

**RICHARD WARMAN**

**Complainant**

**- and -**

**CANADIAN HUMAN RIGHTS COMMISSION**

**Commission**

**- and -**

**MARC LEMIRE**

**Respondent**

**- and -**

**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 FOR HUMAN RIGHTS OF B'NAI BRITH**

**Interested Parties**

**RULING**

MEMBER: Athanasios D. Hadjis 2008 CHRT 30  
2008/06/26

[1] This ruling relates to the matter of the redacted documents referred to in my earlier ruling, *Warman v. Lemire*, 2008 CHRT 16. I have since viewed the redacted and unredacted versions of the documents and I have provided the parties with a general description of the redacted portions.

[2] The Commission was invited to address the disclosure issues raised by the Tribunal in its ruling, by May 29, 2008, and the other parties by June 2, 2008. Only the Commission and the Respondent filed submissions.

[3] The Commission submits that it is only required to disclose arguably relevant material, adding that personal information about individuals is not arguably relevant and that, in fact, disclosure thereof may be prohibited by the *Privacy Act*, R.S., 1985, c. P-21. The Respondent contends that there is no personal information to be found in the documents, particularly with regard to the names and addresses of police officials doing police work. Police, it is argued, are fully aware and expect that documents generated in their work will be subject to production and review by courts.

[4] I view the entire issue of "privacy" as a proverbial "red herring" in this matter. The first criterion in determining what is subject to disclosure under the Tribunal's Rules of Procedure is relevance to an issue, fact or form of relief sought, as identified by any of the parties, i.e. arguably relevant, in the case. Irrespective of what any party's secondary motivation may be for excluding material from disclosure, if the material is not arguably relevant, it need not be disclosed, and accordingly, the Tribunal will have no authority to direct that such disclosure occurs.

[5] As I already suggested in paragraph 4 of my earlier ruling, the question that must be addressed in determining the arguable relevance of this material is how the names, email addresses, phone numbers, weight and height, etc. of the individuals referred to in these

documents, are arguably relevant to the proportionality test set out in *R. v. Oakes*, [1986] 1 S.C.R. 103, that was the basis for the Tribunal's disclosure order in the first place.

[6] The Respondent's submissions are not responsive to this question and are therefore not persuasive in regard to the issue at hand.

[7] The Respondent's request that the Commission disclose the redacted portions is therefore denied.

[8] I would note, in passing, that although the Respondent filed a written waiver from Alexan Kulbashian allowing the Commission to disclose unredacted copies of all documents which contain his private information, the fact remains that this information has not been shown to be arguably relevant to the issues of this case. Consequently, the Tribunal will not be directing that this disclosure take place.

"Signed by"

Athanasios D. Hadjis

OTTAWA, Ontario

June 26, 2008

#### PARTIES OF RECORD

TRIBUNAL FILE:	T1073/5405
STYLE OF CAUSE:	Richard Warman v. Marc Lemire
RULING OF THE TRIBUNAL DATED:	June 26, 2008
APPEARANCES:	
Richard Warman	For himself
Margot Blight	For the Canadian Human Rights Commission
Barbara Kulaszka	For the Respondent
Simon Fothergill	For the Attorney General of Canada
Paul Fromm	For the Canadian Association for Free Expression
Douglas Christie	For the Canadian Free Speech League
Joel Richler	For the Canadian Jewish Congress
Steven Skurka	For the Friends of Simon Wiesenthal Center for Holocaust Studies
Marvin Kurz	For the League for Human Rights of B'Nai Brith

