

TRIBUNAL NUMBER:T1073/5405

CANADIAN HUMAN RIGHTS TRIBUNAL

BETWEEN:

RICHARD WARMAN

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

v.

MARC LEMIRE

Respondent

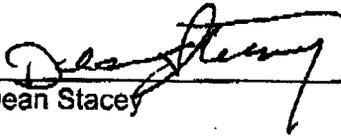
AFFIDAVIT OF DEAN STEACY

I, Dean Steacy, working in the City of Ottawa, Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. I am employed as investigator with the Canadian Human Rights Commission (the "Commission"), and as such, have knowledge of the facts to which I hereinafter depose.
2. I have reviewed the Respondent's Motion to dismiss of January 2, 2007 and will respond to the comments regarding the 200 to 300 files that were mentioned on the conference call of September 8, 2007.
3. In response to the Motion of the Respondent dated January 2, 2007 where it is asserted that there are 200 to 300 letters, this is a misunderstanding. I was responding to Mr. Vigna's question when he asked how many Commission files I would have to review and I replied that I would have to review 200 to 300 files. I had not meant this to be interpreted that we had sent 200 to 300 letters to ISPs.
4. I have reviewed all the Commission files that I am aware of relating to section 13 hate on the Internet. I am confident that I have provided a complete disclosure of the correspondence that has been sent to ISPs and that remains in the Commission's possession. In this regard, there are letters which have been destroyed due to the passage of time, in accordance with the Treasury Board retention policy.

5. From 2001 to the present, the Commission has accepted approximately 55 section 13 complaints in respect to hate on the Internet. Of these, approximately 25 have been referred to the Tribunal and/or Conciliation.

SWORN BEFORE ME at the City of
Ottawa, in the Regional Municipality
of Ottawa-Carleton, this 12th day of
January 2007



Dean Stacey


COMMISSIONER OF OATHS
Kevin E. Conlisk Snider

TRIBUNAL NUMBER: T1073/5405

CANADIAN HUMAN RIGHTS TRIBUNAL

BETWEEN:

RICHARD WARMAN

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

v.

MARC LEMIRE

Respondent

AFFIDAVIT OF HARVEY GOLDBERG

I, Harvey Goldberg of the City of Ottawa, Ontario, MAKE OATH AND SAY AS FOLLOWS:

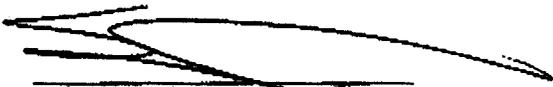
1. I am employed in the position of Team Leader, Strategic Initiatives, at the Canadian Human Rights Commission (the "Commission"), and as such, have knowledge of the facts to which I hereinafter depose.
2. I have reviewed the Respondent's Motion to dismiss of January 2, 2007 and will respond to paragraphs 3 and 15.
3. In response to paragraph 3 relating to files dating back to 1993 the Respondent has misunderstood my statement on page 59 of the transcript. I indicated it was correct that the Commission first began to consider the issue of hate on the Internet around 1993. I also stated that I believed information would be available from that period. This statement was only intended to indicate that I knew of information relating to the overall topic of hate on the Internet. At the time of teleconference I did not know which documents might fit the criteria set out in paragraphs (j), (l) and (m) of the Tribunal Order of August 15, 2006.
4. In response to paragraph 15 on why no documents were produced for the period 1993 to 2003, I can testify that my original search did not indicate that there were any documents relevant to paragraphs (j), (l) and (m) from that period.

5. In complying with the Tribunal Ruling of August 16, 2006 I undertook to search all the relevant records that I have in my possession. This consisted of electronic document files which I have archived on my computer dating back to 1993 and email messages dating back to 2003. My original search of the electronic document files was done using a computer search program. This resulted in the documents released to the Respondent.
6. I have 16,223 emails archived on my computer system. On January 11, 2007 I did a further electronic search to ensure that all relevant e-mails had been identified. I found over 2000 documents that included the phrase "hate on the Internet". I then manually reviewed all these documents. In the course of this review I identified some relevant documents not included in the original disclosure and some documents dating from after my original search.

SWORN BEFORE ME at the City of
Ottawa, in the Regional Municipality
of Ottawa-Carleton, this 12th day of
January 2007


Harvey Goldberg

COMMISSIONER OF OATHS


Karen E. Ceilidh Snider

**CANADIAN
HUMAN RIGHTS
TRIBUNAL**



**TRIBUNAL CANADIEN
DES DROITS
DE LA PERSONNE**

BETWEEN/ENTRE:

	RICHARD WARMAN	
Complainant		plaignant
	and/et	
	CANADIAN HUMAN RIGHTS COMMISSION	
Commission		Commission
	and/et	
	MARC LEMIRE	
Respondent		l'intimé
	and/et	
	ATTORNEY GENERAL OF CANADA; CANADIAN ASSOCIATION FOR FREE EXPRESSION; CANADIAN FREE SPEECH LEAGUE; CANADIAN JEWISH CONGRESS; FRIENDS OF SIMON WIESENTHAL CENTER FOR HOLOCAUST STUDIES; LEAGUE OF HUMAN RIGHTS OF B'NAI BRITH	
Interested Parties		les parties intéressées

BEFORE/DEVANT:

ATHANASIOS D. HADJIS	CHAIRPERSON/ PRÉSIDENT
LINE JOYAL	REGISTRY OFFICER/ L'AGENTE DU GREFFE

FILE NO./N° CAUSE:	T1073/5405
VOLUME:	TELECONFERENCE
LOCATION/ENDROIT:	OTTAWA, ONTARIO
DATE:	2006/09/08
PAGES:	1 - 65

StenoTran

1 repeat that pursuant to our Rules a party is only
2 obliged to disclose documents in their possession, not
3 to fabricate material. So the Commission is obliged,
4 under this aspect of the Ruling, to provide all
5 documents relating to its relations with ISPs.

6 MR. VIGNA: I want some clarity,
7 Mr. Chair, on that issue.

8 THE CHAIRPERSON: Yes.

9 MR. VIGNA: We provided basically a
10 letter that we sent to providers, a sample letter,
11 because we have issues with ending the specific letters
12 to specific files that relate to specific other cases.
13 We sent a sample letter which basically is sent out to
14 ISP providers to tell them about a certain web site.

15 In my view, that is what is being
16 requested in 43(j).

17 Mr. Goldberg can maybe add
18 something on this issue, but there is not much more

1 that document that should be stricken because it is
2 somehow privileged or protected, you can indicate that
3 to the --

4 MR. VIGNA: The contents, Mr. Chair,
5 would be basically the same except that there would be
6 the name. We sent a sample letter and they only deal
7 with -- I don't see the need to send the same letter
8 with the erasures of the name.

9 THE CHAIRPERSON: All right,
10 I understand.

11 Let me work this out with
12 Ms Kulaszka.

13 Ms Kulaszka, you were just
14 interested in finding out the countries where it was
15 sent. Is that what you indicated? Or how many letters
16 were sent?

17 MS KULASZKA: Yes. If they just give
18 me a form letter, that doesn't say anything about the
19 extent of their activities.

20 THE CHAIRPERSON: No, I understand.
21 But let's expand upon it. Let's deal with the issue
22 right here since we are discussing it.

23 MS KULASZKA: I want all the
24 letters they sent out and the responses. How are
25 the ISPs responding? Are they just taking down these

1 web sites immediately?

2 I understand the privacy issues, that
3 is why I would consent to them just blocking out the
4 ISPs they are sending it to and maybe the name of the
5 person they are corresponding with. I think that
6 certainly would satisfy privacy concerns.

7 But we need to see how many letters
8 they are sending out and the kind of responses they
9 are getting.

10 THE CHAIRPERSON: In my view, the way
11 you have structured the definition of the document it
12 accords with what item (j) is in the Ruling.

13 So, Mr. Vigna, do you have documents
14 of that sort? And, if you do, having stricken the
15 private information that's on there, will you be able
16 to disclose it?

17 MR. VIGNA: Mr. Chair, I would like
18 maybe Mr. Goldberg to deal with that, because he is one
19 who deals with that aspect of the Commission work and
20 maybe he can provide us some insight.

21 I understand that what we sent is
22 basically a sample letter that we send and that what
23 could be additionally sent is basically the same letter
24 with names, but we would obliterate the names.

25 Mr. Goldberg, can you give us

1 some insight on if there is anything else than what we
2 sent already?

3 MR. GOLDBERG: Yes. This is
4 Harvey Goldberg.

5 I'm going to let Dean Steacy
6 answer that, because he is directly involved in
7 the investigation.

8 THE CHAIRPERSON: So Dean Steacy is
9 with you at this moment?

10 MR. GOLDBERG: Yes, he is.

11 MR. STEACY: Yes, I am. My name is
12 Dean Steacy, sir.

13 THE CHAIRPERSON: You work for the
14 Commission, Mr. Steacy, right?

15 MR. STEACY: Yes, I do.

16 THE CHAIRPERSON: All right.

17 MR. STEACY: Basically the template
18 letter that was provided is the letter that has been
19 sent to a variety of different ISPs in Canada and the
20 United States when we have had intakes or complaints
21 from individuals or potential complaints from
22 individuals complaining about potential hate messaging
23 on the Internet files.

24 For us to go through all the
25 files and general correspondence and that type of thing

1 to get those individual letters, basically they are
2 going to get that template letter with everything
3 blacked out.

4 As for tracking the responses, I
5 can't tell you specifically. I don't think we could
6 provide how many responses we have gotten. Our
7 tracking system doesn't necessarily keep that and in
8 all cases we haven't necessarily gotten responses
9 from ISPs.

10 THE CHAIRPERSON: Right. But the
11 duty of the Commission under this Ruling is to provide
12 copies of all those documents, even if they are
13 redundant, and to provide all responses since they fall
14 into the definition that has been set out here in (j).

15 Even if it seems repetitive, the
16 respondent is entitled to receive those pursuant to
17 this Ruling.

18 All that could be done to avoid
19 repetition is, I could imagine if there is an
20 understanding between counsel -- and I certainly hope
21 there could be -- is that if Mr. Vigna was to say "I
22 have reviewed all these documents and they all say the
23 same thing and in the interest of not being repetitious
24 I can tell you that they were sent to 25 ISPs
25 throughout North America and they all say exactly the

1 same thing", maybe that is sufficient for Ms Kulaszka.

2 But I think the number of mailings,
3 judging from what I have read from the previous
4 material leading up to this ruling, is an issue for
5 Ms Kulaszka so it becomes arguably relevant.

6 MR. STEACY: Okay.

7 MR. VIGNA: How much time, Dean,
8 Mr. Steacy and Mr. Goldberg, because how many files are
9 involved, approximately, that we will need to go
10 through in order to get that? Approximately.

11 MR. STEACY: It's Dean Steacy
12 speaking again.

13 Approximately --

14 THE CHAIRPERSON: We are only talking
15 about section 13 complaints here. Right?

16 MR. STEACY: Yes. Probably --

17 MR. VIGNA: Section 13 complaints.

18 MR. STEACY: Section 13 complaints, I
19 would think it is 200 or 300.

20 THE CHAIRPERSON: All right. I
21 realize it may take some time.

22 MR. STEACY: Off the top of my head,
23 I can't give you an idea how long that will take.
24 Certainly it will take a couple of months.

25 THE CHAIRPERSON: Well, we will

1 tabulate all the work that needs to be done and
2 determine a date when the disclosure needs to be met
3 with respect to all the items.

4 MS KULASZKA: I'm content with
5 two months.

6 THE CHAIRPERSON: You are content
7 with two months. Okay.

8 Well, let's see what the rest is. I
9 don't want to have any contradictions with any of the
10 other documents, so let's put that aside for a moment.

11 How about items (l) and (m)?

12 Is there anything you wish to say
13 about that, Mr. Vigna?

14 MR. VIGNA: In terms of (l),
15 Mr. Goldberg is working on it.

16 THE CHAIRPERSON: All right. Do you
17 think that --

18 MR. VIGNA: There is a document we
19 sent from the conference in December of last year which
20 I believe the respondent got already.

21 THE CHAIRPERSON: That already was
22 mentioned in the decision I believe. I already
23 discussed that part of it. I think she withdrew that
24 aspect of her request, did she not?

25 MR. VIGNA: Yes. Now, Mr. Goldberg

1 is compiling the information on that issue.

2 Mr. Goldberg, is two months about
3 sufficient to gather all the information for point (1)
4 of the Ruling at paragraph 43?

5 MR. GOLDBERG: Yes, that should be
6 sufficient.

7 THE CHAIRPERSON: And (m) would
8 probably dovetail with (1).

9 MR. GOLDBERG: Yes.

10 THE CHAIRPERSON: Yes.

11 So we will say two months. Two
12 months puts us at what date again?

13 Today is September 8th.

14 --- Off record discussion

15 THE CHAIRPERSON: How about
16 November 14th, after Remembrance Day, because it falls
17 on a weekend.

18 MR. VIGNA: I think it's fine.

19 Is that fine, Mr. Goldberg,

20 Mr. Steacy?

21 THE CHAIRPERSON: It's more than two
22 months actually.

23 MR. GOLDBERG: No, that's fine.

24 MR. STEACY: That's fine.

25 MS KULASZKA: That's fine.

1 THE CHAIRPERSON: I don't know.
2 I haven't quite answered your
3 question, but I don't think 2001 is far enough.

4 MR. WARMAN: Mr. Chairman, I think
5 Mr. Vigna's point -- I'm sorry, it's Richard Warman.

6 I think Mr. Vigna's point is more
7 to the question that there was a constitutional
8 challenge that has already failed once. on the Zundel
9 case. and that really what this new constitutional
10 challenge is based on is the changes to the legislation
11 that were enacted to the Anti-Terrorism Act and that
12 therefore that is the basis for -- and I don't want to
13 put words in Mr. Vigna's mouth, but I would presume
14 that that is --

15 THE CHAIRPERSON: Well, the change
16 that is at issue here, that is being raised, I believe
17 is related more to section 54, is it not, if I
18 understand Ms Kulaszka's original motion.

19 MS KULASZKA: Yes, I agreed with
20 Mr. Vigna that 1993 would be a good date to start.

21 The Commission took the position that
22 it had jurisdiction over the Internet and acted as if
23 it did from early on, '93, '94.

24 THE CHAIRPERSON: Was there an
25 Internet in '93, '94?

1 MS KULASZKA: Yes. They got into it,
2 yes, believe it or not back then.

3 And they made public statements,
4 speeches, they were going to take complaints, and as
5 far as they were concerned they had jurisdiction. They
6 started doing research and taking complaints. So their
7 activity was going back easily to 1993.

8 THE CHAIRPERSON: Mr. Vigna, does it
9 pose such a great problem to bring out that material
10 from 93? Honestly. I mean, I'm giving you two months.

11 MR. VIGNA: I have no idea what
12 is involved.

13 Mr. Goldberg, do you know if there is
14 a lot of stuff from beyond 2001?

15 THE CHAIRPERSON: I mean, if there
16 wasn't much happening anyway there won't be much
17 material either.

18 MR. GOLDBERG: It is Harvey Goldberg.
19 I'm sorry, I'm not exactly clear on
20 what information is being asked for.

21 MR. VIGNA: In paragraph 43 of the
22 Ruling there, (j), (l) and (m), particularly (l) and
23 (m), they are requesting all:

24 "... meetings, networking and
25 consultation ..."

1 "... educative or publicity
2 activities of the Commission
3 with respect to hate."

4 Ms Kulaszka is asking from '93. I
5 put forward the position that it should be from 2001.

6 But between '93 and 2001, do we have
7 all that much information?

8 MR. GOLDBERG: There is some
9 information. It is true that the Commission started
10 considering this issue around that period, but most of
11 that information would be archived somewhere now and it
12 would be a very long process to get it all retrieved.

13 THE CHAIRPERSON: Let me put
14 something forward here.

15 Would it become easier to find from
16 1998 onwards?

17 MR. GOLDBERG: Absolutely.

18 THE CHAIRPERSON: Ms Kulaszka, the
19 reason I look at '98 is, that is the year that the
20 legislation was amended to include section 54, which I
21 gather is key to your constitutional motion here. The
22 legislation, as it existed prior to that amendment, was
23 what was addressed in the Taylor decision.

24 MS KULASZKA: Certainly I would
25 figure 1994. You are still getting key documents in.

1 That's when they are really starting to apply to the
2 Internet and to look at these issues.

3 MR. VIGNA: Mr. Chair, Giacomo
4 Vigna here.

5 The thing is, before the 2001
6 amendment the challenge was on a different basis than
7 what it is today. It is based on the new legislation
8 that the constitutional challenge is based.

9 THE CHAIRPERSON: Yes, but that is in
10 section 54. They are not making -- the challenges
11 being made by Ms Kulaszka is because of the penalty
12 provision.

13 That's what I understand is
14 underlying a large part of her constitutional
15 challenge.

16 Am I mistaken here, Ms Kulaszka?

17 MS KULASZKA: And also its
18 application to the Internet.

19 THE CHAIRPERSON: Right.

20 MR. KURZ: Well, application to the
21 Internet is something that has already been determined.

22 THE CHAIRPERSON: Who is this
23 speaking?

24 MR. KURZ: I'm sorry, it's
25 Marvin Kurz.

1 Application to the Internet is an
2 issue that has been determined in Zundel and there is
3 even Federal Court decision on judicial review.

4 THE CHAIRPERSON: I don't think it is
5 being challenged that the Act applies, that the Act
6 states that it applies to the Internet.

7 I think it is the global -- anyway,
8 I'm not going to rehash the entire constitutional
9 motion that Ms Kulaszka made.

10 Mr. Vigna, if the stuff is available
11 I think it is arguably relevant. The only reason we
12 are grabbing at dates, I'm not quite sure why we should
13 limit it to 2001 or '98, or any other date.

14 MR. VIGNA: It's available in the
15 sense that it might exist somewhere, but it is
16 archived. If the request has to be made, it is going
17 to take a very long process even to go dig it.

18 MS KULASZKA: Mr. Vigna, I'm
19 willing to give you until Christmas. That is quite
20 a long time.

21 THE CHAIRPERSON: It seems to me it
22 is a quite reasonable time.

23 What I would ask here -- I want to
24 be reasonable about this. The Commission can work
25 backwards, start with the 2000s and go backwards.

1 And if you run into some kind of an obstacle or a
2 problem, advise the Tribunal and we can address it
3 at that point. And we will see if perhaps once you
4 have hit '95 or '97 and there doesn't seem to be
5 anything else, just tell us and then from that point on
6 we can address it.

7 MR. VIGNA: Okay.

8 THE CHAIRPERSON: But honestly, I
9 don't see -- Internet is Internet, simply put.

10 It was quite clear in the decisions
11 following the '98 amendments that with cases that have
12 involved complaints filed before, it has been made
13 quite clear that be it before or after the amendments
14 of -- I said '98, I mean 2001, I'm sorry -- before and
15 after 2001, the Tribunal has held repeatedly, as
16 endorsed by the Federal Court, that the provisions
17 applied to those types of communications. Section 13
18 that is.

19 So I would ask that the Commission --
20 Order the Commission to go as far back as it needs to
21 go, which I gather is no further back than '93.

22 MR. VIGNA: All right. And if there
23 are any problems we will raise it at the next
24 conference call or letter.

25 THE CHAIRPERSON: That's right.

1 Try your best and we will be
2 reasonable about this. If there is some reason that it
3 is unavailable you explain it and, you know, we will
4 address it at that point.

5 MR. VIGNA: Fine.

6 THE CHAIRPERSON: Okay.

7 Anybody else? That was Mr. Vigna.

8 Is there anything else from you,
9 Mr. Vigna?

10 Nothing else from you Mr. Vigna?

11 MR. VIGNA: No.

12 THE CHAIRPERSON: No, okay.

13 Mr. Warman, I think we have
14 already spoken.

15 Is there anyone else who would like
16 to say anything?

17 Mr. Fothergill?

18 MR. FOTHERGILL: No, thank you.

19 THE CHAIRPERSON: All right.

20 We never got Mr. Christie on the
21 line. Right? No one heard him enter the phone call?
22 Okay. Well, he was aware of this.
23 We actually changed the time to accommodate
24 Mr. Christie here, but he didn't join in, so whatever.
25 So if there is nothing else, then,