message board complaint option to receive complaints from readers such as Mr. Warman about offensive or possibly illegal postings.

21. When Mr. Lemire received the Warman complaint in March of 2004, every message which had been complained about, except one, had already been removed from the site months before.

22. After receiving the complaint, the solicitor for Mr. Lemire, Barbara Kulaszka, wrote the Commission on April 23, 2004 indicating that the message board had been removed permanently as of January 1, 2004 and that Mr. Lemire had voluntarily removed the one remaining article, “AIDS Secrets”, in the interests of settling the complaint. She indicated that Mr. Lemire was undertaking not to post the article on the website in the future.. In the letter, Ms. Kulaszka stated that a settlement might therefore be reached between the parties, given that all matters complained of were no longer on the website. She reserved the right to make further submissions should a settlement not be reached, particularly with respect to sections 13, 41 and 47 of the Canadian Human Rights Act.

23. There was no reply from the Commission or from Mr. Warman.

24. In July of 2004, Mr. Lemire learned that details of the complaint against him had been posted on <http://www.rabble.ca> in a document entitled “Call to Action Against Holocaust Denier Ernst Zundel and the White Supremacist Canadian Far-Right” posted by the violent group, Anti-Racist Action (ARA). Mr. Lemire had kept the complaint strictly confidential. Ms. Kulaszka wrote to the Commission on July 30, 2004 that only Mr. Warman could have revealed the complaint to the ARA. She submitted the complaint should be dismissed due to the bad faith of Mr. Warman in disclosing the complaint to a group dedicated to violence as a means of silencing its political opponents.

25. There was no reply from the Commission or Mr. Warman.

26. More than a year after receiving the initial notification of the complaint, the Commission informed Mr. Lemire in a letter dated April 15, 2005 that it had completed its investigation into the complaints filed by Mr. Warman. It included a copy of the investigation reports. Mr. Lemire was informed that the complaints would be submitted to the Commission but that he could provide further submissions prior to May 17, 2005.

27. On April 21, 2005 the solicitor for Mr. Lemire, Barbara Kulaszka spoke with Ms. Hannya Rizk of the Commission regarding the case. Ms. Kulaszka indicated that Mr. Lemire wished to

settle the matter and to enter into negotiations. She was told to put the request in writing and the Commission would contact Mr. Warman to get his position. Repeatedly during the conversation, Ms. Rizk stated that the matter would be going to the Commission.

28. By letter dated April 25, 2005, Ms. Kulaszka requested that settlement negotiations take place between the parties. She expressed concern about Ms. Rizk's apparent knowledge that there would be no settlement and no conciliation proceedings. She pointed out that the Investigator's Report recommending that the matter proceed to Tribunal contained new material submitted by Mr. Warman which had never been revealed to Mr. Lemire. This included material from another website, jrbooksonline.com. Further, the investigator herself had found new material which likewise had never been revealed to Mr. Lemire. Ms. Kulaszka proposed a procedure whereby she would make a motion to the Commission under section 47 of the Act for the appointment of a conciliator in the event Mr. Warman did not wish to settle.

29. By letter dated May 8, 2004, Mr. Warman refused any negotiations to settle, alleging Mr. Lemire had dirty hands since jrbooksonline.com continued to be online. This letter was forwarded to Ms. Kulaszka by the Commission by letter dated May 13, 2005.

30. Mr. Lemire does not own or operate jrbooksonline.com and has no responsibility for the content on the website.

31. By letter dated June 3, 2005, Ms. Kulaszka provided proof that Mr. Lemire was not the owner of jrbooksonline.com. She reiterated that Mr. Lemire wished to continue the settlement discussion. In the event Mr. Warman continued to refuse to negotiate, Ms. Kulaszka requested that the Commission send the matter to conciliation pursuant to section 47 of the Act.

32. By letter dated August 19, 2005, the Commission informed Mr. Lemire that the Commission had decided pursuant to paragraph 44(3)(a) of the Canadian Human Rights Act to request the Canadian Human Rights Tribunal to institute an inquiry into the complaints because the evidence supported that Mr. Lemire was the owner and/or was causing to be communicated the material identified on the websites and the evidence supported the allegations that the material contained on the websites, when viewed as a whole, were discriminatory.

33. On September 23, 2005, Mr. Lemire agreed to mediation of the complaint. Mr. Warman refused mediation.

34. The messages complained of, to the extent that they have been disclosed by the complainant, do not incite hatred of the named groups.

35. Mr. Lemire cooperated fully with the Commission and repeatedly offered to enter into negotiations with Mr. Warman to settle the case, to enter into conciliation proceedings and mediation. Mr. Warman ignored all such attempts at settlement and refused mediation before the Tribunal.

36. The messages complained of are coarse ethnic jokes, which could be heard on any day of the week in Canada in private conversations, in emails and websites on the Internet. They are trivia, the equivalent of jokes scrawled on washroom walls in bars. They were not available to the public but to persons who voluntarily registered on the site and accessed the “Jokes and Trivia” conference. Extremely small numbers of people read the messages. The message board did not attract persons likely to be exposed to hatred by the jokes. No complaints were ever made to Mr. Lemire concerning the messages. Mr. Warman made no complaint to him prior to filing the complaint **and Mr. Lemire did not take part in any of the threads complained of.**

37. The ethnic jokes are a crude form of humour which does not expose any group to hatred. All ethnic groups in every society are subject to this type of humour. It is one of the oldest forms of humour and will never be suppressed by human rights commissions. It is part of the human condition.

38. Ethnic jokes are found on the Internet in the hundreds of thousands if not millions. They cover Jewish jokes, Polish jokes, black jokes, English jokes, newfie jokes, Asian jokes and so on. By far the largest number of jokes is with respect to “blonde jokes”, which are jokes about white women.

39. The largest number of jokes, however, is in respect of “lawyer jokes.” Some of the jokes complained of herein are variations of well-known lawyer jokes.

40. Questioning facts of the events of World War II concerning what happened to the Jews of Europe does not constitute hate and does not expose them to hatred.

41. The cartoon included on page 6 of the Investigator’s Report does not constitute hatred against Jews. It refers to Zionism which is a political belief and movement. It is not a religion or ethnicity protected by s. 13 of the CHRA.

42. The “Immigrant Poem” does not expose any group to hatred. It is a biting and satirical commentary on how immigrants are treated in Canada at the expense of the Canadian taxpayer. It constitutes political commentary regarding Canadian immigration policies. While the poem refers to Pakistan, there is no indication that the speaker is Pakistani. The poem speaks of “Canadian dummy” and “Canadian crazy” and “too damn good for the white man race.” No such biting references appear regarding the ethnic groups listed in the complaint. The poem is a commentary on the alleged stupidity of Canadians regarding immigration.

43. The complainant has provided no proof that the respondent posted the poem or even that it appeared on Stormfront. The poem, however, appears on hundreds of websites around the world and in Canada.

44. “AIDS Secrets” is a discussion alleging that AIDS is predominantly found in homosexuals, drug users, and blacks. The author relied on public source documents such as the American Journal of Public Health. This is not hate propaganda but a serious discussion of public health

issues which affect different groups differently. Race and sexual practices impact differently on different health issues. The tainted blood scandal in Canada is proof that there must be open and free discussion of health issues even if homosexuals or any other sexual orientation group are offended. Nevertheless, the respondent removed the article in the interests of settling the complaint.

45. A message board on the Internet is a unique form of communication which allows anyone in the world to freely add a comment on the issue or issues being discussed or to begin a new discussion on another issue. It allows free comment, free argument and back and forth arguments and discussions on matters of every sort.

46. Mr. Lemire suffered physical attacks and damage to personal property after the complaint was initiated. He did not publicize the complaint. Yet a violent group, Anti-Racist Action (ARA), learned of the complaint and posted details on the Internet. Mr. Warman denied giving the information to the ARA.

47. Mr. Warman was a keynote speaker before the ARA in August of 2005.

48. The Commission endorsed the ARA in a poster distributed by it in 1995 but was forced to retract it after receiving complaints.

49. The ARA has a long history of violent actions against those it deems hate-mongers, racists and fascists.

50. Mr. Warman is a former employee of the Commission and has filed numerous complaints under section 13 against individuals and/or groups in Canada. He is a prominent member of the Green Party of Canada, having run in several elections as a candidate both federally and provincially.

51. Mr. Warman participates on a regular basis on message boards of such websites as Stormfront.org, entering messages and repeating messages which are sympathetic to the causes of those who also frequent the sites. **He has written homophobic and racist messages. On September 5, 2003, the evidence shows Mr. Warman wrote a sexist and racist message regarding Senator Anne Cools on the Freedomsite.org message board. It is unknown at this time how many other messages Mr. Warman wrote on the message board.**

52. Mr. Warman communicates with ISP's hosting websites which he dislikes to urge them to stop hosting the sites or remove them. He has been involved in attempting to stop meetings, radio programs, book signings and TV appearances of such people as David Icke and tax dissidents. He has instituted several defamation lawsuits against various persons and/or groups relating to such activities. Attempts to charge Mr. Warman criminally have failed. He instigated an incident of pie throwing against David Icke in Vancouver in a book store by his associates, resulting in damage to store inventory and hitting Mr. Icke in the arm.

53. In September of 2003, several messages were posted on freedomsite.org written by Paul Fromm, Director of the Canadian Association for Free Expression, which set out the activities of Mr. Warman in laying a complaint against a London man named T. Winnicki and Bell Canada and his libel action against a group called Northern Alliance. These messages and the others detailed in the paragraphs following also were sent out on the Freedomsite mailing list, of which Mr. Warman was a subscriber.

54. In October of 2003, a message was posted on freedomsite.org announcing a protest which was being organized by the Canadian Association of Free Expression against the government funding of “Censorship Advocates”, including Mr. Warman, in Victoria, British Columbia. A second message was posted on October 28, 2003 giving an account of the protest in front of the synagogue where Mr. Warman and Mr. Adler of the Simon Wiesenthal Centre spoke about the Internet.

55. On October 29, 2003, a message was posted on freedomsite.org which announced that CAFÉ would be holding a protest of the actions of the Canadian Human Rights Commission, including one of its employees, Richard Warman, in suppressing free speech on the Internet.

56. On October 31, 2003, a message was posted on freedomsite.org which provided a summary of a press conference given in the Parliamentary Press Gallery in Ottawa by Paul Fromm regarding the what it termed the “extensive campaign of harassment against dissident websites by the Canadian Human Rights Commission and by one of its lawyers, Richard Warman...” Two men, Tom Kennedy and Jason Oewendyk, appeared with Mr. Fromm at the press conference and were described in the summary as “victims of Richard Warman.” The message outlined various activities of Mr. Warman in attempting to shut down meetings and websites.

57. On Nov. 2, 2003, a message was posted on freedomsite.org entitled “Warman on the Warpath - Threatens CAFÉ” which stated that Richard Warman had served Paul Fromm and CAFÉ with a Notice under the Libel and Slander Act of Ontario alleging that words defamatory of Mr. Warman had been posted on the freedomsite.org. The notice demanded that a retraction be published on the freedomsite.org and on the [freedomsite](http://freedomsite.org) email announcement list.

58. On Nov. 2, 2003, a message was posted on the freedomsite.org which was the text of the CAFÉ press conference in Ottawa in the Parliamentary Press Gallery on Internet censorship.

59. On Nov. 12, 2003, a message was posted on freedomsite.org entitled “CAFÉ complaint against CHRC lawyer Richard Warman.” The message set out a letter which Paul Fromm, director of CAFÉ, had sent to Chief Commissioner Mary Gusella by fax on Nov. 11, 2003 in which Mr. Fromm lodged a formal complaint against Mr. Warman who worked as a lawyer for the Commission. The complaint alleged that Mr. Warman was “using his position at the Commission to carry on an ideological vendetta against people whose views he disagrees with...” Mr. Fromm listed Mr. Warman’s recent activities and demanded an investigation of his behaviour which he stated harmed the integrity of the Commission.

60. On Nov. 11, 2003, the same day Mr. Fromm faxed his letter of complaint to the Commission, Mr. Warman visited the FreedomSite website message board, looking for and finding messages which he would include in the present complaint. He returned to the site on November 15 and 23, 2003 to find further matters to include in the complaint. He filed the within complaint on November 24, 2003.

61. The herein complaint was filed by Mr. Warman with the intention of shutting down a website that was active in publishing messages outlining his activities, protests against those activities and complaints laid against him with the Commission. FreedomSite.org is one of the very few websites which publishes criticism of the Commission and the activities of Mr. Warman to the public.

62. The Commission did not follow the normal procedure used in screening complaints in handling this complaint. For instance, Mr. Warman was not required to contact Mr. Lemire in order to see if the matter could be settled privately.

63. The Commission itself had an interest in shutting down a website active in criticizing one of its lawyer's activities and which was leading to controversy about the Commission and its activities under section 13. On the day Mr. Fromm's complaint was lodged with the Commission, Mr. Warman began his search for messages to complain about.

64. On Jan. 2, 2004, a message was posted on freedomSite.org entitled "Complaint Against Warman filed with Law Society." The message was the text of a complaint filed by Mr. Gordon Watson concerning Mr. Warman's activities in stopping meetings of the Tax Honesty Movement on the grounds of anti-Semitism.

65. On March 18, 2004, a message was posted on freedomSite.org announcing that Mr. Warman had sued Paul Fromm and CAFÉ and setting out a copy of the Statement of Claim.

66. On March 25, 2004, the respondent Mr. Lemire received notice of the complaint of Mr. Warman.

67. The complainant, the Commission and others involved in the banning of information seek to use extra-judicial means such as approaching phone companies and internet access providers to pressure them to deny the targeted individual or organization a platform from which to publish.

68. Allegations alone that a person or group is inciting hatred is enough often to have the group or individual's website pulled by an ISP.

69. Only certain views are deemed by the Commission to be hate, almost exclusively what is roughly termed "right wing" or "nationalist." These are individuals or groups which are against Third World immigration, or do not believe that six million Jews died during World War II, and oppose multiculturalism or homosexuality.

70. Although “rap” music is a viciously anti-female form of hate propaganda and has been freely available in Canada for years, the Commission and Mr. Warman have made no move against this music, a multi-billion dollar business.

71. The Commission works with only those organizations which further its own agenda, such as the Canadian Jewish Congress, the League for Human Rights of B’nai Brith and the Simon Wiesenthal Centre. It has not worked with German ethnic groups and has never considered that the Holocaust allegation itself might be hate propaganda against Germans.

72. Beginning in 1995, the Commission deemed “Holocaust denial” hate propaganda with no investigation and no consultation with German groups.

73. The Commission’s deeming of what is hate and what is not hate is not based on any type of scientific evidence or investigation or even sociological evidence or investigation. It is a totally political decision and determination.

74. The Commission is using its screening process of complaints to stop any complaints against individuals or groups which it does not want targeted by the legislation.

75. The Commission itself states that the complaint process is only “one part” of what it terms “the broader fight against hate motivated activity” in Canada. It works with ISP’s, NGO’s, the police and government departments in extra-judicial ways to stop the viewpoints which it deems to be hate. It is empowered by its legislation to undertake this destruction of free speech behind closed doors in private meetings and with favoured groups and organizations. **The Commission works closely with Edmonton, Alberta and London, Ontario Police Hate Crime Units, among others, to seize computers and evidence in raids on the homes of people whom Mr. Warman has filed complaints against. This evidence is later used at Tribunal hearings. Section 13 is being used as a de facto criminal provision, using the police power of search and seizure to obtain evidence. Most of these people are never subsequently charged under the Criminal Code.**

76. It has attempted to shut down the Zundelsite in the United States by pressuring the ISP’s hosting the site, even though it has no jurisdiction in the United States.

77. Internet Service Providers are businessmen, not free speech advocates. They are beholden to federal regulatory agencies and will not stand up for any right to free speech or access to the Internet. The Canadian Association of Internet Providers has accepted special recognition for its activism in “combating online hate and terror” from the Simon Wiesenthal Centre. This is “hate” as defined by the Simon Wiesenthal Centre, not any judicial determination before a court or tribunal.

78. Hate laws and their enforcers regard words as a “serious threat”. The Commission speaks in terms of “fighting”, of “combating” in which the fighters must show “solidarity.” It is the language of war, of enemies, of fear and hysteria and a belief that laws of coercion will change

hearts. Such laws do not fulfil the purpose for which they are allegedly intended. They do fulfill the purpose of silencing political opposition and commentary.

79. Hate laws are the end of dialogue, a repudiation of communication, the exchange of ideas and the responsibility to try to understand the other, which is the basis of democracy. Such laws only instill fear, anger and hatred through their coercive measures.

80. Hate is totally subjective as it is an emotion. It cannot be controlled through law.

81. Only certain ideas are being defined as “hate”, not others. Who has the power to define will have the power to silence and suppress using these laws.

82. A website is not a “hate message” within the meaning of section 13. A complainant is required to produce the message alleged to be a hate message and only that message, if deemed contrary to the section, can be banned. The Commission is attempting through these complaints to shut down entire websites and any discussion of issues it wants silenced.

83. In the leading case on section 13, that of John Ross Taylor, the evidence showed that Taylor wrote the 15 or so messages for which he was held liable. He put them on his tape recorder and used the telephone to send them. He repeatedly used the telephone this way, some 15 times. The term "repeatedly" in section 13 does not relate to the number of times someone phoned the telephone number and listened to the tape; it refers to the number of times Taylor used the telephone system to send out messages. Otherwise, someone could put out one message, listened to by many people and be held liable under the provision.

84. The Supreme Court of Canada upheld the constitutionality of section 13 in *Taylor* by finding that intent to expose persons to hatred could be found in the requirement that the respondent send such hate messages “repeatedly.” . The fact that a person had repeatedly sent hate messages over the telephone proved he intended to expose people to hatred. There had to be a "series of messages" in a manner that constituted a "public, larger-scale scheme[s]".

85. On a message board, the messages are not posted by the webmaster. He or she is simply providing a forum for communication on various topics. The topics are many and the opinions given are conflicting in many cases. No intent whatsoever can be ascribed to the webmaster. He is simply providing a forum. Therefore, the "repeatedly" aspect of section 13 is not fulfilled by messages on a message board in any complaint against a webmaster.

86. The defence of subsection 13(3) of the *Canadian Human Rights Act* applies to the webmaster of a forum or message board.

87. Further, to hold webmasters liable under section 13 of the Act would constitute an unacceptable chill upon freedom of conscience, expression and the press as guaranteed by the Charter. Those wishing to destroy a webmaster need only post a number of messages

which could violate section 13 in order to discredit the website and make it vulnerable to a section 13 complaint. In this case, the evidence shows Richard Warman posted a racist, sexist message concerning Anne Cools prior to the laying of his complaint. It is not known how many other messages he posted of the same ilk.

88. When a user has to register to enter a message board, this does not fulfill the requirement that the messages form part of a "public, larger-scale scheme". The message board on freedomsite.org required registration and was never indexed by any Internet search engines and was therefore not publicly accessible via web searches. A message board is a private conversation of many people discussing things. It is not an attempt to convert the public to some point of view. It is a meeting place of people to talk and exchange views.

89. A message board is simply people speaking with each other via text. Craig Harrison posted a few messages, giving his point of view. It was not part of a "campaign" that was part of a "public, larger scale scheme" as required by *Taylor*. Craig Harrison was simply a working class man venting his frustration with others he was conversing with on the message board. He was one of the working class, white people targeted by the complainant who did not have the means to hire counsel to defend his case.

90. A website is part of the larger "conversation" that is the Internet. The Freedomsite contains educational and newsworthy materials and was correctly reporting facts of interest. The Freedomsite is not a large-scale public scheme as required by *Taylor*. It is like a book containing essays, newspaper articles, commentary, government legislation or other writings, published by an individual. Opinions contrary to those expressed on Freedomsite can be found easily by a reader by making searches on such search engines as Google.

91. Truth is a defence to any charge under section 13 given *Charter* rights to freedom of conscience.

92. Truth is a defence to any complaint under section 13 given *Charter* rights to freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication.

93. Intent of the respondent to expose groups to hatred is a requirement under section 13, given the amendments to the penalty provision. There must be an intent to expose others to hatred by reason of their group identity. Once intent becomes relevant, truth becomes a defence because the intent of the respondent may be to tell the truth and warn others as a matter of conscience and freedom of the press and expression.

94. Hate is an emotion given to mankind by God. The supremacy of God is recognized in the preamble to the *Canadian Charter of Rights and Freedoms*. Section 13 disputes God's wisdom in giving the emotion of hate to human beings. This Tribunal is asked to stop people from hating, something which cannot be done. It is not rational to believe it can be done. While persons banned from sending hate messages may stop speaking or writing, they will

hate even more because of what has been done to them and will find other outlets for their hatred.

95. Hatred against groups cannot be stopped by censorship. Hatred is caused by the acts of the group which incite persons to hate them or a person's beliefs which cause him to hate the group. Until the underlying reasons for the emotion of hatred are addressed, the hatred will continue. Section 13, by simply silencing a person, does not address these underlying reasons and has no effect except extraordinary lifetime censorship of the respondent and the destruction of free expression in society. It is not remedial as it does not remedy the underlying problems between groups.

96. Those who use the hate law to silence another human being are guilty of hatred in their own right. To silence another human being, rather than interact with him, is an act of hatred and such people will not stop at simply using section 13. They regard the violator as a demon who threatens civil society and therefore all means must be used to destroy him. Whether this involves violent demonstrations, assaults, arson, shunning, defamation, silencing through section 13 or criminal hate laws, the purpose is to destroy the violator, not to conciliate with him.

97. The complainant herein is an example of a person who hates those he is laying complaints against. His goal has been to destroy and disrupt the lives of people with whom he disagrees. He has used the term "maximum disruption" and he has used this in many ways, including section 13 complaints, criminal charges, libel suites or threats of libel suites and intimidating employers into firing such individuals. He has attempted to entrap Mr. Lemire on the freedomsite message board and on the Stormfront.org message board.

98. The law has no rational relation to stopping hatred as the same messages can be found in print, (where various defences are available to criminal charges), on other websites around the world, in speeches to public gatherings, in emails and in private conversations. The world of communications has exploded since the enactment of section 13 in 1977, a time when telephone and broadcasting were the only major means of communication outside of paper. Of these, only the telephone was available to the average man. Today, every person has the ability via the Internet, email, cell phones and Blackberries to instantly communicate globally to all other persons. This has changed the psychology of people from being passive to active in questioning beliefs, religions, government policies and authority.

99. Section 13 has an extraordinary chilling effect on expression, creativity and intellectual vitality in the general population. By punishing fringe expression, the range of discourse becomes narrower and narrower. The findings of the Cohen Committee on Hate Propaganda, heavily relied upon by the Supreme Court of Canada in *Taylor*, on the psychology of hate and its effects on target groups are obsolete and untenable. In the past 40 years, new studies show that hate laws do not further the aim of stopping discrimination.

The respondent will rely on the Expert Report and testimony of Dr. Michael A. Persinger and the Expert Report and testimony of Dr. Donald A. Downs and the Expert Report of Bernard Klatt in challenging the constitutionality of section 13.

100. Section 13 is unique in the world, showing that it is an extreme legal measure. No other similar measures exist in the world. This alone indicates it is a measure not within the acceptable range of legal prohibitions worldwide regarding discrimination.

101. The law will be used only by persons identifying strongly with one of the protected groups or a person politically bound to the ideology of collectivism, rather than individualism. The law encourages people to form groups according to such characteristics as race or religion for the purpose of silencing criticism. It thus has a polarizing effect along lines of race and sex, etc. It creates and exacerbates divisiveness and hostility.

102. Moreover, rulings which hold that a person “hates” a certain ethnic group, for example, become fodder for ethnic leadership to show members of the group that they are “hated” and need “protection” by their group leadership and organizations. Such laws breed fear and paranoia in members of minority groups, the opposite effect the law was intended to have. It encourages retreat and isolation of people into their ethnic or other minority communities, destroys their confidence in dealing with what is perceived to be an irrational outside world full of hatred. Regular rulings of “hate” provide a means of using fear to raise funds for community groups claiming to represent the group. “Hate” becomes an industry, using government money, symposiums, seminars, sensitivity training, to constantly ratchet up the hysteria in order to keep the money flowing.

103. Law should always encourage dialogue and discussion, not censorship. There are no provisions in the Act to force conciliation or mediation and the complainant and the Commission are free to do as they did in this case, refuse every offer of mediation and conciliation. The Act, while stated to be remedial, is in fact remedial only in the total discretion of the Commission and the complainant.

104. Section 13 punishes those who are not articulate or literate but express political opinions on such matters as immigration in passionate, angry tones. The same opinions, formulated in another way by someone with the ability to circumvent the hate laws, would not be caught by section 13. This is a law that punishes and silences those least able to meaningfully participate in public issues because of lack of education, inability to formulate or articulate ideas clearly, or express their thoughts in a manner that does not violate section 13. These people will never have opinion pieces published in a newspaper. But they have the ability and desire to participate in the discussion of issues on message boards and on websites, mediums which give them the opportunity to learn from others, to obtain new outlooks and new ideas. It is significant that most of the people Richard Warman has complained against are young, working poor people whose only means of participating in democratic discussion is via the Internet.

105. TIME Magazine (December 16, 2006) declared YOU to be the 2006 Person of the Year because of countless individual's contribution to the Internet. It stated: "It's about the many wresting power from the few and helping one another for nothing and how that will not only change the world, but also change the way the world changes. The tool that makes this possible is the World Wide Web. Not the Web that Tim Berners-Lee hacked together (15 years ago, according to Wikipedia) as a way for scientists to share research. It's not even the overhyped dotcom Web of the late 1990s. The new Web is a very different thing. It's a tool for bringing together the small contributions of millions of people and making them matter. ..This is an opportunity to build a new kind of international understanding, not politician to politician, great man to great man, but citizen to citizen, person to person." This captures the new psychology of communication and empowerment of the individual provided by the Internet.

106. Classifying opinion as "hatred" is an effort to ban or inhibit discussion of a subject by making it taboo. When truth is not relevant in matters of expression, then rationality and conscience are no longer present. What remains is ritual or occult, resulting in taboos using fear and punishment as inhibitors. Tribunal proceedings in this sense are not judicial, but ritualistic proceedings in which a person and his thoughts are banned or excommunicated from public expression. The Tribunal procedure constitutes religion, not reason, when truth is excluded. It is a new form of blasphemy, much broader and more suffocating than before, now protecting not only religion but ethnicity, race, sexual orientation and so on.

107. A majority of the websites ordered closed by Tribunals are still operating and available on the Internet. Many matters which were deemed by Tribunals to be hatred are widely available on the Internet on hundreds of other websites, including Archive.org and Google. Section 13 is utterly ineffective as a law to ban messages deemed to be hatred in the age of the Internet. The best example of this is Zundelsite.org which has never ceased operation even though the person found liable for operating the site has been imprisoned since 2003.

108. Section 13 constitutes a penal provision and the provisions of section 10 of the Charter apply to any hearing regarding complaints laid under it.

109. Section 13 of the CHRA is unconstitutional for the reasons set out in these particulars and in the Notice of Motion filed on December 6, 2005. The respondent relies on the evidence of Bernard Klatt, Dr. Michael A. Persinger and Dr. Donald A. Downs to support the constitutional arguments.

ISSUES

110. The respondent raises the following issues:

1. Are sections 13 (1), (2), (3) and 54 (1), (1.1) of the *Canadian Human Rights Act* a violation of subsections 2 (a) and (b) and section 7 of the *Canadian Charter of Rights and Freedoms* , which 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*?
2. Are sections 13 and 54(1), (1.1) of the *Canadian Human Rights Act* a violation of subsections 1 (d) and (f) and section 2 of the *Canadian Bill of Rights* and thereby rendered inoperative?
3. **Did the respondent communicate or cause to be communicated the messages at issue on the freedomsite.org?**
4. **Did the respondent communicate or cause to be communicated the messages at issue on jrbooksonline.com?**
5. Do the messages constitute hate messages with the meaning of section 13?
6. **Did the respondent cause the messages complained of to be communicated repeatedly within the meaning of section 13 of the Act?**
6. **Is truth a defence to a complaint?**
7. **Is intent of the respondent a defence to a complaint?**
8. Does an entire website constitute a hate message as alleged by the Commission herein?
9. Is Mr. Lemire responsible under section 13 for messages posted to a website message board which he did not write or post?
10. Is Mr. Lemire responsible under section 13 for messages posted to a website message board which required the poster to abide by rules in which the user agreed to keep discussion civil and not to post any matter illegal in Canada.
11. What is the effect of the conduct and motives of both Mr. Warman and the Commission in pursuing this complaint in the manner outlined and in refusing all attempts by Mr. Lemire to settle the complaint?
12. **Is the respondent entitled to the defence contained in section 13(3) of the Canadian Human Rights Act with respect to any part of the case against him?**
13. **Was the message board a large-scale, public scheme?**

14. Was the website freedomsite.org a large-scale, public scheme?

15. Is Section 13 a penal provision to which the provisions of section 10 of the Charter apply to any hearing regarding complaints laid under it?

REMEDY

85. The respondent requests:

(A) an order that sections 13 (1), (2), (3) and 54 (1), (1.1) of the *Canadian Human Rights Act* are a violation of subsections 2 (a) and (b) and section 7 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*;

(B) an order that section 13 and 54(1), (1.1) of the *Canadian Human Rights Act* is a violation of subsections 1 (d) and (f) and section 2 of the *Canadian Bill of Rights* and is thereby rendered inoperative;

(C) an order dismissing the complaint.

WITNESSES

86. At this time, the respondent proposes calling the following witnesses:

Ian MacDonald - Ian MacDonald is the author of one of the impugned messages and will give evidence regarding it.

William Livingstone - Mr. Livingstone will testify to the fact of Mr. Lemire being targeted by Anti-Racist Action, a group before which Mr. Warman has been a prominent speaker. Mr. Lemire has been attacked physically, had private property vandalized and been threatened. **He will identify documents in the case. He will testify to the effect and his user experience of the Freedomsite.org.**

Jerry Neuman - Mr. Neuman will prove documents relating to the case and video evidence. **He will give testimony about violence against those accused of hatred from his personal experience. He will testify to the effect and his user experience of the Freedomsite.org.**

Paul Fromm - Mr. Fromm has represented various persons brought before Tribunals under section 13 or is personally knowledgeable about others whom he did not represent. **He will provide testimony concerning the respondents and their cases. He will identify documents he has received from persons who have laid complaints under section 13 which were refused by the Commission.**

Kevin Strom - Mr. Strom is the author of AIDS Secrets and will testify to the content of the article.

The respondent reserves the right to add further witnesses pending the provision of further particulars and disclosure from the Commission and Mr. Warman which the respondent has requested.

Mr. Lemire may also request the Tribunal to subpoena certain witnesses. This matter, however, will be raised in a motion to the Tribunal.

AMENDED STATEMENT OF PARTICULARS; DATED December 18, 2006