

Canadian Human
Rights Tribunal



Tribunal canadien
des droits de la personne

Between:

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

Date: May 16, 2008

Citation: 2008 CHRT 16

[1] A number of parties filed letters with the Tribunal over the last two weeks regarding the redacted portions of certain documents that the Commission had disclosed. In order to gain a better understanding of the matters at issue, on May 12, 2008, the Tribunal asked the Respondent to provide me with a digital copy of the documents in question, in redacted form. Ms. Kulaszka kindly so obliged on May 13, 2008.

[2] I have now had the opportunity to view the said documents. They were apparently parcelled into eight groupings, and consist of the following:

- 1) - Two briefs prepared by the London Ontario Police Service for the Crown Prosecutor's office dated respectively September 28, 2001, and February 1, 2002. They relate to an investigation of James Scott Richardson, who was a respondent in the Tribunal case of *Warman v. Kulbashian et al*, 2006 CHRT 11, in respect of which the decision was rendered on March 10, 2006. Most of the redacted information appears to consist of the names and contact information of police investigators, witnesses and other individuals.
- 2) - Emails sent on an MSN Hotmail account. They all appear to relate to the Canadian Ethnic Cleansing Team (CECT) which was another respondent in the above mentioned case of *Warman v. Kulbashian et al*. The redactions appear to consist of names and contact information.
 - An email from Dean Steacy regarding the same case, addressed to a "Det." [detective, I presume], whose name has been redacted.
- 3) - Copy of a search warrant that again relates to the CECT. The name of the Applicant and the address where the warrant is to be executed are redacted.
 - A memo to file by Dean Steacy regarding his conversation with a constable about Alexan Kulbashian and the CECT. The name and email address of the constable were redacted.
 - A London Police Service "mugshot" of Mr. Richardson. The image of his face as well as his date of birth, his height and weight are redacted.
- 4) - An excerpt from what appears to be the Commission's Investigation Report regarding the above mentioned case of *Warman v. Kulbashian et al*. The name(s) of one or more police officers involved in the case have been redacted.

- 5) - An email to Mr. Steacy from someone at the London Police Service, whose name has been redacted, regarding the above mentioned complaint against Mr. Kulbashian et al.
- Two briefs by the London Police Service to the Crown Prosecutor's office regarding Mr. Richardson dated respectively February 1, 2002, and February 14, 2002. The names of and aliases used by the police investigators have been redacted. The names and contact information of persons interviewed for the investigation also appear to be redacted.
 - An unredacted version and a redacted version of a single "Charge Sheet" regarding the criminal charges that were filed against Mr. Richardson.
- 6) - An email between Harvey Goldberg and someone at B'Nai Brith, whose name and contact information have been redacted.
- Correspondence between the former CHRC Chief Commissioner Maxwell Yalden's office and the Toronto Mayor's Committee on Community and Race Relations. The name of the person with whom the Chief Commissioner is corresponding has been redacted as well as the name of someone from the Simon Wiesenthal Center who is referenced therein.
 - Correspondence by Mr. Steacy with a "Corporal" at the "BC Hate Crime Unit", whose name and contact information have been redacted.
 - Memos to file by Mr. Steacy regarding conversations he had with a "Constable" and a "Corporal" at the BC Hate Crime Unit, whose names and contact information have been redacted. The memos are regarding BCWhitePride, which was a respondent in a human rights complaint that was referred to the Tribunal (*C.R.A.R.R. v. www.bcwhitepride.com*, Tribunal file no. T1120/0206).
 - A memo to file by Mr. Steacy regarding communications he had with the "National Security Office" of an organization whose name has been redacted. The names and contact information of the individuals contacted have also been redacted.
 - Email correspondence and related memo to file between Mr. Steacy and a police officer in London, Ontario, whose name and contact information have been redacted. The topic of the correspondence is the "Complaint about the CECT".

- Memo to file by Mr. Steacy regarding conversations with someone at the Edmonton Police Hate Crimes Division, whose name and contact information have been redacted. The memorandum relates to Peter Kouba, who was the respondent in a human rights complaint that was referred to the Tribunal (*Warman v. Kouba*, Tribunal file no. T1070/5205). Mr. Kouba's contact information was also redacted.

 - Memo to file by Mr. Steacy regarding conversations he had with a "Corporal" of the Montreal Police Anti-gang Unit, and an investigator at the RCMP's National Security Office. The names and contact information of the police officers have been redacted. The conversations relate to a human rights complaint. The name of the respondent was not redacted.

 - Email between Mr. Steacy and someone with an e-mail address ending as "police.london.ca". The name of the corresponding party has been redacted as was Mr. Steacy's contact information.

 - Memo to file by Mr. Steacy regarding a conversation he had with a "Witness" whose name has been redacted, regarding a human rights complaint. The names of the complainant and the respondent were not redacted.

 - Memo to file by Mr. Steacy regarding a conversation he had with a "Constable", whose name had been redacted, regarding the above mentioned complaint against the CECT.

 - Memo to file from someone at the Commission, whose name has been redacted, to a "Corporal" at the RCMP Vancouver Detachment, Hate Crime Unit, whose name is also redacted. The conversation relates to the complaint filed against www.bcwhitepride.com.

 - Memo to file by Mr. Steacy regarding a "Detective" whose name and contact information have been redacted. The memorandum relates to a complaint filed by a complainant, whose name and contact information have been redacted, against a respondent, whose name was not redacted. An address of a person referred to in the memo has also been redacted.
- 7) - A series of email exchanges between Mr. Goldberg and someone who appears to work for the Winnipeg Police Service. The person's name and contact information have been redacted, as well as what appear to be numerous lines of text. It is difficult for me to surmise what these redactions are from the remaining material.

- An email received by Mr. Steacy, Mr. Goldberg, and others (whose names have been redacted) from someone whose name has also been redacted. Numerous lines (possibly containing contact information) at the bottom of the email have also been redacted.

8) In my viewing of the documents in grouping eight, I did not see any redactions.

[3] Thus, it appears to me that most of the redactions relate to the names of individuals and their contact information. I am hereby instructing the Commission to provide me by May 20, 2008, the unredacted copies of the documents to verify these determinations.

[4] Rule 6(d) of the Tribunal's *Rules of Procedure* requires parties to disclose documents that "relate to a fact, issue, or form of relief sought in the case, including those facts, issues and forms of relief identified by other parties under this rule", i.e. that are arguably relevant. The obvious question that emerges, therefore, is the following: how are the names, email addresses, phone numbers, weight and height, etc. of the individuals referred to in these documents, 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 (see *Warman v. Lemire*, 2006 CHRT 32 at paras. 32 and following)?

[5] After I review the unredacted version of the documents, I will advise the parties whether the nature of the redacted information differs from my earlier descriptions and in what way. Those parties who seek the disclosure of the redacted portions will then be invited to provide me with their submissions as to the arguable relevance of the information. If I am satisfied that any of the redacted material is arguably relevant, the Commission will be required to make its submissions regarding any privilege that it may be claiming prevents the materials' disclosure (Rule 6(e)).

[6] On another matter, CAFE had filed letters dated May 6 and May 8, 2008, in which the following requests were made:

- One of the requests related to the redacted disclosure of the above mentioned documents. It was my intention to deal with this request by

first reviewing the redacted documents at issue, which I have now done with this ruling.

- Another request related to the hearing schedule, which I addressed in the May 12, 2008 ruling but which now forms the object of a new motion by the Respondent, on which submissions are being awaited from the other parties.
- CAFE also sought to obtain an order that the Commission disclose complete versions of documents that were originally provided by the Commission in January 2007, some portions of which had been redacted based on a privilege claim pursuant to s. 37 of the *Canada Evidence Act*. As I have already stated in my earlier ruling in this case, *Warman v. Lemire*, 2007 CHRT 21 at para. 7, in hearings before the Canadian Human Rights Tribunal, objections to disclosure pursuant to s. 37 may only be determined by application to the Federal Court. CAFE contends that the Commission has “withdrawn” its s. 37 objections. However, I note that no such “withdrawal” is identified in the Federal Court’s ruling of January 15, 2008, Docket no. T-860-07, with the exception of the Commission’s objection to the issuance of a subpoena regarding Bell Canada. In any event, the matter before the Federal Court did not relate to the documentary disclosure that had occurred one year earlier, in January 2007. I am therefore not ordering the “complete” disclosure of documents in which s. 37 was claimed by the Commission.
- Finally, CAFE also requested that all documents related to a number of listed email user accounts be disclosed by the Commission, stating that they are “highly relevant to the issues raised by Mr. Lemire in his constitutional motion”. No further explanation is provided to explain what this relevance may be. In these circumstances, I am not ordering their disclosure.

Signed by

Athanasios D. Hadjis
Tribunal Member

Ottawa, Ontario
May 16, 2008

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T1073/5405

Style of Cause: Richard Warman v. Marc Lemire

Ruling of the Tribunal Dated: May 16, 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