

CANADIAN HUMAN RIGHTS TRIBUNAL TRIBUNAL CANADIEN DES DROITS
DE LA PERSONNE

RICHARD WARMAN

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

TERRY TREMAINE

Respondent

REASONS FOR DECISION

MEMBER: Michel Doucet 2007 CHRT 2
2007/02/02

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I. INTRODUCTION

[1] On October 13, 2004, Richard Warman (the "Complainant") filed a complaint under section 13 of the *Canadian Human Rights Act* (the "Act") with the Canadian Human Rights Commission (the "Commission") against Terry Tremaine (the "Respondent"). The Complainant alleges that the Respondent has engaged in a discriminatory practice on the ground of religion, national or ethnic origin, race and colour, in a matter related to the usage of a telecommunication undertaking.

[2] The Commission fully participated at the hearing into the complaint and was represented by legal counsel. The Respondent also participated at the hearing.

II. PRELIMINARY ISSUES

A. Motion of the Commission to have the Respondent's representative excluded

[3] On the first day of the hearing, the Commission filed a motion requesting an order prohibiting Mr. Paul Fromm from appearing before the Tribunal as an agent for a period of at least three years, or in the alternative, an order prohibiting Mr. Fromm from appearing in this proceeding as an agent for the Respondent.

[4] The Commission argued that the Order should be granted because of comments Mr. Fromm made about the Canadian Human Rights Tribunal (the "Tribunal"), and the Canadian judicial system. According to the Commission, these comments are contemptuous. It further argued that the presence of Mr. Fromm before the Tribunal would compromise the integrity, fairness and efficiency of the hearing. The Commission added that Mr. Fromm's participation would hinder rather than facilitate the process.

(i) Background for the motion

[5] At a case management conference, held on March 10, 2006, the Respondent informed the Tribunal that he would be representing himself during the proceedings. Then, on May 16, 2006, in his written particulars, he requested permission to have Paul Fromm appear as his representative. He further requested that they both be allowed to cross-examine the Complainant and the witnesses of the Commission and of the Complainant.

[6] The Commission opposed this request on various grounds. It referred to the fact that the Complainant and the Respondent are currently involved in a civil litigation. It also made reference to various postings on the internet by Mr. Fromm in which he strongly criticized the Tribunal, its members, members of the judiciary and the Commission.

[7] According to the Commission's evidence, which was not challenged, Mr. Fromm has made contemptuous comments directed at the Canadian judicial system, the Canadian Human Rights Tribunal, members of the Tribunal and towards the Commission. He has described the Tribunal as "a Soviet style kangaroo court" and its decisions as "Stalinist lunacy". He has also stated that the Tribunal's decisions in hate speech cases are leading Canada to become a "Third World banana republic".

[8] Mr. Fromm has appeared in other cases before the Tribunal as representative of other Respondents.

(ii) The issues on this preliminary motion

[9] The issues on this preliminary motion are as follows:

Does the Tribunal have jurisdiction to prohibit a person from appearing before it as an agent for a party?

Should the Tribunal exercise its discretion to prohibit Mr. Fromm from appearing before it?

Should the Tribunal exercise its discretion to issue a general order of prohibition against the participation of Mr. Fromm as agent in all Tribunal hearings for three years?

(iii) Analysis

a) Does the Tribunal have jurisdiction to prohibit a person from appearing before it as an agent for a party?

[10] To support its position, the Commission referred to two decisions, one from the Court of Appeal of New Brunswick, in *Thomas v Assn. of New Brunswick Registered Nursing Assistants* (2003), 230 D.L.R. 337 and the Tribunal's decision in *Filgueira v. Garfield Container Transport Inc.*, [2005] C.H.R.D. No. 31 (QL).

[11] In the *Thomas* decision, the New Brunswick Court of Appeal states, at paragraph 10: As stated at the outset, the general rule is that parties appearing before adjudicative tribunals are entitled to representation from an agent of their choosing. But tribunals retain a residual discretion to override this general right, provided the discretion is properly exercised. It is because tribunals are the "masters" of their own procedure that they retain a right to veto a party's choice of counsel. For this reason, a party to a tribunal proceeding does not have an absolute right to be represented by a person of their choosing, unless the enabling legislation states otherwise.

[12] In *Filgueira*, the Tribunal followed the New Brunswick Court of Appeal's decision and added that in cases where complex legal issues are raised the participation of a lay person as a representative may only confuse matters further.

[13] Subsection 50(1) of the *Act* provides:

<p>50. (1) After due notice to the Commission, the Complainant, the person against whom the complaint was made and, at the discretion of the member or panel conducting the inquiry, any other interested party, the member or panel shall inquire into the complaint and shall give all parties to whom notice has been given a full and ample opportunity, <u>in person or through counsel</u>, to appear at the inquiry, present evidence and make representations. (The emphasis is mine.)</p>	<p>50. (1) Le membre instructeur, après avis conforme à la Commission, aux parties et, à son appréciation, à tout intéressé, instruit la plainte pour laquelle il a été désigné; il donne à ceux-ci la possibilité pleine et entière de comparaître et de présenter, <u>en personne ou par l'intermédiaire d'un avocat</u>, des éléments de preuve ainsi que leurs observations. (Non souligné dans l'originale.)</p>
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[14] Section 48.9 of the *Act*, is also relevant. It provides, *inter alia*, that the proceedings before the Tribunal are to be conducted as informally and expeditiously as the

requirements of natural justice and the rules of procedure allow. Generally speaking, representation by non-lawyers is consistent with this purpose which is to facilitate access to the Tribunal and decrease the need for formalities. This section must however be read in conjunction with section 50 in order to determine who can act for a party in a proceeding before the Tribunal.

[15] Section 50, by recognizing a statutory right to be represented by counsel, eliminates any question whether a party to a proceeding before the Tribunal has the right to retain counsel. What the section does not tell us is whether the right to counsel excludes the right to lay representation. In the French version the word used for counsel is "avocat" which clearly refers to legal counsel. The French word "avocat" reinforces and indeed restricts the ordinary meaning of the English term "counsel". Taking into consideration the French expression, one could conclude that the word "counsel", in the English version, refers to a lawyer.

[16] This conclusion does not mean that a lay-person cannot appear as an agent before the Tribunal. In *Re Men's Clothing Manufacturer's Association et al and Arthurs et al* (1979), 26 O.R. (2d) 20 (H.C.J.) and again in *Thomas v. Association of New Brunswick Registered Nurses Assistants, supra*, the courts have recognized that there is a common law right to be represented by an agent, quite distinct from any statutory right to counsel. The fact that the *Act* expressly allows for legal representation by lawyers does not support the inference that the right to lay representation is not allowed. Section 50 of the *Act* should not be read as restricting or prohibiting any party from attending the hearing with a representative of his or her choice. In the interest of respecting the purpose of section 48.9, parties should be allowed to be represented by a lay-person, even though that person may not be legally trained or qualified. I agree with the comments of Judge Robertson, of the New Brunswick Court of Appeal, in the *Thomas* case when he stated, at paragraph 19 of the decision: "Accordingly, the courts have generally been reluctant to construe statutory directions providing for representation by counsel to exclude persons who are not lawyers".

[17] Just as section 50 of the *Act* does not abrogate a party's right to appear with a non-lawyer, neither does any section of the *Act* abrogate the right of the Tribunal to exercise its discretion to exclude non-jurists. Following the purpose set out in section 48.9, the participation of an agent or representative must be consistent with the proper functioning of the Tribunal and not be an impediment. It is also important to reiterate that an agent appears only with the permission of the Tribunal.

[18] This is the approach which was taken by the Tribunal in *Beaudet -Fortin v. Canada Post Corporation*, 2004 CHRT 23. In that case the Tribunal allowed the Complainant to be represented by an individual who was not a lawyer. The Tribunal stated that it was reluctant to deny less financially fortunate Complainants the opportunity to be represented by a non-jurist who would generally be more affordable. The Tribunal felt that no prejudice would be caused to the Respondent by allowing a non-jurist to represent the Complainant and that this would not be a hindrance to the proper administration of justice.

[19] In *Fry v. Department of National Revenue*, interim ruling, Transcript, pp. 23-25, March 9, 1993, the Tribunal allowed a disbarred lawyer to represent a Complainant. The Tribunal ruled that it would limit the individual to presenting evidence that the Canadian

Human Rights Commission would not be presenting and to cross-examining witnesses. The individual was not permitted to make representations of fact or law.

[20] Again in *Filgueira v. Garfield Container Transport Inc*, [2005] C.H.R.D. No. 31, the Tribunal accepted that the Complainant be represented by an agent. The Tribunal added that the Complainant had an obligation to satisfy the Tribunal, if the Tribunal deemed it necessary, that the agent was in a position to facilitate the process.

[21] There are also other examples where the Tribunal allowed non-jurists to represent parties. In the recent case of *Warman v. Harrison* 2006 CHRT 30, Mr. Harrison, the Respondent in that case, was allowed to be represented by his common law wife, who was not a lawyer.

[22] In summary, a person appearing before the Tribunal possesses the right to be represented by an agent of their choosing. But this right is not absolute. The Tribunal retains a residual discretion to limit participation to those persons the Tribunal believes will facilitate, rather than hinder, the adjudicative process. In exercising that discretion the Tribunal is required to justify its decision. The Tribunal should exclude non-lawyers when it is convinced that their participation is likely to hamper, rather than facilitate, the hearing process. (*Thomas v. Association of New Brunswick Registered Nurses Assistants, supra*, at para. 25).

[23] The answer to the first question is therefore yes, the Tribunal has jurisdiction to allow or to prohibit a person to act as an agent for a party.

b) Should the Tribunal exercise its discretion and prohibit Mr. Fromm from appearing before it?

[24] The Commission suggested three reasons why the Tribunal should exercise its discretion and prohibit Mr. Fromm from appearing before it. First, it suggested that he had clearly demonstrated a blatant disrespect for the law. Secondly, that his participation would hinder, rather than facilitate the adjudication. Finally, it referred to the acrimonious relationship between Mr. Fromm and the Complainant which creates a conflict of interest that would hinder the Tribunal's process.

[25] I will deal first with the second and third reasons given by the Commission. Regarding the third reason, although I agree that the relationship between Mr. Fromm and the Complainant is acrimonious, I fail to see how this could be a justification to exclude Mr. Fromm from appearing as agent for the Respondent. The Tribunal is well capable of dealing with any issues that may arise from the hostile relationship that the parties and their agent might have towards each other. The Tribunal also notes that neither the Commission, nor the Complainant explained exactly what "conflict of interest" would be created and for whom.

[26] Regarding the second issue, whether the participation of Mr. Fromm would hinder, rather than facilitate the hearing, no evidence was presented to support this allegation. The Tribunal cannot make a decision on insinuations or allegations which are not supported by facts.

[27] Finally, the last reason given by the Commission to support its request for the exclusion of Mr. Fromm is more compelling although it will not be enough to convince the Tribunal to grant the order sought. There is no question, from a review of the evidence presented, that in many of his writings, Mr. Fromm has shown a blatant disrespect for the Tribunal and its members. He has also on many occasions manifested disrespectful views towards the Canadian judiciary. The Tribunal is of the opinion that

these matters would be better dealt with in another forum and as long as Mr. Fromm accepts the procedure and authority of the Tribunal and acts in a respectful manner towards it, there is no reason to exclude him from acting as a representative in these proceedings.

[28] The Commission's motion that the Tribunal exercise its discretion to prohibit Mr. Fromm from appearing before it in these proceedings is denied.

[29] Because of this decision there is no need to deal with the third issue in which the Commission is seeking an order preventing Mr. Fromm from appearing before it as a representative for a period of three years. The Tribunal wishes to make one comment on the procedure used by the Commission to bring this motion forward. The Commission failed to notify Mr. Fromm personally of its intention, although the order sought would directly affect him. This omission alone would have been sufficient to reject the motion or to adjourn the hearing with leave to regularize service.

B. The post-referral evidence

[30] During the proceedings, the Respondent took objection to the fact that the evidence submitted at the hearing referred to postings which were not included specifically in the complaint. The same issue was raised in *Warman v. Winnicki*, 2006 CHRT 20. In that decision, the Respondent had not raised any objections to the introduction of post-referral evidence by the Commission during the hearing, but had argued in its final submissions that the Tribunal could not consider this evidence since it essentially constituted the basis for a new complaint.

[31] In *Winnicki*, the Tribunal rejected this argument. Firstly, the Tribunal referred to the fact that a motion to amend the s. 13(1) complaint had been granted on the basis of the post-referral evidence. In deciding that an amendment to the original complaint was appropriate, the issue whether the new allegations constituted the basis for a new complaint was conclusively determined, therefore it could not be argued that the post-referral evidence relating to those allegations could only be presented in support of a new complaint. In the present case, neither the Commission, nor the Complainant filed a motion to have the complaint amended.

[32] Although no motion was filed or granted, the Tribunal is of the view that the post-referral evidence in this case could be considered. The evidence goes directly to the issue before the Tribunal of whether the Respondent was engaging in an ongoing violation of section 13(1) of the *Act*. Even if the complaint form does not specifically include the words "and ongoing", as was the case in *Winnicki* and in *LeBlanc v. Canada Post Corporation* (1992), 18 CHRR D/57, it did contemplate the possibility that additional evidence would be submitted. In his complaint, the Complainant mentions that the two postings which were listed constituted "samples" of the evidence which would accompany the complaint. In the *Leblanc* ruling, the Tribunal properly set out that in such a situation, the essential question is whether it would be fair to admit the evidence. If there is no evidence of surprise and the Respondent is aware that this evidence relates to matters such as the one submitted in the complaint, then it would be difficult to argue that the admission of this post-referral evidence will cause him prejudice.

[33] In the present case, there is no evidence that the Respondent was caught by surprise by the introduction of the evidence. The evidence was disclosed to the Respondent prior to the hearing and he admitted that he was the author of these postings. These postings are sufficiently similar to the allegations in the complaint, such that it does not effectively

constitute a new or separate complaint. The Tribunal therefore rules that the post-referral evidence was properly admitted.

III. THE FACTS RELATING TO THE COMPLAINT

[34] For many years, the Complainant has been monitoring activities of what he describes as "White Supremacist" and "neo-Nazi groups", both in Canada and internationally. By "white supremacist", he refers to people or groups who assume that there is some inferiority within the races that are traditionally referred to as non-white or non-Aryan. When he uses the term "neo-Nazi", he refers to groups or individuals who share similar beliefs as those of the National-Socialist Regime of Germany during the World War II era.

[35] From 2002 to 2004, the Complainant was employed by the Commission as a Human Rights Officer. His duties would involve the investigation of human rights complaints. He specified that his duties at the Commission were "explicitly" separate from the investigation he was then conducting on "internet hate files." During his cross-examination he admitted that given that he had been employed by the Commission during the relevant time of this complaint, he would probably have been monitoring the activities of the Respondent during this period but he added that it was on his own time.

[36] The Complainant explained that for a number of years he has been monitoring the Canadian postings on a U.S. website called "stormfront.org", which he qualified as "white supremacist". This website provides "forums" where people can communicate and exchange ideas about issues relating to white supremacy and neo-Nazi ideology. This website is readily accessible to the public. Anybody that has access to the Internet can log on to this site and read the messages posted, although posting is reserved to members.

[37] The "Stormfront" website is organised in the form of a pyramid. There is a "forum" where the user can have access to different categories of subject matter. When the user clicks on one of the subjects, a thread appears allowing the user to read and the members to participate in the discussion about the chosen topic. The nature of the postings and their content vary enormously on these threads.

[38] During his "monitoring" of this website, the Complainant noticed postings by an individual using the pseudonym "mathdokter99" that began to concern him. He did further research into the nature of that person's postings. Having viewed other postings by the individual using this pseudonym, he said that he was convinced that these were likely to violate section 13 of the *Act*. He began compiling information with a view to identifying that person and ultimately filing a complaint with the Commission.

[39] An individual who uses a pseudonym to post on "Stormfront" will also have to provide a profile to the administrator of the website. The profile of the individual identified as "mathdokter99" provided an email address. It also indicated that this person lived in Saskatoon, Saskatchewan, and that he was a "self-employed programmer/analyst".

[40] The Complainant did a "Google search" of the e-mail address. This search established that the e-mail address of "mathdokter99" was affiliated with an individual named Terry Tremaine. The Respondent does not deny that he had made these postings under the pseudonym "mathdokter99".

[41] Terry Tremaine holds a Bachelors Degree in Mathematics and Philosophy and a Master's Degree in Science. He also holds a diploma in Computer Programming Analysis. He held for a period of time a part-time position as lecturer in the Department

of Mathematics at the University of Saskatchewan and, according to his evidence he has been "pursuing a career in information technology as a programmer".

[42] The Respondent testified that he formed the basis of the ideas found in his postings while studying for his Master's degree, in Montreal, in 1982. After obtaining his Master's degree, he took a teaching position in Red Deer, Alberta. It just so happened that the James Keegstra trial was then proceeding in Red Deer. Mr. Keegstra had been charged under the hate crime laws in force at the time. Mr. Tremaine said that he attended the hearing and saw Mr. Keegstra testify. He added that he "was very impressed" by what he heard. He further added that this got him thinking about "what you might call the Jewish problem".

[43] After his experience in Alberta, he began doctoral studies in a Canadian university, which he stopped before completing them to accept a teaching position in the Bahamas. While there, he testified that he "developed some fairly negative views towards blacks and black culture". He stayed there for two years, then returned to Canada. He testified: "By then I was a racist". He has also described his political beliefs as those of National-Socialism.

[44] On his return to Canada, he pursued a career in information technology and completed a "computer diploma". After having obtained this diploma, he opened up a programming company in Saskatoon, Saskatchewan.

[45] During this period, around 2001, he became interested in what he described as "white nationalism". It is also during this period that he "found" the Stormfront website. For a while, he was just a reader but, after a couple of months, he decided to become a member of the website and started his postings. At the hearing, he testified that he has posted at least 1,900 messages on this site.

[46] The Respondent was served with the complaint on April 8, 2005. On April 11, 2005 and again on July 23, 2005, the Complainant wrote to the President of the University of Saskatchewan, the Respondent's employer at the time, providing information regarding the Respondent's activities. On August 4, 2005, the Vice-Provost of the University wrote back to the Complainant informing him that the matter had been investigated by the Human Resources Division of the University and that the position of the Respondent with the University had been terminated on April 30, 2005.

[47] Following his dismissal from the University, the Respondent moved to the west coast (British Columbia). He said that he then felt frightened and depressed. In September of 2005, he returned to Saskatchewan and admitted himself to the Regina Qu'Appelle psychiatric facility to be treated for depression. While there he wrote, on September 30, 2005, a four page letter to the Commission. In this letter he indicated that his postings on "Stormfront" were attributable to mental health issues. The letter stated that he "...became delusional and began imagining grand conspiracies behind world events. Part of my delusional thinking was the notion of a `Jewish world conspiracy'". He goes on to add: "I emphasize that this was delusional thinking for which I am profoundly ashamed and guilt ridden. Words cannot describe the depth of my shame. I am tormented by it daily. I despise and detest everything I wrote on Stormfront and wish I had never heard of Stormfront. The commission need have no concerns about any future activity on my part on Stormfront or anywhere else."

[48] He continues: "Prior to March 2001, I was a normal decent person without any racist or intolerant attitudes. In 2001 I underwent a destructive personality change that I can

now only describe as sick and deranged. That eventually led to my posting on Stormfront". He further adds: "In the months since I was confronted with the Human Rights complaint against me the shame and remorse has grown within me to the point where it has become unbearable and resulted in a further mental breakdown".

[49] He then expresses his remorse and his hope that he will regain his "true moral and decent self" and concludes with his "...profoundest regret, shame, and remorse to all members of the Jewish community against whom many of my posts were directed. I truly regret to the utmost all that I wrote on Stormfront, especially as it pertains to the Jewish community."

[50] The Commission never answered this letter and no explanation was given for its failure to do so. The Complainant for his part explained on cross-examination that he could not recall whether he actually saw the letter or whether the Commission had provided him with a summary of its content. He added that he had indicated to the Commission that if the Respondent's letter was sincere that it was of great interest to him. He said that he was "essentially" willing to negotiate a settlement of the complaint with the precondition that there be a permanent cease and desist order and other appropriate remedies. Nothing resulted from this and there is no evidence of any contact with the Respondent to further discuss the matters raised in the letter.

[51] During his examination, the Respondent emphatically repudiated the content of this letter and never challenged its admissibility. He referred to a retraction that he posted on "Stormfront" on February 5, 2006. He further stated that, but for some minor modifications, he now stands by everything he wrote on "Stormfront". In the course of his cross-examination the Respondent confirmed his state of mind about his posting on "Stormfront" and his views about Jews and Blacks. He certainly showed no remorse for these statements and, given the opportunity, he stated that he would enthusiastically repeat them.

[52] The question of the identity of the author of the postings which form the basis of this complaint as well as the post-complaint postings was not in dispute; the Respondent admits that all these postings are his. The Respondent was a very prolific and prolix author, who in most of his postings camouflaged his ideas under the disguise of academia, using, in many instances, what he purported to be historical references and facts to support his allegations. His postings essentially fall into one of two categories: those that purport to be quasi scholarly articles, and those that constitute direct communications with other participants. The tone of some of these postings, although they did not in any way follow the strict standards of academic writing, could lend an air of legitimacy to their content for a credulous mind.

[53] The first document submitted in evidence was posted on February 14, 2004, on the Stormfront website. The Respondent was participating in a discussion on a thread entitled "A Real Holocaust Coming?" He then posted the following: "The Jew cannot help being a Jew any more than a rat can help being a rat". He went on to refer to Jews as a "parasitic race". He added that "no healthy host population can tolerate a parasite feeding on it without eventually rejecting it". Finally, he concluded that "no conferences on 'anti-Semitism' will help the Jew avoid his long-overdue fate."

[54] Again on February 17, 2004, he made another posting on a thread entitled "Re: A view from the inside (for all anti's)". In this posting, the Respondent again refers to Jews

as a "parasitic race" that depends on "word weaving, crafty financial dealings, and a total lack of ethics toward non-Jews".

[55] In a posting dated February 19, 2004, on a thread entitled "Your Awakening?", the Respondent explains how he came to espouse the ideas of the "White Nationalist Community". He refers to the fact that in the early nineties, he took a teaching job in a Caribbean country:

I was not a racist when I moved there but became one while there. Firstly, I discovered that blacks are intellectually inferior to Whites. This was evident everywhere and in all walks of life. I do not mean they were less educated (which they were), I mean they were intellectually inferior at a more fundamental level. In my job I encountered blacks who were well educated on paper but seemed to lack a certain intellectual spark which most, even relatively uneducated whites possess. I also came to see black culture as fundamentally depraved and disgusting. It is only fit for blacks and is certainly not anything a self-respecting white person should associate with or emulate.

[56] Later in the same posting, talking about an unnamed Jewish author, he refers to him as "the weasel Jew author". In his conclusion he affirms "Hitler was right about the Jews."

[57] On March 23, 2004, on a thread which purported to post the political testament of Adolph Hitler, the Respondent, again referring to Jews, wrote: "The hatred for that race of parasitic vermin is growing everywhere."

[58] In another posting, entitled "The Greatness of Adolf Hitler", the Respondent wrote on April 9, 2004:

Hitler stood in opposition to international Jewry and Marxism. He regarded Marxism as being the most recent vehicle to secure the long term goal of international Jewry - the destruction of independent nation states. It represented the obliteration of all national and ethnic distinctions and the formation of a worldwide mongrelized proletariat without any ethnic identity or loyalty.

[...]

Hitler's original intention for the Jews was that they be expelled from Europe voluntarily or involuntarily. The original destination mentioned was Madagascar. [...] Once the war began that became impractical. The only options available were to confine them or allow them to roam free. The latter option was deemed inappropriate since they were regarded as potential enemy combatants, much like the Japanese in North America who were also interned. It cannot be denied that some, perhaps many, Jews were killed deliberately. The exact number may never be determined but that number would almost certainly fall short of the six million figures which has been part of post-war anti German propaganda for over sixty years.

[59] Referring to the concentration camps used during the Second World War by the Nazis and, in particular, to the infamous Auschwitz camp, he describes it as a "labour camp not a death camp" and adds that the "gas chambers were used to delouse clothing to prevent the spread of typhus - not for the extermination of human beings". He disputes the figures regarding the number of people who died in these camps: "We still do not have objective evidence that six million Jews died. The best available evidence is from the Red Cross which indicates that slightly over 400,000 Jews died in the interment(sic) and labour(sic) camps from all causes..."

[60] On another topic, in a thread entitled "HIV/AIDS and Indians in Saskatchewan" that the Respondent initiated, referring to the propagation of AIDS within the First Nation population of that province, he wrote on May 2, 2004, "Now, I don't really care if AIDS wipes out the whole lot of them. It would make our job easier".

[61] On July 5, 2004, on a thread entitled "Questions from a black man", the Respondent wrote:

Speaking for myself only I expect this white nation to comprise most of what is now Canada with most of what is now the US. Non-white immigration would be banned. Non-whites living within our borders would be encouraged to leave or submit to voluntary sterilization. Under such a plan our nation would be 100% White within one generation. It could be accomplished without significant bloodshed if non-whites were willing to cooperate in the endeavour. Blacks could be repatriated to Africa. The foreign aid now being doled out to Israel would instead go towards this repatriation plan. Educated Blacks from America could help Africa get back on its feet (if that is possible). Asians would be sent back to their country of origin. If that were impossible then the sterilization plan would kick in. In no case would a Jew be allowed to remain on our territory. They would be allowed to leave peacefully with whatever goods they could put in a suitcase.

[62] In responding to a post entitled "My feelings on Jews", the Respondent wrote on September 11, 2004:

- 1) You did not mention their [referring to the Jews] compulsive deceitfulness. Hitler called them the Masters of the Lie and he was right on that.
 - 2) You did not mention their parasitic nature. They despise real work and live only to get money and do not really care how.
 - 3) You did not mention that they gravitate towards all that is disgusting and depraved. You can see this from their art.
 - 4) You did not mention their involvement in organised crime, drugs, and white slavery.
 - 5) You did not mention their subversion of all our institutions (mass media, academic, financial, political, judicial, law enforcement) and their subsequent redirection towards Jewish goals.
 - 6) You did not mention the cancer of Zionism.
- Etc. Etc...

[63] On a Stormfront thread entitled "Did you Know that one million Germans were murdered...after the war", the Respondent contributed this posting on September 12, 2004:

The more a person researches the events surrounding WWII (before, during and after) the more one is led to the conclusion that the **real** holocaust was against the German people and instigated by the Jews. The holohoax story attempts to invert that and portay(sic) the juden as victims of the `evil Nazis'. As time passes we are learning more and more the real truth.

[64] On September 18, 2004, in a thread he initiated, "The `Sacred' Parasite", he again describes the Jews as "parasite". On that same day, he also initiated another thread entitled "Hanadi Jaradat". According to the Respondent's posting, Hanadi Jaradat was a Palestinian woman who blew herself up in a restaurant in Haifa, Israel, killing and injuring a number of people. Referring to her action the Respondent wrote:

[...]Her country is occupied by the same parasitic race that controls our formerly White countries. As Dr Pierce used to say: "SHE HAD HAD ENOUGH!!". So, she decided **to do something** about it.

It is nearly one year since Hanadi Jaradat struck a blow against ZOG. I know there are WNs who will criticize me for honouring a muslim in this way but I do not honour her as a muslim or arab, as such, but as a dedicated soldier fighting against ZOG. Nor do I suggest we all strap bombs to ourselves and start blowing up Jews. My only intention is to draw attention to her courage and self-sacrifice (literally) and hope for the day when we have a thousand WN [White Nationalist] equally dedicated to destroying our enemy.

[65] On September 19, 2004, he wrote:

The more the Jews try to stamp out anti-semitism the more it will increase. That is guaranteed. It will increase until the Jews themselves realize they are the cause of anti-semitism (which will never happen). Just as a healthy body attempts to identify and repel foreign destructive organisms so too any healthy society will react to the Jew with revulsion and disgust and will desire to have them expelled. The Jews attempt to undermine this healthy response the same way the AIDS virus interferes with the body's rejection of foreign organisms. But for the Jews that will not work. There are too many people aware. We are like the White blood cells in certain people that are immune to the effects of the AIDS virus.

[66] On that same day, but on another thread, the Respondent posted: "As someone (I cannot remember who) once said, when the end of the Jews finally comes they will wish they had the SS there to protect them."

[67] The Respondent also participated in a thread entitled "Re: If it took a police state", which purported to discuss the advantages of establishing a white nation. In one of his many and long postings on this thread, dated September 20, 2004, he stated: "NS [National Socialist] policy toward Jews was quite restrained. Hitler was a lot nicer to the Jews than they deserved. His original intention was to simply deport them all. However, nobody wanted them (no surprise there)." Later on in another posting he stated in part, in answer to a question asked about whether he would be ready to pay the price of a totalitarian police state for an all white nation: "In fact, I would not support it unless it were actively engaged in the expulsion of all Jews from our territory." In another posting on the same subject, in which he was referring to the "fracture" of "our multi-racial countries", he suggested that white nationalists should be ready "to seize power by whatever means available". He then added "Our people will then be in charge of the existing police state apparatus and will begin the process of cleaning up the mess (expelling the Jews, repatriating the other non-whites, etc.)"

[68] On January 17, 2005, the Respondent posted the following: "The Arabs are NOT the new juden. The juden are the juden!! As Dr. Pierce used to say, once we deal with the Jews everything else will just be mopping up." The last posting put into evidence by the Complainant from the period before the Respondent was served with the complaint on April 8, 2005, was posted on March 23, 2005, and it deals with the subject matter contained in a thread entitled "Gambling at the Public Library". In this posting the Respondent makes derogatory remarks about Aboriginal persons.

[69] The next posting put into evidence appears in early February 2006, ten months after the complaint was served and some five months after the letter of "apology" referred to earlier in this decision. This posting appeared following the Tribunal's decision in

Warman v. Kulbashian et al, 2006 CHRT 11, which was issued on January 30, 2006. In this posting, the Respondent, referring to the Tribunal member who rendered the decision, had this to say: "Notice that we don't even have White "tribunal decision makers" but someone who crawled out of some third-world hell hole."

[70] In the next posting, dated February 27, 2006, the Respondent asserts: "We must never forget that communism was, is, and always will be Jewish. It is the best example of what would happen to our people if and when the Jews attain the kind of absolute control of our countries that they so much lust after." In another posting, on March 3, 2006, the Respondent stated :

The Jews rely on their shabbos goy helpers to implement their plans. The Jews are simply following their instinct as a parasitic race but their White helpers are making a choice to betray their race. The Jews set up innumerable front organizations to recruit their shabbos goy helpers who, at best, think they are working for some noble cause to help this or that. At worst, they **know** they have been recruited to the Judaic cause but believe it is their path to riches and/or power.

[71] On May 8, 2006, the Respondent's attacks become more spiteful. Referring to a world conspiracy by the Jews, he affirms:

The Jews are the **poisoners(sic) of all nations**. One reason they promote multiculturalism (which is really multi-racialism) is to create a country of mulatos(sic), whom the Jews find easy to control and a bunch of squabbling ethnic groups whom they can divide and conquer. In a multi-racial country the racial group with the strongest ethnic solidarity will rule. The Jews believe, in all likelihood truly, that they have sufficient internal cohesion amongst themselves to rule, especially considering their current grip on the financial, political, educational, and cultural (media) institutions.

Every ethnic group must recognize the above to be true. We, as WNs, can form strategic alliances with other national groups but we must be wary of trying to get others to fight our battles for us. In such a case, those other groups will determine the configuration of a final victory. We must determine that configuration ourselves. In practical terms, the final configuration must not involve the breakup of any of our formerly White countries. Rather than trying to create some little White-only national territory, we should have a grande view. Kick the Jews out and have no more to do with them regardless where they end up. Then help the other ethnic groups towards repatriation. ... They do not share our values, which is (sic) demonstrated by their tendency to gang activities and crime in general. And even if they did share our values we do not want them here because we want our territory for the advancement of our own race to achieve our racial advancement.

We can establish an agreement among other national groups to ensure the Jews have no safe haven to re-establish another base of operations such as America and Britain. [...]

Fundamentally we (and all ethnic groups and races) must see the Jews as alien poisoners (sic) who always try to get others to do their dirty work. That way they can always claim innocence and do not get their hands dirty. Nor do they have to spend any of their own precious gold. They have openly declared that they would rather destroy the world than have their own national existence threatened (the Samson Option). We must accept that they are serious about that. We must turn that around and say, better that the Jews and Israel be destroyed than have the world destroyed.

[72] Then on June 27, 2006, the Respondent proposes a National-Socialist Constitution for Canada. This constitution would be based on what the Respondent describes as the seven principles of National Socialism. The seventh principle declares that Adolph Hitler was a gift to the world which was on the brink of a Jewish-Bolshevik catastrophe. This document proposes that, in this imaginary national socialist state of Canada, the citizens be of at least 75% White European extraction. Jews and people of the Jewish faith would be denied citizenship.

[73] In another posting on July 8, 2006, the Respondent talking about the Complainant had this to say: "I think Warman is a Jew simply because of his unrestrained capacity for malevolence. He does not appear to have a White man's conscience." In a posting referring to his case before this Tribunal, the Respondent writes: "Hitler said that Jews are the bacillus of social disintegration. Today we might consider them like the AIDS virus and the influx of other non-White populations in our country as opportunistic infections. The disease is multiculturalism and Jews are the cause."

[74] On the internet site, <http://mathdokter99.htmlplanet.com>, the Respondent comments on what he describes as the Jewish "world-wide conspiracy". He makes reference to a purported article written by Winston Churchill, which he claims was published in the *London Sunday Herald*, on February 8, 1920, whose content is clearly anti-semitic. He also refers to a document, allegedly prepared by the International Red Cross in 1947, which numbers the Jewish deaths in the various camps under German control during World War II at 271,000 deaths. He further quotes the headline of an article supposedly published in the *Daily Express*, of London, on March 24, 1933, and concludes that the Jews were the one who declared war on the Third Reich. He also makes reference to the Russian author Alexander Solzhenitsyn as having declared the "Jew Bolsheviks to be the stranglers of Russia and the genocide against millions of Russians was planned (sic) by Jews in 1919".

[75] The Respondent's attacks are not limited to the Jewish community; he also writes disparaging remarks against the Black community. In one of his postings on "Stormfront", dated August 2, 2006, entitled "My Story", he relates his experience in the Bahamas where he had taken a teaching position in 1993:

That country is about 98% Negro. The same proportion held among my students, some of whom did have some natural talent in Mathematics. When I went there I was NOT a racist. In fact, there were times when I forgot I was White. You could say I "went native" to a degree. I even became deeply tanned to the point where I was quite dark. However, by the time I was there a year I had come to the conclusion that most of the Negroes in the Bahamas were innately stupid. Not all were, of course. I remember a few intelligent conversations among the Negro men in the liquor store, more intelligent than most of the talk among "educated" Negroes at the College. But, I formed the estimate that the average IQ there was somewhat around 75 to 85 and after six months of accumulated experience there that opinion solidified. Over the next 3½ years that estimate would go up or down a few points but eventually averaged out to about 80. I kept thinking that the average truck driver in Canada has more brains than 99% of the Negroes in that country. So my views on race began to change. I did not think the 80 IQ could be explained culturally, though no doubt some would like to make that case. The Bahamians do not have the same excuse for being stupid as the American Negroes. They are an

overwhelming majority in that country and have run their own show since 1973. Slavery was abolished in the Bahamas in 1837, But they are still stupid. Not all but most.

[76] He then goes on to add:

If Negroes were only stupid, collectively speaking, but otherwise innocent we could regard them like children. Unfortunately, that is not the case. I found them to have a natural tendency to violence as a first resort and to be natural born thieves. In the four years I was in the Bahamas I had maybe half a dozen disputes with Negro males over what would normally be considered minor issues. In each case I was threatened with physical violence. They are cowards as well, brave only in packs like hyenas, since each case I did not back down and the other guy scurried away. I found that even the educated among them are natural born thieves.[...] The rule when you are among Negroes : If it isn't nailed down, glued down, or welded down to the floor it will disappear.

[77] One of the themes of the document revolves around the idea that the Jews are trying to take over every aspect of society and to dominate the world. Quoting from Adolph Hitler, the Respondent divides races into three categories: "Those who can create and maintain civilization; those who can maintain but not create civilization; and those who can do neither but are destroyers of civilization. The Aryan (=Whites) people created civilization. Asians and some Semites are able to maintain civilization. Jews and Negroes are destroyers of civilization. The Jews are especially dangerous because not only are they destroyers but of the worst kind, parasites."

[78] He concludes: "[D]o I want to live in a world owned and operated by Jews for the benefit of Jews? Do I want to live in a world controlled by the world destroying parasites or do I want to do something about it? Do I want to just sit and watch while Whites are destroyed as a people with no other alternative but to merge with - and eventually disappear into - the great brown swamp of Third World biomass? I decided to do something about it."

[79] Finally, on July 27, 2006, the Respondent posted the following on Stormfront: "Warman [referring to the Complainant] is just the front man, the performing monkey, for the B'nai Brith and the Canadian Jewish Congress. They run this country and it is sinking into the bottomless pit of Jew Hell."

[80] In 2006, the Respondent also set up and maintained a website "nspcanada" where he posted what he purported to be the political program of the National-Socialist Party of Canada (the "NSPC"). This website is readily accessible to everybody.

[81] The home page of this website indicates that the NSPC is dedicated, amongst other things, to "stopping and reversing the effects of multiculturalism, resisting the Jewish/Zionist takeover of the most important social institutions of Canada, restoring White sovereignty in Canada, implementing a new constitution for Canada [and] building up the White birth rate to replacement levels so that non-White immigrants are not required for our labour force."

[82] He mentions that the NSPC is "dedicated to the creation of a White racist state in Canada" which "would restore the White sovereignty within Canada which has been lost through multiculturalism and Marxist Political Correctness." To accomplish this goal, he recommends various steps which include "challeng[ing] by any and all legal means the Jewish influence on our news and entertainment mass media through developing our own media and utilizing the media of cooperating White organizations." He also called for the

establishment of "local units throughout Canada which can be rapidly transformed into resistance cells as the future need arises."

[83] The Respondent then goes on to elaborate on the seven points of National Socialism which would form the basis of the "constitution of national-socialist Canada." The seventh principle states: "Adolf Hitler was the gift of an inscrutable Providence to a world on the brink of Jewish-Bolshevik catastrophe, and that only the blazing spirit of this heroic man can give us strength and inspiration to bring the world a new birth of radiant idealism, realistic peace, international order and social justice for all men."

[84] Regarding firearm ownership, he states that this will be a fundamental right of law-abiding citizens but adds "[n]ever again will Jews control this land! We MUST have a well armed citizen militia to ensure that multiculturalism is never again forced down our throats. Non-citizens (i.e. non-Whites) will not be allowed to own or possess firearms. The only exception to this will be native Indians living on their own reserve lands. They will be allowed firearms for hunting purposes only." The Respondent also refers to multiculturalism as a "poison" and proposes to "clean up the multicultural mess".

[85] In a "National-Socialist Canada", we can read, that loyalty to "Zionism and the Zionists entity in Palestine (the terrorist "state" of Israel)" will be regarded as "treason to Canada" and "will be dealt with as such".

[86] According to the Respondent, homosexuality "may or may not be genetically determined". He goes on to add that "[a]ccording to the best available science on the subject, something goes wrong in the wiring of the brain during fetal development". He states that homosexuality "is clearly a pathology whether recognized by the Psychiatric Association or not. [...] It is the position of the NSPC that homosexuals not be allowed to work in environment where children or young adolescents will be present. They will not be allowed to adopt or care for foster children. They will not be allowed to serve in the military" and evidently they will not be allowed to marry as marriage is, according to the Respondent "between a man and a woman".

[87] Under a NSPC Canada, the military would be used "to assist other White nations in their defense (sic) against non-White aggression". At the end of their compulsory military service the male citizens would "maintain possession of their assault weapons to further the existence of a well armed citizen militia."

[88] Citizenship under the NSPC would be only for people of "at least 75% White European extraction. They cannot be Jews or of the Jewish religion." Only citizens will have the right to vote, to stand for elected office or the judiciary. The residents of Canada who do not "qualify for citizenship" will be either voluntarily or forcibly repatriated. Aboriginal people will not be citizens, nor will they have the right to vote but they will be given self-government over their own territories.

[89] The document also states:

We are dedicated to peaceful revolutionary struggle for National Socialism and White sovereignty within Canada.

However, it must be remembered that Canada is not currently a free country but is under Jewish/Zionist control. We are suffering under Judeo-Liberalism and drifting toward Judeo-Fascist tyranny,

We support the right of political dissent for all White people in all land. This implies resistance to the current status quo. We must be prepared for all eventualities, as much as that is humanly possible. We propose that our local units structure themselves as

resistance cells modelled after the Committees of Correspondence prior to and during the American Revolution.

[90] The website then goes on to give a list of other pro-white groups with their web address. It also lists the name of companies and businesses that should be boycotted because of what the Respondent qualifies as Zionist connections.

[91] There are also a number of quotations on different pages of the website where we can read, for example,

"Negroes Back to Africa? Yes!!!";

"No amount of special programs or incentives can change the basic genetic nature of a race. The only solution to the plague of Negro crime is the repatriation back to Africa.";

International Jewry is the enemy of all humankind and the poisoners(sic) of all nations;

Multiculturalism is the displacement, marginalization, and eventual destruction of the host population - The White Race!!!

[92] There is also a series of what we could be described as short commentaries entitled, for example, "Zionism is Treason", "Removing Negroes Back to Africa? Yes!!!", "Jew Tube", "Negro Crime". The Respondent also purports to reproduce a series of documents which he presents as being historically correct.

[93] It is clear that the Respondent wants nothing less than a totally white Canada. He argues that whites and non-whites, including Jews, can never live together in harmony in the same country. He considers Blacks despicable but too feeble-minded to pose a threat to whites. Jews, on the other hand, are considered more clever, but they are dangerous, amoral, vermin, conspiring to take control of the world. The most important themes running through most of his writing are the supremacy of the white race and anti-Semitism.

IV. THE SECTION 13 COMPLAINT

A. INTRODUCTION: Hate propoganda and free speech

[94] Freedom of expression is held especially dear in a free and democratic society such as ours. The *Canadian Charter of Rights and Freedoms* makes it one of the fundamental rights guaranteed to all Canadians. It is the foundation on which our democratic and political process has been built. It allows individuals to shape their personal development and in so doing it ensures the fostering of a vibrant democracy where the participation of all, no matter what their ethnic or religious background might be, is not only welcomed but accepted and encouraged. (*Canadian (Human Rights Commission) v. Taylor*, [1990] 3 S.C.R. 892, at para. 47.)

[95] It is because of our attachment to this fundamental value that matters, such as those raised in the present instance, present some difficulty. In rendering its decision, the Tribunal must take into consideration two fundamental values which, in some cases, are difficult to reconcile. On the one hand, we have the interest of a democratic society to promote freedom of expression and, on the other hand, we have the importance for the same society to promote the equality rights of all its citizens as well as the inherent dignity of all human beings.

[96] Some of the ideas expressed by the Respondent in his postings may be seen as forming part of a legitimate political discourse, although they might seem repugnant to the values of a majority of Canadians. This is why we must be careful, when dealing with issues such as these, not to let our judgment be clouded by the general disapproval and the offensiveness of the political ideas advocated by the Complainant. We might not like

what he is saying and would prefer not to hear it, but in a democratic society, people are free to express their opinions, unpopular as they might be, as long as it does not demean and humiliate others.

[97] Although freedom of expression is an important fundamental value, we in Canada value just as much the equality rights of all individuals. Equality means a respect for the inherent dignity of all human beings whatever their colour, race, language, sex or religion. Freedom to express one's idea ceases to be freedom of expression or opinion when it is used to stand in the way of the promotion of equality. Freedom of expression ceases to be a fundamental characteristic of democratic values when it becomes a vehicle for the promotion of hate. (See *Canada (Human Rights Commission) v. Canadian Liberty Net*, [1992] 3 F.C. 155, at para. 60)

[98] In *Citron et al v. Ziindel*, T.D. 1/02, 2002/01/18, the Tribunal stated, at paras. 153 and 154:

In any event, even if we accept that there can be legitimate debate on this topic, we have focussed on the manner in which the Respondent has expressed his views and not the mere fact he chooses to engage in this debate. Our conclusion is based on the way in which these doubts are expressed, and not on the fact that challenges are raised regarding the historical accuracy of these events. Although it might always be hurtful to raise these questions, we accept that the standard for determining the "promotion of hatred or contempt" must be applied with care so that it remains sensitive to free speech interests.

If this truly were a neutrally worded, "academic" debate, our analysis might be quite different. The tone and extreme denigration of Jews, however, separates these documents from those that might be permissible. We have found that it is the linkage between the author's view of these events and the extreme vilification of Jews as a consequence: it is their denunciation as liars, racketeers, extortionists and frauds that is likely to expose them to hatred and contempt.

[99] In *Canada (Human Rights Commission) v. Taylor*, *supra*, at para. 2, the Supreme Court of Canada defined the term "hate propaganda" as an "expression intended or likely to circulate extreme feelings of opprobrium and enmity against a racial or religious group". Hate propaganda or messages lie at the outer margins of the values that form the core of freedom of expression. It is fundamentally inimical to the rationale of freedom of expression. That is why Parliament adopted section 13(1) of the *Act*. Parliament has clearly indicated, when it adopted this section, that it viewed the activities described therein as contrary to the furtherance of equality. The objective behind this section is obviously one of substantial importance sufficient to warrant some limitation upon freedom of expression. (*Canada (Human Rights Commission) v. Taylor*, *supra*, para. 43.)

[100] In the *Taylor* case, the Supreme Court concluded that while s. 13 infringed the freedom of expression right, this infringement was justified in light of the international commitments to eradicate hate propaganda, and Canada's commitment to the values of equality and multiculturalism.

[101] In his closing remarks, the Respondent's representative based part of his argument on "fair comment" and free speech. Although, I agree that all individuals, including the Respondent, have a right to express by whatever means they choose their political ideas, they must do so in a manner that does not offend s.13(1) of the *Act*. As the Tribunal stated in *Warman v. Kyburz*, 2003 CHRT 18, at para. 54: "While the right to hold and express one's opinions is a cornerstone of a free and democratic society, such a right is

not unlimited. In some situations, the protection of society mandates limits on what individuals may say." Calumny against and the calling for the expulsion of Canadian citizens on the basis of their colour or religion cannot be protected by free speech or fair comment.

[102] Mr. Fromm also requested that the Tribunal not consider the information posted on the National-Socialist Party of Canada website. He argued that this "political platform" ought to be dealt with in a political arena. I disagree. The importance in our democracy of maintaining free public opinion and discussion is not a right which is absolute. The Courts have recognized that these values are subject to legal limits, under the provisions of the *Criminal Code*, the common law, the *Charter of Rights and Freedom* and the *Act*. Parliament and Canadian society in general have decided to impose legal limits on free public opinion and discussion. They have decided that one cannot promote hate and contempt even if he pretends it to be political speech.

B. The general purpose of section 13(1) of the Act

[103] The complaint alleges that the Respondent discriminated against persons or a group of persons on the basis of religion, race, colour and national or ethnic origin by repeatedly communicating messages over the Internet which would likely expose Blacks, Asians, Aboriginal, other non-whites and Jews to hatred or contempt contrary to subsection 13(1) of the *Act*.

[104] Section 13(1) reads as follows:

<p>13. (1) It is a discriminatory practice for a person or a group of persons acting in concert to communicate telephonically or to cause to be so communicated, repeatedly, in whole or in part by means of the facilities of a telecommunication undertaking within the legislative authority of Parliament, any matter that is likely to expose a person or persons to hatred or contempt by reason of the fact that that person or those persons are identifiable on the basis of a prohibited ground of discrimination.</p>	<p>13. (1) Constitue un acte discriminatoire le fait, pour une personne ou un groupe de personnes agissant d'un commun accord, d'utiliser ou de faire utiliser un téléphone de façon répétée en recourant ou en faisant recourir aux services d'une entreprise de télécommunication relevant de la compétence du Parlement pour aborder ou faire aborder des questions susceptibles d'exposer à la haine ou au mépris des personnes appartenant à un groupe identifiable sur la base des critères énoncés à l'article 3.</p>
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[105] Section 13(2) extends this provision to communications made on the Internet:

<p>(2) For greater certainty, subsection (1) applies in respect of a matter that is communicated by means of a computer or a group of interconnected or related computers, including the Internet, or any similar means of communication, but does not apply in respect of a matter that is communicated in whole or in part by means of the facilities of a broadcasting undertaking.</p>	<p>(2) Il demeure entendu que le paragraphe (1) s'applique à l'utilisation d'un ordinateur, d'un ensemble d'ordinateurs connectés ou reliés les uns aux autres, notamment d'Internet, ou de tout autre moyen de communication semblable mais qu'il ne s'applique pas dans les cas où les services d'une entreprise de radiodiffusion sont utilisés.</p>
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[106] Section 13 of the *Act* is especially designed to prevent the spread of prejudice and to foster tolerance and equality. In denoting the activity described in this section as a discriminatory practice, Parliament has indicated that it views hate propaganda or messages as contrary to the furtherance of equality. In 1966, the Special Committee on Hate Propaganda in Canada, commonly known as the Cohen Committee, had identified the serious harm caused by hate messages. It noted that individuals subjected to racial or religious hatred "may suffer substantial psychological distress, the damaging consequences including a loss of self-esteem, feelings of anger and outrage and strong pressure to renounce cultural differences that mark them as distinct". (*Canada (Human Rights Commission) v. Taylor, supra*, para. 40.)

[107] The purpose of section 13 is to remove hate messages from the public discourse and to promote equality, tolerance and the dignity of the person. The views expressed in these messages inevitably result in prejudice, discrimination and can also lead to physical violence against members of the targeted groups.

[108] Hate messages can also operate to convince their listeners or readers that members of certain racial or religious groups are inferior. The result may be an increase in acts of discrimination or even incidents of violence towards these groups. Hate messages undermine the dignity and self-worth of targeted groups' members and contribute "to disharmonious relations among various racial, cultural and religious groups as a result eroding the tolerance and open-mindedness that must flourish in a multicultural society which is committed to the idea of equality". (*Canada (Human Rights Commission) v. Taylor, supra.*, para. 41).

[109] Under section 13(1), the intent to discriminate is not a pre-condition to a finding of discrimination. (*Ontario Human Rights Commission and O'Malley v. Simpson-Sears Ltd*, [1985] 2 S.C.R. 536, at pages 549-50; *Canada (Human Rights Commission) v. Taylor, supra*, at pages 931-34). In *Warman v. Kulbashian et al*, 2006 CHRT 11 (C.H.R.T.), at paragraph 59, the Tribunal indicates:

[The] language of section 13 is clear, in that it is the effect of messages that has attracted the attention of Parliament. The question to be asked is not whether the conveyor of the message intended to communicate hate or contempt, but whether the message itself is likely to expose persons belonging to the identifiable groups to hatred or contempt. If indeed the newsletter's content was intended to express a supposed political opinion, the message could have been communicated without resort to the extremist and denigrating language that pervades the various editions of the newsletter...

[110] In *Nealy v. Johnson* (1989), 10 C.H.R.R. D/6450, at para. 45697, the Tribunal stated that the use of the word "likely" in section 13(1) means that it is not necessary that evidence be adduced to prove that any particular individual or group took the messages seriously and directed hatred or contempt towards others. Nor is it necessary to show that anyone was so victimized. Unlike the other sections in the *Act* dealing with discrimination, s. 13(1) provides for liability where there is no proven or provable discriminatory impact. As discussed by the Tribunal in *Warman v. Winnicki*, 2006 CHRT 20, at paras. 46 and 49:

The Tribunal alluded to the difficulty involved in determining how many people had received the message and to gauging the impact of the message on these people. This, in the Tribunal's view, justified the extension of liability under s. 13(1) to cases where there

is no proven or provable actual discriminatory effect.[...] Section 13(1) makes it a discriminatory practice to communicate messages that are likely to expose a person or persons to hatred or contempt. The provision does not state that it is a discriminatory practice to communicate messages that cause others to feel hatred or contempt toward members of the targeted group.

[111] Again in *Taylor, supra*, at para. 74, the Supreme Court of Canada added that the truthfulness of the impugned statement did not provide a defence to the discriminatory practice prohibited by section 13(1): "One must remember that truth may be used for widely disparate ends, and I find it difficult to accept that circumstances exist where factually accurate statements can be used for no other purpose than to stir up hatred against racial or religious groups."

[112] Hate messages undermine the dignity and self-worth of the targeted group members and erode the tolerance and open-mindedness that must flourish in a multi-cultural society that is committed to the idea of equality (*Winnicki, supra*, at para. 50.) Therefore proof of harm is not required. The key is to ensure that only those messages that are likely to expose members of the targeted group to unusually strong and deep-felt emotions of detestation, calumny and vilification are caught by s. 13(1). (*Winnicki, supra*, at para. 51)

[113] As the Federal Court stated in *Canadian Human Rights Commission v. Winnicki*, 2005 FC 1493, at para. 30:

The damage caused by hate messages to the groups targeted is very often difficult to repair. It insidiously reinforces the prejudice that some people may have towards minorities identified by race, color, ethnic origin and religion, thus prompting and justifying discriminatory practices and even violence against these groups. At the same time, these messages are most likely to affect the perception and self-esteem of all members of these groups, thus precluding their full participation in Canadian society and the achievement of their full potential as human beings.

[114] How is the likelihood of exposure to harm to be determined? In *Citron v. Zundel* (No. 4) (2002), 41 C.H.R.R. D/274, the Tribunal stated that the most persuasive evidence was the language used in the messages themselves. There is no need for expert evidence on this matter although it could be helpful in certain cases.

[115] There are three issues that must be considered in determining whether the complaint has been made out:

- 1) Did the Respondent communicate or cause to be communicated repeatedly the material which is subject of the complaint?
- 2) Were these messages communicated in whole or in part by means of a telecommunication undertaking within the legislative authority of Parliament?
- 3) Is the subject matter of the messages likely to expose a person or persons to hatred or contempt by reason of the fact that they are identifiable on the basis of a prohibited ground of discrimination?

C. Did Mr. Tremaine communicate, or cause to be communicated, repeatedly, the messages found on the various websites in issue?

[116] The Respondent does not deny that he communicated the material which is the subject of this complaint including the post-complaint material. He also admitted that all of the material was authored and signed either under his real name or under his pseudonym, "mathdokter99".

[117] His representative took issue with the characterisation of these messages as having been "repeatedly" communicated. He referred to the Supreme Court of Canada's decision in *Taylor* and suggested that the reason the Court found that the communications were repeated in that case was that there was a deliberate effort to call public attention to them. He added that there was no evidence that the Respondent attempted to call attention to or advertised his postings on the Internet and consequently the Tribunal should rule that they were not "repeated".

[118] The requirement that there be repeated communication is a constituent element of s. 13(1) and the Tribunal finds as a fact that there was, in this case, repeated communication of the material posted. In *Schnell v. Machiavelli and Associates Emprize Inc.* (2002), 43 C.H.R.R. D/453, the Tribunal held that the use of the word "repeatedly" in s. 13(1) suggests that it is aimed not at private communications with friends, but rather at a series of messages that form a larger-scale, public scheme for the dissemination of certain ideas or opinions, designed to gain converts from the public.

[119] In this case, the material was posted on the Internet which is designed to facilitate repeated transmission of material posted on a chosen site. The Internet provided an inexpensive means of mass distribution. One of the purposes sought by posting messages on a website is that it will be available for transmission and display by a user who requests it. This characteristic of the Internet satisfies the requirement of "repeatedly" found in section 13(1). The Respondent did not need to call public attention to his postings, the mere fact of putting them on the Internet which is accessible to almost everyone was sufficient to attain this objective.

D. Were these messages communicated in whole or in part by means of a telecommunication undertaking within the legislative authority of parliament?

[120] The substantive evidence against the Respondent consists primarily of copies of postings on the Internet.

[121] The *Canadian Human Rights Act*, as it was originally enacted, did not explicitly deal with Internet communications. As part of the changes to Canadian law effected by the proclamation of the *Anti-Terrorism Act*, S.C. 2001, c. 41, section 88, on December 24, 2001, the *Canadian Human Rights Act* was amended to add subsection 13(2), which deals expressly with matters communicated by means of the Internet.

[122] Since all the messages which form the basis of this complaint were posted after the enactment of section 13(2), there is no issue that they were communicated in whole or in part by means of a telecommunication undertaking within the legislative authority of Parliament.

[123] In his closing arguments, Mr. Fromm insisted that the Tribunal should consider postings on an internet site dedicated to persons sharing the same basic ideology, as similar to a private communication. He characterised the postings on "Stormfront" as "in-house conversation". The Tribunal does not accept this argument. In an article written by L. B. Lidsky, "Silencing John Doe: Defamation and Discourse in Cyberspace" (2000), 49 *Duke L. J.* 855, cited with approval in the decision of *Barrick Gold Corporation v. Lopehandia*, [2004] O.J. N° 2329 (Ont. C.A.) at para. 31, the author states:

Although Internet communications may have the ephemeral qualities of gossip with regards to accuracy, they are communicated through a medium more pervasive than print, and for this reason they have tremendous power to harm reputation. Once a message enters cyberspace, millions of people worldwide can gain access to it. Even if the

message is posted in a discussion forum frequented by only an handful of people, any one of them can republish the message by printing it or, as is more likely, by forwarding it instantly to a different discussion forum. And if the message is sufficiently provocative, it may be republished again and again. The extraordinary capacity of the Internet to replicate almost endlessly any defamatory message lends credence to the notion that "the truth rarely catches up with a lie."

[124] Internet has had a profound impact on modern society. It has made accessible to all information which in the past was only available to a few. It has also allowed individuals to exchange ideas and to discuss important issues but it has also raised serious concerns about the content found on many sites. Issues have arisen regarding the preservation of legitimate free speech, on the one hand, and the need to control the proliferation of "hate sites", on the other hand. Cyberspace cannot and should not be seen as a frontier society where everything is allowed and where the constraints which limit discourse in the real world have no place. The fact that the user employs a pseudonym does not mean that "anything goes". Also, the fact that he is printing his messages on a site which is essentially used by like-minded individuals does not make it a private communication. Once the message has entered cyberspace it can be read by millions of people, it is part of the public domain.

[125] In this case, the evidence clearly establishes that the websites used by the Respondent were readily accessible to the public. The Complainant testified that to have access to the messages posted on these sites, a person did not have to be a member - although on "Stormfront", you could not post a message without being a member. Anyone could easily access the "Stormfront" and the "nspcanada" websites, no password required.

[126] The Tribunal therefore sees no merit in the Respondent's argument on this point.

[127] The Respondent's representative also expressed the opinion that common sense would suggest that since the postings were made on a website where like-minded people communicated amongst themselves then they were not exposing the targeted groups to hatred or contempt. He also argued that the messages were not likely to expose members of the targeted groups to hatred and contempt since anyone surfing the Internet would have had fair warning of the content of the messages by the nature of the banners on the home page of the sites. Therefore, people had a choice whether to read the messages or not.

[128] Again, the Tribunal cannot accept this argument. Although, it might be true to conclude that an individual who posts or reads the posting on these sites might be considered an adherent to the opinion they espouse and consequently might already possess feelings of hate and contempt for minority groups, it is conceivable that these feelings might be inflamed further by these messages. In any event, we should remember that the preconceived feelings of the individual who post or reads such posting is not in issue in the interpretation of s. 13. The question is whether the matter communicated is likely to expose a person or persons to hatred or contempt. The fact that the banners provided some vague indication of the content of the websites does not put the messages beyond reach of s 13(1).

E. Is the subject matter of the messages likely to expose a person or persons to hatred or contempt by reason of the fact that they are identifiable on the basis of a prohibited ground of discrimination?

[129] The issue here is whether the messages are indeed likely to expose a person or persons to hatred or contempt by reason of the fact that they are identifiable on the basis of a prohibited ground of discrimination or whether they are simply, as Mr. Fromm has categorized them, "strong opinions" expressed by the Respondent.

[130] In defining "hatred" or "contempt", the Tribunal, in *Nealy v. Johnson* (1989), 10 C.H.R.D. No. 10, at para. 45653, applied the definition found in the Oxford English Dictionary (1971 ed.). "Hatred" is defined as "active dislike, detestation, enmity, ill-will, malevolence". "Contempt" is "the condition of being condemned or despised; dishonour or disgrace".

[131] In that same decision, the Tribunal further added, at para. 45654 :

As there is no definition of "hatred" or "contempt" within the [Canadian Human Rights Act] it is necessary to rely on what might be described as common understandings of the meaning of these terms. Clearly these are terms which have a potentially emotive content and how they are related to particular factual contexts by different individuals will vary. There is nevertheless an important core of meaning in both, which the dictionary definitions capture. With "hatred" the focus is a set of emotions and feelings which involve extreme ill will towards another person or group of persons. To say that one "hates" another means in effect that one finds no redeeming qualities in the latter. It is a term, however, which does not necessarily involve the mental process of "looking down" on another or others. It is quite possible to "hate" someone who one feels is superior to one in intelligence, wealth or power. None of the synonyms used in the dictionary definition of "hatred" give any clues to the motivation for the ill will. "Contempt" is by contrast a term which suggests a mental process of "looking down" upon or treating as inferior the object of one's feelings. This is captured by the dictionary definition relied on in Taylor...in the use of the terms "despised", "dishonour" or "disgrace". Although the person can be "hated" (i.e. actively disliked) and treated with "contempt" (i.e. looked down upon), the terms are not fully coextensive, because "hatred" is in some instances the product of envy of superior qualities, which "contempt" by definition cannot be." [Canada (Human Rights Commission) v. Taylor, *supra*, para. 60]

[132] "Hatred" thus refers to "extreme" ill-will and an emotion which allows for "no redeeming qualities" in the person at whom it is directed. For its part, "contempt" describes circumstances where the person is looked down upon.

[133] How is the likelihood of exposure to hatred or contempt to be determined? Is it sufficient for the Tribunal to have regard to the messages alone and then draw an inference, based on the content, tone and presentation of the messages as to whether they are likely to expose members of the targeted groups to hatred and contempt? Or must there be other evidence to assist the Tribunal in determining whether the messages are likely to expose members of the targeted groups to hatred or contempt? In his closing arguments, the Respondent's representative stated that there was no evidence before the Tribunal that the messages were likely to expose targeted groups to hatred or contempt as no expert evidence had been called by the Complainant to help the Tribunal answer these questions.

[134] In *Citron v. Zundel, supra*, at para. 141, the Tribunal stated that, although expert evidence might be helpful, it is the language used in the messages themselves that will allow it to determine whether the material offends s. 13(1). Similarly, in *Warman v. Kyburz*, 2003 CHRT 18, the Tribunal, while taking note of the expert's evidence, found

that it was evident from the messages themselves that they were contrary to s. 13(1). The fact that no expert evidence was called is not in itself fatal to the complainant's claim.

[135] The messages submitted in evidence are principally directed at two groups, Blacks and Jews. People of the Black community are portrayed as intellectually inferior, violent, criminal and stupid - in short, they are represented as devoid of any redeeming qualities.

[136] The messages directed towards Jews characterize them as the enemy of humanity, as a parasitic race, as pure evil, hideous parasites, as a disease, vermin, as deceitful, liars, depraved, criminals involved in organised crime, drugs and white slavery. The Respondent refers to the holocaust as the "holohoax" which he describes as an attempt to portray the Jews as victims of the Nazis, which he asserts to be an inversion of the truth. He recommends that Jews be deprived of their Canadian citizenship and even expelled from this country. The basic theme of the material is that Jews have no redeeming qualities and they are destroying the white race. The messages reinforce the classic anti-semitic myths that Jews have a disproportionate degree of power and that they pose a menace to the civilized world. They have foisted multiculturalism on White society and are responsible for the damage it has done. In addition they are dangerous Communists Marxists. The tone and extreme denigration of Jews in these messages does not form part of a legitimate political debate, because it is incompatible with the basic tenets of equality enshrined in the *Act*.

[137] The messages even insinuate that violence against Canadian minorities and especially Jews is acceptable. They contain in many instances an aggressive overtone.

[138] In the NSPC website, the Respondent clearly asserts that Jews, Blacks and other non-whites are destroying the country, should be denied citizenship, sterilized and even deported. These messages point out that non-white people bring poverty, crime and corruption to our society. The messages also offer readers reasons to hate them and to be suspicious of them.

[139] The messages clearly expose the people of the Jewish faith, Blacks and other non-white minorities to hatred and contempt contrary to section 13 of the *Act*.

F. Conclusion on the section 13(1) complaint

[140] Having looked at these messages in context, I have no doubt that they are likely to expose persons of the Jewish faith, Blacks and other non-white minorities to hatred or contempt. The underlying theme in the Respondent's messages is that Jews, Blacks and other non-whites are destroying the country and that they should either be deported or segregated. They also refer to the threat they represent for white civilization. Members of the targeted groups are described as vermin, a disease, parasites, criminals, scoundrel, embezzlers and liars. They are portrayed as dangerous and, in some cases, intellectually inferior.

[141] These messages convey extreme ill-will to the point of violence towards the targeted groups. Nothing in these messages allows for any redeeming qualities for members of these groups. The members of the groups have been completely dehumanized. Consequently they may likely be the object of hatred and contempt.

[142] The Tribunal therefore concludes that these messages are likely to expose a person or persons to hatred or contempt by reason that that person or those persons are identifiable on the basis of race, national or ethnic origin, colour or religion under section 13(1) of the *Act* and that a discriminatory practice has been established.

G. Remedies

[143] Having found that Mr. Warman's section 13 complaint was substantiated, the final issue to be determined is that of remedy. The remedies sought by the Complainant are:

- a) An Order that the Respondent cease the discriminatory practice, pursuant to section 54(1)(a) of the *Act*;
- b) An Order that the Respondent pay compensation pursuant to section 54(1)(b) of the *Act*;
- c) An Order that the Respondent pay a penalty pursuant to section 54(1)(c) of the *Act*.

(i) Cease and desist order

[144] Where a section 13 complaint is substantiated, section 54(1)(a) of the *Act* empowers the Tribunal to order the Respondent to cease the discriminatory practice. The process of hearing a complaint and, if the complaint is substantiated, issuing a cease and desist order serves to remind Canadians of our fundamental commitment to equality of opportunity and to the eradication of racial and religious intolerance. (See *Taylor, supra*, at para. 53, and *Winnicki, supra*, at para. 192.)

[145] A cease and desist order brings to a Respondent's attention the fact that his or her messages are likely to have a harmful effect. Uncertainty or mistake as to the probable effect of these messages is thus dissipated and consequently their continued promulgation will be accompanied by the knowledge that certain individuals or groups are likely to be exposed to hatred or contempt on the basis of race or religion.

[146] Messages posted by individuals on the Internet present a particular challenge for the Tribunal in crafting a meaningful remedy. As the Tribunal stated in *Warman v. Kyburz, supra*, at para. 81: "The unique nature of Internet technology, including the jurisdictional challenges arising from the borderless world of cyberspace, as well as the 'moving targets' created by the use of mirror sites raise real concerns as to the efficacy of cease and desist orders in relation to hate messages disseminated on the Internet." Notwithstanding this observation, the Tribunal in *Kyburz* still issued a cease and desist order. The difficulty in crafting a meaningful remedy should not in any way prevent the Tribunal from making such an order if it deems fit to do so.

[147] In the *Zündel* decision (*supra*), the Tribunal stated, at para 300:

Any remedy awarded by this Tribunal, will inevitably serve a number of purposes: prevention and elimination of discriminatory practices is only one of the outcome flowing from an Order issued as a consequence of these proceedings. There is also a significant symbolic value in the public denunciation of the actions that are the subject of this complaint. Similarly, there is the potential educative and ultimately the larger preventive benefit that can be achieved by open discussion of the principles enunciated in this or any Tribunal decision.

[148] A cease and desist order can have both a practical and symbolic effect. On a practical side, it will prevent the Respondent from continuing to communicate over the Internet material of the nature described in this decision. On the symbolic side there is an important value to the public denunciation of the actions which form the subject matter of this complaint and, also, there is an important educational value in such an order.

[149] Having regards to the postings of the Respondent, the Tribunal is of the view that a cease and desist order is entirely appropriate. It is therefore ordered that the Respondent, Terry Tremaine, cease the discriminatory practice of communicating or causing to be communicated, by the means described in s. 13 of the *Act*, namely the Internet, material of the type which was found to violate s. 13(1) in the present case, or any other matter of a substantially similar content that is likely to expose a person or persons to hatred or

contempt by reason of the fact that that person or persons is identifiable on the basis of a prohibited ground of discrimination.

(ii) Compensation pursuant to paragraph 54(1)(b) of the Act

[150] Paragraph 54(1)(b) of the *Act* provides that the Tribunal may order the payment of special compensation to the victim, of a sum that is not to exceed \$20 000, where a victim is specifically identified in the communication that constituted the discriminatory practice and if the Tribunal determines that the Respondent engaged in the discriminatory practice wilfully or recklessly. The Complainant is seeking special compensation in the amount of \$10 000, from the Respondent.

[151] The Complainant argues that to order compensation under this section, the Tribunal need only be satisfied that the victim is specifically identified in the discriminatory messages and that the Respondent engaged in the practice wilfully or recklessly. He argues that no other factors should be taken into consideration.

[152] The first paragraph of section 54 gives the Tribunal the discretion to order one or more of the remedies enumerated therein. The paragraph states that "The member or panel *may* make only one or more of the following orders/le membre instructeur...peut rendre". (The emphasis is mine.) Subsection 53(3), to which paragraph 54(1)(b) makes reference, also uses the expression "may/peut".

[153] When "may" is used in legislation there is rarely any doubt about what the word means (See *Interpretation Act*, R.S. 1985, c. I-21, s. 11.). It means that Parliament authorizes a person to do something that he would otherwise not be able to do or to do something that would otherwise be legally ineffective. In this case, Parliament as empowered the member or panel of the Tribunal to order certain remedies including special compensation to the victim. When a statutory power is conferred using the word "may", the implication is that the power is discretionary and that the person or persons authorized to exercise this power can lawfully decide whether or not to exercise it. This discretion must, though, be exercised judicially and in light of the evidence before the Tribunal. (See *Canadian Human Rights Commission v. Dumont*, 2002 FCT 1280, at paras. 12-15).

[154] In this case, paragraph 54(1)(b) provides that compensation may be ordered where:

- (i) a victim;
- (ii) is specifically identified in the communication that constituted the discriminatory practice; and
- (iii) the Respondent engaged in the practice wilfully or recklessly.

[155] The first requirement is that the Respondent pay a compensation to "a victim". The Tribunal must determine if the Complainant in this particular case is "a victim of the discriminatory practice".

[156] In her closing arguments the Commission's lawyer addressed this issue. She referred to subsection 40(1) of the *Act* which states:

40. (1) Subject to subsections (5) and (7), any individual or group of individuals having reasonable grounds for believing that a person is engaging or has engaged in a discriminatory practice may file with the Commission a complaint in a form acceptable to the Commission.	40. (1) Sous réserve des paragraphes (5) et (7), un individu ou un groupe d'individus ayant des motifs raisonnables de croire qu'une personne a commis un acte discriminatoire peut déposer une plainte devant la Commission en la forme acceptable pour cette dernière.
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[157] Interestingly, paragraph 40(5)(b) of the *Act* contemplates specifically a situation such as the present one when it states:

<p>40(5) No complaint in relation to a discriminatory practice may be dealt with by the Commission under this Part unless the act or omission constitutes the practice (b) occurred in Canada and was a discriminatory practice within the meaning of section 5, 8, 10, 12 or 13 in respect of which <u>no particular individual is identifiable as the victim.</u> (The emphasis is mine.)</p>	<p>40(5) Pour l'application de la présente partie, la Commission n'est valablement saisie d'une plainte que si l'acte discriminatoire: b) a eu lieu au Canada <u>sans qu'il soit possible d'en identifier la victime,</u> mais tombe sous le coup des articles 5, 8, 10, 12, ou 13. (Non souligné dans l'original)</p>
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[158] The Commission, in its closing arguments, rightly added, in light of this subsection, that there is no need to be a victim in order to file a complaint under section 13 of the *Act*. It also referred to the case of *Warman v. Winnicki, supra*, where at para. 46, the Tribunal indicated that, under section 13, it was not necessary to show that, in fact, anyone was victimized by the hatred or contempt directed to the targeted group. The Commission concluded by stating that the case law and particularly the *Act* clearly authorize any individual or group of individuals to file a human rights complaint under this section whether or not they are the victims of the discriminatory practice which is alleged. The Commission did not think that the question of whether or not the Complainant was a victim was an issue in this case.

[159] The Complainant, for its part, did not present, during the hearing, any evidence which could establish that he was a victim of the discriminatory practice of the Respondent. He didn't have to in order to file his complaint. In his original complaint, the Complainant had sought relief under section 14.1 of the *Act* for retaliation. At the start of the hearing, he chose to abandon this claim. He cannot now resurrect this claim by seeking special compensation under paragraph 54(1)(b). The Tribunal therefore concludes, for the above given reason, that the Complainant has not met the burden under this paragraph.

[160] The Tribunal therefore concludes that the Complainant's claim to compensation under paragraph 54(1)(b) is unfounded.

(iii) An order to pay a penalty under paragraph 54(1)(c)

[161] Paragraph 54(1)(c) provides that the Tribunal may order the Respondent to pay a penalty of not more than \$10,000. In deciding whether to order the payment of the penalty, the Tribunal must, according to subsection 54(1.1), take into account:

- (i) the nature, circumstances, extent and gravity of the discriminatory practice;
- (ii) the wilfulness or intent of the person who engaged in the discriminatory practice;
- (iii) any prior discriminatory practices that the person has engaged in;
- (iv) the person's ability to pay the penalty.

[162] The numerous hate messages posted by the Respondent were highly contemptuous and injurious. They portrayed members of the targeted groups as evil and criminal. They referred to Jews as parasites and vermin. They claimed that Blacks were intellectually

inferior to Whites. They called for the expulsion of Jews, Blacks and other non-whites from Canada. These messages are malicious, vicious and extreme in the violent nature of their overtone.

[163] The active promotion of hatred and contempt towards members of the targeted groups by the Respondent is fundamentally at odds with the goal of the *Canadian Human Rights Act*, which is to promote a society in which all are free from discrimination and all may benefit from equal opportunity regardless of personal traits such as race, national or ethnic origin, colour, and sexual orientation.

[164] On the positive side for the Respondent, there was no information that he had engaged in any prior discriminatory practices before he started posting on the "Stormfront" website in 2004. Also, the fact that for a period of about ten months, after he was served with the complaint, he refrained from posting any messages and that at one point he even disavowed and repudiated all of his messages should be taken into consideration when determining the amount of the penalty to be imposed.

[165] In terms of the extent of the hate messages, the evidence indicates that the Respondent had posted almost 1,900 messages on the "Stormfront" site, as of July 28, 2006. Since the Tribunal has not seen nor read all of these messages, it cannot, in all fairness to the Respondent, conclude that they all contain hate messages of the nature of those put into evidence in this case. Consequently, the Tribunal cannot come to the conclusion that the number of messages posted favours a penalty at the highest end of the spectrum.

[166] The Respondent's wilfulness and intent in engaging in the discriminatory practice, is self-evident from the vicious tone of the messages themselves. His reaffirmation at the hearing that he stood by all his postings, his refusal to utter any remorse and the fact that he has not shown any indication that he has any intent of stopping.

[167] The Respondent gave evidence regarding his financial situation. He testified that he did not own a car or a house. He has lost his job at the University of Saskatchewan. He testified that he is presently working 20 hours a week at a minimum wage job, clearing about \$600 a month. This evidence went unchallenged and the Respondent was not cross-examined on this matter neither by the Commission, nor by the Complainant.

[168] Taking into account the nature, circumstances, gravity and intentional nature of the communication, and taking all the other factors into consideration, I find that a penalty of \$4,000, would be reasonable in these circumstances.

V. ORDER

[169] For the foregoing reasons, the Tribunal finds that the complaint against Terry Tremaine is substantiated and orders that:

- 1 Terry Tremaine, and any other individuals who act in concert with Mr. Tremaine, cease the discriminatory practice of communicating telephonically or causing to be communicated telephonically by means of the facilities of a telecommunication undertaking within the legislative authority of Parliament, material of the type that was found to violate section 13(1) in the present case, or any other messages of a substantially similar content, that are likely to expose a person or persons to hatred or contempt by reason of the fact that that person or persons are identifiable on the basis of a prohibited ground of discrimination, contrary to section 13(1) of the *Canadian Human Rights Act*.
- 2 Terry Tremaine shall pay a penalty in the amount of \$4,000. Payment of the penalty shall be made by certified cheque or money order, payable to the "Receiver General for Canada",

and must be received by the Tribunal within 120 days of Mr. Tremaine's being notified of this decision.

"signed by"
Michel Doucet

OTTAWA, Ontario

February 2, 2007

PARTIES OF RECORD

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APPEARANCES:	
Richard Warman	For himself
Ikram Warsame Giacomo Vigna	For the Canadian Human Rights Commission
Terry Tremaine Paul Fromm	For the Respondent