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**Court File No.:**

**FEDERAL COURT**

**B E T W E E N :**

**B'NAI BRITH CANADA**

**Applicant**

**- and -**

**LIBRARIAN AND ARCHIVIST OF CANADA**

**Respondent**

**APPLICATION UNDER SECTION 41(1) OF THE *ACCESS TO INFORMATION ACT***

**NOTICE OF APPLICATION**

**TO THE RESPONDENT:**

**A PROCEEDING HAS BEEN COMMENCED AGAINST YOU** by the Applicant. The relief claimed by the Applicant appears below.

**THIS APPLICATION** will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the Applicant. The Applicant requests that this application be heard at Toronto, Ontario.

**IF YOU WISH TO OPPOSE THIS APPLICATION**, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the [Federal Courts Rules](#) and serve it on the Applicant's solicitor or, if the applicant is self-represented, on the applicant, **WITHIN 10 DAYS** after being served with this notice of application.

Copies of the [Federal Courts Rules](#), information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

**IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.**

**January 21, 2025**

**Issued by:** \_\_\_\_\_

**Address of local office:** 200-180 Queen Street W.  
Toronto, ON M5V 3L6

**TO: LIBRARIAN AND ARCHIVIST OF CANADA**

Library and Archives Canada  
550 de la Cite Boulevard  
Gatineau, QC J8T 0A7

**AND TO: THE ATTORNEY GENERAL OF CANADA**

**DEPARTMENT OF JUSTICE**

Ontario Regional Office  
400-120 Adelaide Street West  
Toronto, ON M5H 1T1

**AND TO: INFORMATION COMMISSIONER**

Office of the Information Commissioner  
30 Victoria Street  
Gatineau, QC K1A 1H3

## **APPLICATION**

This is an application for judicial review of the decision by Library and Archives Canada ("LAC") to withhold portions of the September 1986 report by Alti Rodal, titled: "Nazi War Criminals in Canada: The Historical and Policy Setting from the 1940s to the Present – Prepared for the Commission of Inquiry on War Criminals" (the "Rodal Report"), requested by the Applicant in its access to information request to LAC bearing LAC file number A-2022-10879 ("Rodal ATIP").

### **The Applicant makes an application for:**

- (a) An Order quashing the decision of the LAC to withhold any portion of the Rodal Report;
- (b) An Order declaring that the Respondent acted unreasonably and unlawfully in withholding information in the Rodal Report from the Applicant;
- (c) An Order directing the Respondent to provide an unredacted copy of the Rodal Report to the Applicant in satisfaction of the Rodal ATIP; and
- (d) Such further and other relief as this Honourable Court deems just.

### **The grounds for the application are:**

1. The Rodal Report was prepared in September 1986 for the Commission of Inquiry on War Criminals (the "War Crimes Commission" or the "Commission").
2. The War Crimes Commission was established by Order in Council No. 1985-348, on February 7, 1985, to consider whether Nazi war criminals had been allowed to enter Canada after World War II, how they obtained entry, and whether they were still residing in Canada. The Commission was also directed to provide advice and recommendations on whether Canada should take further action to prosecute or deport Nazi war criminals who might be living in Canada.
3. A copy of the Rodal Report was eventually made publicly available but with extensive redactions of important information.

4. The Rodal Report provides a key window into the history of the immigration of Nazi war criminals to Canada and Canada's response thereto, which history still needs to be fully told.
5. The Applicant, B'nai Brith Canada ("B'nai Brith"), participated in the inquiry conducted by the War Crimes Commission.
6. On March 6, 2023, B'nai Brith submitted the Rodal ATIP pursuant to the *Access to Information Act* ("AIA"), R.S.C. 1985, c. A-1, seeking a fully unredacted copy of the Rodal Report.
7. On June 5, 2023, LAC released a version of the Rodal Report with significant information still withheld by LAC by way of redactions.
8. On August 2, 2023 B'nai Brith submitted a complaint to the Office of the Information Commissioner ("OIC"), in accordance with section 31 of the AIA regarding the redactions in LAC's June 5, 2023 release version of the Rodal Report.
9. On February 1, 2024, while the OIC's investigation of B'nai Brith's complaint was still ongoing, LAC released yet another version of the Rodal Report. This new version still withheld vital information on the asserted basis of the exemptions in sections 15(1) and 13(1) of the AIA.
10. On November 28, 2024, the OIC issued a "final report" on B'nai Brith's complaint, which did not direct LAC to adjust any of the remaining redactions in LAC's February 1, 2024 release version.
11. LAC's decision to withhold information in the Rodal Report from disclosure to the Applicant on the basis of ss. 13 and 15 of the AIA was incorrect, unreasonable, and/or otherwise unlawful, breached the duty of fairness and principles of natural justice, and breached duties established by the AIA.
12. The Applicant relies on sections 2, 4, 6.1, 13, 15, 31, 41, 44.1, 48, 49, and 50 of the *Access to Information Act* ("AIA"), R.S.C. 1985, c. A-1;

**This application will be supported by the following material:**

13. This application will be supported by the following material:
- (a) The Applicant's Rodal ATIP request;
  - (b) A copy of the War Crimes Commission's final report Part I;
  - (c) Copies of the Rodal Report as released by LAC;
  - (d) Affidavit evidence provided by the Applicant, to be sworn; and
  - (e) Such further and other evidence as the Applicant may submit and this Honourable Court may permit.

**Rule 317 Request for Material in the Possession of the Respondent**

14. The Applicant requests the Respondent to provide the following material:
- (a) A complete copy of the Respondent's file with respect to the Rodal ATIP (A-2022-10879);
  - (b) All materials and communications with any foreign state that the Respondent communicated with in relation to the Rodal ATIP;
  - (c) All materials and communications with any Department of the Government of Canada or any Member of Parliament which LAC received and/or considered as part of its deliberations with respect to the Rodal ATIP;
  - (d) All materials and communications with any stakeholder with whom the Respondent consulted or received materials or submissions from in relation to the Rodal ATIP; and

- (e) All materials provided to and communications with the Office of the Information Commissioner in the Applicant's complaint bearing OIC file number 5823-01722.

**January 21, 2025**

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**Lawyers for the Applicant**