

**Canadian Human Rights Tribunal**

**Tribunal canadien des droits de la  
personne**

**BETWEEN:**

**RICHARD WARMAN**

**Complainant**

**- and -**

**CANADIAN HUMAN RIGHTS COMMISSION**

**Commission**

**- and -**

**FRED KYBURZ**

**Respondent**

**REASONS FOR DECISION**

2003 CHRT 18

2003/05/09

**PANEL:** Anne L. Mactavish, Chair

Shirish Chotalia, Member

Eve Roberts, Q.C., Member

## TABLE OF CONTENTS

I. INTRODUCTION 1

II. FAILURE OF FRED KYBURZ TO APPEAR AT THE HEARING 1

III. THE ISSUES 2

IV. THE SECTION 13 COMPLAINT 3

A. Did Mr. Kyburz Communicate, or Cause to be Communicated, Repeatedly, the Messages Found at the Web Site in Issue? 3

B. Were These Messages Communicated in Whole or in Part by Means of a Telecommunications Undertaking Within the

Legislative Authority of Parliament? 4

C. 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? 5

(i) What is the Subject Matter of the Messages Communicated by Mr. Kyburz? 5

(ii) Are These 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? 14

C. Finding Regarding the Section 13 Complaint 18

## V. THE SECTION 14.1 RETALIATION COMPLAINT 19

A. The Allegedly Retaliatory Messages 19

B. The Undisclosed Messages 25

C. Analysis of the Retaliation Complaint 26

## VI. THE COPYRIGHT NOTICE 28

## VII. REMEDY 28

A. The Section 13 Complaint 28

(i) Cease and Desist Order 28

(ii) Special Compensation 31

(iii) Interest 32

(iv) Penalty 32

B. The Section 14.1 Complaint 35

(i) Cease and Desist Order 35

(ii) Compensation for Pain and Suffering 36

(iii) Interest 37

(iv) Special Compensation 37

## VIII. ORDER 37

## I. INTRODUCTION

[1] Richard Warman is a lawyer in Ottawa. On February 2, 2002, Mr. Warman filed a complaint with the Canadian Human Rights Commission against Fred Kyburz. Mr. Warman's complaint alleged that Mr. Kyburz communicated messages through his Internet web site, messages which expose identifiable groups to hatred or contempt, in violation of section 13 of the *Canadian Human Rights Act*. Mr. Warman's complaint was subsequently amended, with leave of the Tribunal, to include the allegation that Mr. Kyburz retaliated against Mr. Warman for having filed his human rights complaint, contrary to section 14.1 of the *Act*. This retaliation is alleged to have occurred through the use of Mr. Kyburz' e-mail account and web forum.

## II. FAILURE OF FRED KYBURZ TO APPEAR AT THE HEARING

[2] Mr. Kyburz did not appear at the hearing into Mr. Warman's complaint, nor did anyone acting for Mr. Kyburz appear on his behalf. The record discloses that Mr. Kyburz was personally served with information relating to the complaint. The documents served upon Mr. Kyburz included the Notice of Hearing, which indicated the dates and location of the hearing. Shortly after this material was served on Mr. Kyburz, the documents were returned to the Tribunal, with the notation "returned for fraud and lack of jurisdiction" written across the top page, followed by what appears to be Mr. Kyburz' signature. <sup>(1)</sup> Mr. Kyburz also sent the Tribunal a document entitled "Copyright Notice", relating to the name Ernst-Friedrich Kyburz.

[3] The Tribunal is satisfied that Mr. Kyburz had notice of Mr. Warman's complaint and of the hearing in this matter. This finding is confirmed by the material downloaded from Mr. Kyburz' web forum, which makes it abundantly clear that Mr. Kyburz was aware of the hearing, and elected not to participate in the process.

## III. THE ISSUES

[4] Insofar as Mr. Warman's section 13 complaint is concerned, there are three issues that must be considered in determining whether the complaint has been made out: <sup>(2)</sup>

1. Did Mr. Kyburz communicate, or cause to be communicated, repeatedly, the messages found at the web site in issue?
2. Were these messages communicated in whole or in part by means of a telecommunications undertaking within the legislative authority of Parliament?  
and
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?

[5] The Tribunal must also determine whether Mr. Kyburz retaliated or threatened retaliation against Mr. Warman for having filed his original section 13 complaint with the Canadian Human Rights Commission, contrary to the provisions of section 14.1 of the *Canadian Human Rights Act*.

[6] In the event that either or both aspects of the complaint are substantiated, the issue of the appropriate remedy will also have to be addressed.

#### **IV. THE SECTION 13 COMPLAINT**

##### **A. Did Mr. Kyburz Communicate, or Cause to be Communicated, Repeatedly, the Messages Found at the Web Site in Issue?**

[7] Mr. Warman's section 13 complaint relates to a web site located at the [www.patriotsonguard.org](http://www.patriotsonguard.org) web address. During his testimony, Mr. Warman identified numerous documents that he had downloaded from this site. These consist of a copy of the site's home page, as well as numerous Daily Information Pages (or DIPs). The home page describes the mission of Patriots on Guard, and states that the web page is presented by Fred Kyburz of Coleman, Alberta. Each DIP starts with a welcoming message, which includes a solicitation to subscribe to a monthly Patriots on Guard newsletter. Subscription fees are to be sent to Fred Kyburz, General Delivery, Blairmore Post Office, Blairmore, Alberta.

[8] Mr. Warman testified that he performed a search at the [www.register.com](http://www.register.com) web site, which, he explained, will provide the name of the registrant of a particular web address. The results of that search disclose that the registered owner of the [www.patriotsonguard.org](http://www.patriotsonguard.org) web site was Fred Kyburz, General Delivery, Blairmore Post Office, Blairmore, Alberta.

[9] Based upon the evidence before us, the Tribunal finds that Fred Kyburz controlled the [www.patriotsonguard.org](http://www.patriotsonguard.org) web site. The Tribunal is further satisfied that Mr. Kyburz caused the materials found on the site to be communicated. The fact that a web site is a somewhat passive medium, requiring the reader to take positive steps in order to access the posted material does not detract from the fact that, in up-loading the material to the web site, Mr. Kyburz communicated the material in issue.<sup>(3)</sup>

[10] The final matter to be considered is the element of repetition. The extent to which these messages were disseminated is a testament to the effectiveness of the Internet as a communications tool. The Patriots on Guard web site has a visitor counter. As of the time when Mr. Warman downloaded the page on September 10, 2001, 61,370 visitors had accessed the Patriots on Guard site.

[11] We are therefore satisfied that Mr. Kyburz communicated, or caused to be communicated, repeatedly, the messages found at the web site in issue.

## **B. Were These Messages Communicated in Whole or in Part by Means of a Telecommunications Undertaking Within the Legislative Authority of Parliament?**

[12] The messages which form the subject matter of Mr. Warman's section 13 complaint are those that appear on the Patriots on Guard web site. The last such message is dated December 21, 2001, and appears to have been downloaded by Mr. Warman that same day.

[13] As will be explained in greater detail further on in this decision, Mr. Warman complained about the content of the Patriots on Guard web site to Mr. Kyburz' Internet service provider, causing the service provider to withdraw service. Mr. Warman testified that the Patriots on Guard web site was shut down permanently some time in late December of 2001 or early January of 2002.

[14] It is not entirely clear which version of section 13 governs the Patriots on Guard web site. The *Canadian Human Rights Act*, as it was originally enacted, did not explicitly deal with Internet communications. This is not surprising, in that section 13 was originally enacted in 1977, well before the Internet came into our lives on a regular basis. As part of the changes to Canadian law effected by the proclamation of the *Anti-Terrorism Act*<sup>(4)</sup> on December 24, 2001, the *Canadian Human Rights Act* was amended to add the following provision to subsection 13(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 ...

[15] Ultimately, however, it does not matter whether any communication by Mr. Kyburz took place after the amendments to the legislation<sup>(5)</sup>. The earlier version of section 13 has been found to encompass Internet communications in *Citron et al. v. Zündel*<sup>(6)</sup>, and we adopt the reasoning of the Tribunal in that case.

## **C. 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?**

### **(i) What is the Subject Matter of the Messages Communicated by Mr. Kyburz?**

[16] In order to put the messages in issue into context, it is helpful to review the self-described mission of Patriots on Guard. According to the web site's home page, Patriots on Guard: "... is an organization dedicated to alerting the public about travesties against people's rights and freedoms, specifically by the courts and law enforcement agencies in Canada, and worldwide." This is done through the use of the DIPs. Most of the DIPs consist of copies of articles obtained from other sources, followed by an editorial comment. These editorial comments are frequently written in the first person, and appear to be the work of Mr. Kyburz.

[17] The focus of many of the early DIPS is on the supposed misdeeds of Ashkenazi Jews. <sup>(7)</sup> For example, the October 22, 2000 DIP contains several articles from what appears to be a Syrian news web site, each of which deals with aggression and terrorist acts allegedly committed by the State of Israel. These articles are followed by a commentary by Mr. Kyburz, wherein he explains his understanding of the difference between what he calls "blood Jews" or Sephardic Jews, and Ashkenazi Jews. Ashkenazi Jews, who Mr. Kyburz says comprise about 90% of the world's Jewish population, are not real Jews, but chose Judaism as a faith sometime in the 13<sup>th</sup> century.

[18] Mr. Kyburz states that he is not an anti-Semite, but rather is writing "in order to clarify misunderstandings some people have about Jews." He goes on to say:

I am not against Jews. I am against some of the practices of these Ashkenazi Jews. They are the ones who propagate all the violence. They are the ones who are the driving force behind the United Nations. They are the designers of our present usurious money system that brings so much hardships [sic] and destruction. They are the ones in control of the mainstream media disseminating lies and misinformation. They are the ones who are in control of the filth in the movie industry. Communism, terrorism, war and Ashkenazi Jew are synonymous.

Mr. Kyburz further states:

Again I want to repeat that there are decent Jews, even Ashkenazi Jews. We have to be careful not to attack the Jews but their nefarious actions, and to expose the particular individuals who commit such nefarious actions. We also have to go after their mindless lackeys, the people in government who don't think twice to implement their murderous plans.

[19] A similar sentiment is expressed in the October 24, 2000 DIP. Commenting on an article entitled "The 'English' Jew behind the foundation of Israel", Mr. Kyburz writes "Isn't it amazing that war is always traced back to Ashkenazis who are falsely called Jews. Wherever they are involved deceit, treachery and murder run rampant".

[20] On October 25, 2000, Mr. Kyburz published an article written by William Pierce, entitled "There will be Hell to pay". This is a lengthy article - one quite remarkable in the level of vitriol that it directs at Jews. The article deals with a number of issues, including the White-slave trade supposedly operated by Jews. Pierce states that the "White-slave business flourishes in Israel because in that country slavery is not illegal, as long as the slaves aren't Jews. White-slavery is, in fact, sanctioned by the Jewish religion."

[21] Pierce also discusses Jewish involvement in child pornography, referring to the break-up of a child pornography ring in Moscow, which ring was allegedly run by three Jews. He describes the activities of the pornographers in the following terms:

Child pornography is an almost unimaginably filthy business. I'm not talking about videos of well-developed 15- or 16-year-old girls having sex. I'm talking about things so perverse and sickening that most Americans can't imagine them.

I'm talking about men being filmed having sex with two- and three-year-old girls. I'm talking about small children - White children - being sexually tortured and raped to death in front of the camera for the titillation of the sick freaks who are sexually excited by such horrors.

[22] As to the 'sick freaks', that is, the consumers of the child pornography, Pierce states that "The freaks, I am sorry to say are not all Jews, although Jews are disproportionately represented among them."

[23] Pierce goes on to explain the fact that there was no coverage of these events in the American media, as a result of Jewish control over the media.

[24] What is to be done about the people engaged in these pornographic activities? Pierce states that "[his] view is that such people should simply be killed on the spot whenever and wherever they are found." Having previously identified Jews as being in control of the media, he goes on to say: "More than that, the people who promote and encourage this extreme individualist mind-set through their control of the media should be exterminated root and branch as a class."

[25] Pierce does not, however, limit his comments to the killing of Jews engaged in child pornography and media control, but actually suggests that the elimination of all of the Jews in Russia would be justified:

The Jews bled Russia dry with 70 years of Marxist rule and murdered tens of millions of Russians - the best Russians - in the communist slave labour camps or in the basement of the secret police headquarters or beside the shooting pits in forests all over Russia and Ukraine; they have forced thousands of the prettiest young Russian women into prostitution and slavery after the fall of communism; and now they kidnap Russian children and rape them to death in front of the camera in order to make child-porn films for rich perverts in the West. The Jews are lucky they still control most of the television and other mass media in Russia - because if the Russian people ever are fully awakened to what the Jews are still doing to them, they will rise up and kill every Jew in Russia - every Jew - and they will be fully justified in doing so.

[26] While acknowledging that not all Jews are engaged in child pornography, Pierce posits that all Jews should be held to account for these "horrible atrocities", as "... the ones who don't run the child-porn business cover for the ones who do."

[27] While it does not appear that Fred Kyburz was the author of this article, section 13 of the *Act* does not require authorship. The discriminatory practice is made out when a respondent communicates matter that is 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, whether or not the respondent wrote the material himself.

[28] As with the previous DIPs, Mr. Kyburz offers his own commentary regarding the article he published on his web site. What does he have to say about the Pierce article? He says:



I would like to mention that the Jews who engage in these atrocities are not 'real' Jews. They are the Ashkenazi Jews which [sic] took the Jewish faith for political reasons as we have seen in the previous DIP. I will refer to them in the future simply as Ashkenazis. They are frauds. They are the ones who brought communism into being. They are the ones concocting the many ways of sickening people throughout the world. They are the ones who created the usurious money system in order to bleed us dry. They are the ones who are in control of WHO. They are the ones who push the vaccines to make us sick and dependant on their pharmaceutical corporations. They are the ones controlling the United Nations. Is it any surprise that the United Nations is a murderous outfit? They are the ones dictating our governments."

Mr. Kyburz concludes his commentary with the following statement:

\* Warning \*

If the good Jews do not denounce the bad Jews (Ashkenazis),  
they share the guilt!

[29] Commenting on televised comments made by a former CSIS agent with respect to groups such as Patriots on Guard, Mr. Kyburz' November 9, 2000 DIP says:

First I will tell you that you are very, very insensitive to call the murderers, child molesters, terrorists and pedophiles Jews. They are not Jews, yet they call themselves Jews. They are the Ashkenazis. Are they the seed of Satan? I don't know. I know that it would be impossible for the spawn of Satan to commit worse crimes than these characters commit..."

[30] The notion of Ashkenazi Jews as frauds is reinforced in Mr. Kyburz' November 17, 2000 DIP, which contains an extract of a book entitled "Truth and Justice versus Lies and Hatred". This book extract questions the extent of the Holocaust, suggesting that somewhere in the vicinity of 2-300,000 Jews actually perished during the Second World War, rather than the oft-cited figure of six million deaths. To some extent, the writer suggests, the Jews were the authors of their own misfortune:

The anti-Jewish - falsely dubbed as anti-Semitic stipulations of the National Socialist programs were, in fact, a slap in the face for Jews who were loyal to the German state. The Zionist Movement which operates throughout the world, took these measures as a crucial back-up in their efforts to attain their own goals. That is why Zionist [sic] stoked the fires of confrontation between the Reich Government and the Jews internationally. That is something that we are not supposed to know today. The Zionists were convinced that only if their co-religionists were segregated in their host countries would they be interested in settling Palestine. They even welcomed the Nuremberg Laws because they put wind into the sails of Zionist aspirations.

Mr. Kyburz states that he is publishing this excerpt " ... to unveil part of the truth regarding the 'Holocaust'".

[31] In his November 18, 2000 DIP, Mr. Kyburz follows an article critical of Israeli actions against the Palestinians during the most recent Intifada with the statement that:

The Ashkenazis are in their element. Destruction of property and life is their great ability. That's what they do best. They practice [sic] that ability where ever and whenever they find an opportunity. They have done it throughout the centuries.

[32] Mr. Kyburz' comments in his December 18, 2000 DIP mark the beginning of a shift in the focus of his attentions. Zionist Jews are now equated with Ashkenazi Jews. According to Mr. Kyburz, the Zionist Jews' agenda should also provoke consternation in the reader:

Now folks, the Khazars<sup>(8)</sup> (Zionist Jews) which [sic] are in control and create the wars for Israel are also in control of the NWO [New World Order<sup>(9)</sup>] Can you imagine the fate which will await you once these people are in total control? Remember, Stalin was one of them. He killed tens of millions of his own people. Some estimates go as high as a hundred million. These depraved characters have not become more civilized in the meantime. Either they are being stopped or we will have to experience the wrath of their depraved and twisted minds. I, for one, am not too excited to become one of their victims. How about you?

The March 25, 2001 DIP refers back to the October 25, 2000 DIP, noting that it:

... shows the real character of the Zionist Jews. Their speciality is child abductions, child pornography, child molestation, slavery and murder. Yes, that's the type in our courts, in the Universities, in governments, in the police, in the medical profession specializing in abortion, everywhere they could have a chance to destroy life.

[33] Subsequent DIPs describe Zionist and/or Ashkenazi Jews as the most ruthless terrorists in the world, who do not respect the rights, freedoms or lives of others<sup>(10)</sup>, a criminal and murderous group of thugs, who are sub-human and demented<sup>(11)</sup>, people who will kill a great proportion of the world's population unless they are stopped.<sup>(12)</sup>

[34] Mr. Kyburz' comments are not always limited to Zionist or Ashkenazi Jews but are, on occasion, directed at Jews as a whole. For example, his December 21, 2000 DIP states that "The Jews have inflicted an incredible amount of harm throughout the world over centuries." He goes on to refer specifically to Zionist Jews, stating that they will never change their ways because:

...being frauds, criminals, war mongers, pedophiles, anti-life and full of hate is part of them ... It is their nature. They will not and cannot change. If we do not want them to destroy our civilization, our way of life, our rights and freedoms we should make sure that they have no part in the decision making. This means that they will not be allowed in any government institution of any kind.

[35] Richard Warman testified that in March of 2001, he became aware of the Patriots on Guard web site, through his involvement in human rights work. He contacted Mr. Kyburz' Internet service provider, alerting it to the nature of the content on the site. As a result, service to the site was cut off, and the site was shut down. According to Mr. Warman, the Patriots on Guard web site was not accessible for several days in April of 2001, although it was back up within a couple of days, through a different service provider.

[36] Mr. Warman's efforts to shut down the web site did not go unnoticed by Mr. Kyburz. On April 7, 2001, an e-mail was sent to Mr. Warman from someone identifying himself as Fred Kyburz, using the [kyburz@telusplanet.net](mailto:kyburz@telusplanet.net) e-mail address. The circumstances surrounding the sending of the e-mail, together with its content establish, on a balance of probabilities, that it was sent by Mr. Kyburz. The correspondence, which was copied to dozens of other recipients, can best be described as a diatribe against Mr. Warman for having caused the Patriots on Guard web site to shut down.

[37] In reviewing Mr. Kyburz' message to Mr. Warman, it is apparent that Mr. Kyburz assumed that Mr. Warman was himself Jewish. Indeed, much of his venom is directed at Mr. Warman and his "Zionist Jewish brethren" :

You got the nerve to call me an 'antisemite' [sic]! I am NOT an anti-Semite - unlike yourself! I am anti-vermin, anti-crime, anti-child abuse, anti-child pornography, anti-Zionist propaganda.

You are an anti-Semite since your ilk have the blood of thousands of Jews on your hands as well as the blood of millions of white people. You are anti-Semite, anti-white and anti-right.... I have warned you idiots of my intent to expose your communistic Zionist agenda. Now you have given me good reason to make good on my promise. You will see much of your ilk's atrocities exposed. It will show who the TRUE anti-Semites are.

You call my exposure of your ilk's devious and criminal actions 'hatred of an identifiable group (ie. in this case Jewish people).' It's not hatred on my part, it is unspeakable hatred by your Zionist brethren's insidious and murderous actions against innocent people (ie. in this case white children). I will write about the possible motives of your Zionist Jewish brethren in the near future. You can holler and scream ANTI-SEMITE as loud as you want, the louder the better. The louder you shout the more I will expose your incredibly devious intentions. So go ahead. I am ready for battle.

[38] Mr. Kyburz then began to include regular references to Mr. Warman in his DIPs. For example, in the August 5, 2001 DIP, Mr. Kyburz stated:

Remember that these Jews are the Zionist Jews, mostly Ashkenazi Jews - all of them hard core communists. They are also the ones in control of the media everywhere. They are as well in control of Hollywood. Is it any surprise that the

news of the media is twisted? Is it any surprise that nothing but scum and stench comes out of Hollywood?

Richard Warman ... [here Mr. Kyburz names other individuals who have incurred his wrath] ... am I an anti-Semite by bringing the cold truth to light about these criminal and murderous minds you so fervently support and protect?

[39] The December 15, 2001 DIP refers to Mr. Warman's effort to shut down Mr. Kyburz' web site, specifically mentioning Mr. Warman by name. The DIP goes on to say:

We have to stop these low lives for what they are and their incredible atrocities. We can only stop their murderous actions by full exposure. It is hard, if not impossible, for a normal individual to understand how anyone could be as evil as they are. The fact is, that we better learn before they are poisoning us with their proposed vaccinations and other medical poisons.

[40] In his December 18, 2001 DIP, Mr. Kyburz refers to Mr. Warman as a "wretched character", saying that he is a willing flunkey of the Zionist/communist Israeli government. Mr. Kyburz subsequently refers people like Mr. Warman as "sub-human criminal minds" who "... do not shy away from any crime in order to reach their goal of complete world domination".

[41] The final reference to Richard Warman in the Patriots on Guard web site is contained in the December 20, 2001 DIP. Following his observation that "The Jews (Zionists) are as evil as they have always been. War is their game. Profits from war is [sic] their aim.", Mr. Kyburz goes on to say:

Richard Warman, if you can prove me wrong speak up. Write me an e-mail and make your objections known. Don't be a jerk or a coward. Sign your name to your e-mail. And don't try to shut down my web site again because you object to my straight forward talk. If you object to my telling the truth then change your ways and get your fellow Zionist frauds to change. I know to change your characters is a virtual impossibility. To be underhanded, dishonest and a fraud is your nature and your fellow Zionist brethren's nature.

[42] It was shortly after this message was posted on the Web that the Patriots on Guard web site was shut down for good. It is unclear from the evidence whether this was as a result of Mr. Warman's efforts.

**(ii) Are These 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?**

[43] In considering this question, the Tribunal was aided by the testimony of Dr. Karen Mock, a Psychologist who was qualified as an expert in discrimination, anti-Semitism, racism and hate

material. In this case, there was nothing subtle or nuanced about the material contained on the web site, which was clearly hateful on its face. Dr. Mock's testimony was, however, of assistance in identifying some of the traditional anti-Semitic themes referenced in the material, such as the concept of 'blood libel', the Jews' alleged goal of world domination, and their ostensible control of various institutions.<sup>(13)</sup>

[44] The terms "hatred" and "contempt" have been judicially considered in previous section 13 cases. In *Canada (Human Rights Commission) v. Taylor*<sup>(14)</sup>, the Supreme Court of Canada cited with approval the definitions of "hatred" and "contempt" utilized by the Tribunal in *Nealy v. Johnston*<sup>(15)</sup>. In *Nealy*, the Tribunal said:

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 for "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.

[45] The Tribunal in *Nealy* also considered the meaning of the word "expose" as it is used in section 13. Citing the original Tribunal decision in *Taylor*, the *Nealy* Tribunal said:

"Expose" is an unusual word to find in legislation to control hate propaganda. More frequently, as in the *Broadcasting Act Regulations*, *Post Office Act* provisions and in the various related sections of the *Criminal Code*, the reference is to matter which is abusive or offensive, or to statements which serve to incite or promote hatred.

"Incite" means to stir up; "promote" means to support actively. "Expose" is a more passive word, which seems to indicate that an active effort or intent on the part of the communicator or a violent reaction on the part of the recipient are not envisaged. To expose to hatred also indicates a more subtle and indirect type of communication than vulgar abuse or overtly offensive language. "Expose" means: to leave a person unprotected; to leave without shelter or defense; to lay open (to danger, ridicule, censure etc.). In other words, if one is creating the right conditions for hatred to flourish, leaving the identifiable group open or vulnerable to ill-feelings or hostility, if one is putting them at risk of being hated, in a situation where hatred or contempt are inevitable, one falls within the compass of section 13(1) of the *Human Rights Act*.

[46] In the Tribunal's view, there can be no doubt that the messages contained on the Patriots on Guard web site are likely to expose people of the Jewish faith to both hatred and contempt. Having singled out Ashkenazi Jews for particular criticism, Mr. Kyburz has discriminated

against Jews of European ancestry on the basis of both their religion as well as their national or ethnic origin.

[47] Mr. Kyburz does not, however, limit his comments to Jews of European ancestry. In finding that the messages expose Jews generally to hatred and contempt, and not just Ashkenazi Jews, the Tribunal notes that while much of Mr. Kyburz' attention is focused specifically on Ashkenazi Jews<sup>(16)</sup>, some of his commentary addresses the supposed evil nature and mis-deeds of Jews as a whole. Mr. Kyburz further suggests that non-Ashkenazi Jews are complicit in the alleged evil activities of the Ashkenazi Jews. A number of the articles published by Mr. Kyburz on his web site draw no distinction between Ashkenazi Jews and Jews of non-European origin.

[48] When read in context, the messages on the Patriots on Guard web site tell the reader that Jewish people are innately devious, treacherous, and murderous. Not only do they want to kidnap, corrupt, and kill "white children", their ultimate goal is to take over the world. Such messages can only serve to foster hatred against the Jewish people. Of even greater concern are the messages, notably the Pierce article, that openly advocate the extermination of the Jewish people.

[49] Further, Mr. Kyburz' use of terms such as "sub-human", "scum", "vermin" and "low-lives" to describe Jews could most certainly lead some readers to view Jews as inferior beings, causing them to hold Jewish people in contempt. As Dr. Mock testified, this tactic of the dehumanization of the Jewish people was common in Nazi propaganda. By making Jews appear as something less than human, Dr. Mock explained, it became easier to kill them.

[50] The persuasive effect of these messages is enhanced by Mr. Kyburz' use of what Dr. Mock described as a "pseudo-academic approach", exemplified by his references to "the noted historian David Irving" and "the truth-seeking Ernst Zundel". A further example of this technique are the references to articles published by groups such as the Institute for Historical Review, an organization committed to debunking the 'myth' of the Holocaust.

[51] As regards Mr. Warman's allegation that Mr. Kyburz's messages discriminate against Jews on the basis of race, we note that Dr. Mock testified that Jews are not members of a race, but rather share a common religion. We accept Dr. Mock's testimony that Mr. Kyburz has, nevertheless, attempted to 'racialize' Jews, with his suggestion that their various alleged character flaws are inherited or innate. This is evidenced by his frequent comments about people of their "ilk", as well as by references to such things as "the real character of the Zionist Jews". This tactic is perhaps epitomized by the last DIP, with its comment that Zionist Jews will never change, because "...being frauds, criminals, war mongers, pedophiles, anti-life and full of hate is part of them ... It is their nature. They will not and cannot change."

[52] The fact that Jews do not constitute a race does not operate to defeat this aspect of Mr. Warman's complaint. Human rights jurisprudence has interpreted prohibitions against discrimination on the basis of a proscribed ground of discrimination to include the prohibition of discrimination based on *perceived* membership in the protected group.<sup>(17)</sup> The Tribunal therefore finds that the messages contained on the Patriots on Guard web site are likely to expose people of the Jewish faith to hatred and contempt on the basis of their perceived race, as well as their

religion and, in the case of Ashkenazi Jews, their national or ethnic origin.

#### **D. Finding Regarding the Section 13 Complaint**

[53] As was noted in one of the articles posted on the Patriots on Guard web site, international law recognizes the right of individuals to freedom of opinion and expression. For example, Article 19 of the *Universal Declaration of Human Rights*<sup>(18)</sup> provides that such right "... includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media ...".

[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. For this reason, it is unlawful to shout "Fire!" in a crowded theatre when no fire exists, to phone in a bomb threat, or to threaten to kill another person.

[55] In the *Taylor* case, the Supreme Court of Canada had occasion to scrutinize the reach of section 13 of the *Canadian Human Rights Act* in light of international law principles, as well as the *Charter* guarantee of freedom of opinion and expression.<sup>(19)</sup> The Court concluded that while section 13 infringed the right to freedom of opinion and expression, this infringement was justified in light of international commitments to eradicate hate propaganda, and Canada's commitment to the values of equality and multiculturalism.

[56] Having found that Fred Kyburz did communicate, repeatedly, by means of the facilities of a telecommunications undertaking within the legislative authority of Parliament, matter that is likely to expose people of the Jewish faith to hatred or contempt, Mr. Warman's section 13 complaint is substantiated.

### **V. THE SECTION 14.1 RETALIATION COMPLAINT**

#### **A. The Allegedly Retaliatory Messages**

[57] After the Patriots on Guard web site was shut down, a Patriots on Guard Internet web forum was established. Mr. Warman explained that a web forum is a domain where people can post messages and view the messages posted by others. The Patriots on Guard web forum was an open forum, which means that anyone could sign up to participate in the forum's discussions. A member could also choose to have any new posting on the site automatically e-mailed to him or her as soon as the material was posted. Mr. Warman signed up to join the web forum, using a false name, and, as a result, was able to access the information posted there.

[58] The content of the material posted on the Patriots on Guard web forum is similar in nature to that which appeared on the Patriots on Guard web site, and includes messages signed by Fred Kyburz, sent through the [freburz@yahoo.ca](mailto:freburz@yahoo.ca) e-mail address. The timing of the establishment of

the web forum, together with the name of the forum and the subject matter of the debate in the material posted, establishes that the web forum was created by Mr. Kyburz. This finding is confirmed by the exchange of e-mails appearing at Tab 28 of Exhibit HR-1, where Mr. Kyburz refers to "my web site <http://www.patriotsonguard.org>."

[59] Further, we find that numerous postings appearing in the web forum originate from Mr. Kyburz. In coming to this conclusion, we note that these messages are signed by Mr. Kyburz, either as 'Fred' or 'Fred Kyburz'. In many cases, the context as well as the content of the messages make it clear that they came from Mr. Kyburz.

[60] On February 5, 2002, Richard Warman filed his original complaint with the Canadian Human Rights Commission. On April 26, 2002, Mr. Kyburz posted an exchange of e-mails between himself and a producer of the CTV television show "W-5" regarding a television program on the 'de-tax' movement.<sup>(20)</sup> In the initial e-mails, the producer asks Mr. Kyburz if he would like to participate in the show. Mr. Kyburz declines. After the show was broadcast, Mr. Kyburz sent the producer a lengthy e-mail expressing his disgust with the broadcast. In the course of his comments, Mr. Kyburz stated:

Now you can go and complain to the Canadian Human Rights Commission about my anti-semitism [sic] just as did your fellow Zionist Richard Warman, a valued employee of the Federal Court of Canada and the Department of Justice - a great crowd! The CHRC is an organization that has to deny truth as a defense. That's how low these people have sunk. They have to deny truth in order to protect their criminal behaviour. They are so incredibly demented that they believe their own twisted reasoning. Richard Warman must be your treasured ally ...

[61] Mr. Kyburz goes on to reproduce a copy of a letter that he says he sent to the Honourable John Richard, the Chief Justice of the Federal Court of Canada, where Mr. Warman was formerly employed. After referring to Mr. Warman's efforts to shut down his web site, and to Mr. Warman's complaint to the Canadian Human Rights Commission, Mr. Kyburz says:

I do discuss a wide range of topics on my web site. Some of the topics include slavery, murder, terrorist activities, pedophilia, war, taxes, inalienable rights of individuals, child prostitution, child pornography, etc. I have posted other people's opinions, newspaper articles, as well as my own conclusions.

Some of the articles discuss actions of Jews implicated in child pornography, child prostitution, slavery, murder, genocide, etc. These are well-publicized stories. Warman, a Jew, is not happy to have his fellow Jews and their fiendish activities exposed, obviously his motive for his complaint to the Canadian Human Rights Commission. This means that he is in full support of such nefarious acts as child prostitution, child pornography, murder, genocide, slavery and wholesale slaughter of innocent people. No individual with a smidgen of a conscience will engage in, or be in support of, such fiendish and sub-human activities as mentioned above. Mr. Warman obviously has no conscience....



Now Sir, I am asking you herewith to:

- 1) Dismiss Mr. Richard Warman immediately from his present government position without severance pay. He is not allowed anytime in the future to hold another government position or an advisory position to any government body or government employee. If he is not dismissed by April 12, 2002, without severance pay, I will make public that you fully support the above mentioned crimes being committed by employees of the Department of Justice. I will also make sure that Canadians are made aware that every judge [i]n Canada is in support of the abovementioned crimes (unless a judge demonstrates clearly with his rulings that he does not support any of the above crimes, meaning that his rulings are based on 'the Law of the Land'.)
- 2) get Mr. Richard Warman to write me an apology
- 3) get Mr. Richard Warman to ask my previous server (Rackspace), to reinstate my web site on David Icke's web site [\(21\)](#)
- 4) get the investigation by the Canadian Human Rights Commission against myself and my web site terminated immediately.

[62] The letter to the Chief Justice indicates that it was being copied to every Member of Parliament and Senator. Mr. Kyburz also asks readers to write to the Chief Justice "... and give him a piece of your mind". There is nothing in the material before the Tribunal to indicate that Chief Justice Richard ever responded to Mr. Kyburz' letter, nor is there any indication that Mr. Warman suffered any adverse employment consequences as a result of Mr. Kyburz' letter to the Chief Justice.

[63] In a subsequent posting, Mr. Kyburz reproduces some of the correspondence exchanged during the course of the Commission investigation into Mr. Warman's complaint. Commenting on one of Mr. Warman's letters, Mr. Kyburz says:

Mr. Warman, since you are so diligently following my every written word I do not see the need to send you a copy of this post. I am sure that you will not miss it. I will make sure though that every MP and Senator will receive this post as well as the Chief Justice of the Federal Court of Canada and every Commissioner. Additionally many other people will receive it. I would think that you have the deep desire to become famous. This will come to pass. Many people will become familiar with the name 'Richard Warman' and all it stands for. Aren't you tickled pink?! ...

Freedom of speech is non-existent or forbidden when Jewish and Zionist atrocities are involved. Yet, when you talk about NAZI atrocities nobody is allowed to even ask a question. Hypocrisy seems to be a way of life for you and your fellow Zionist brethren. Mr. Warman, to any level headed individual you look like a real jerk. What is good for you is forbidden to everyone else. What you

and your fellow Zionists do all day is off limits for everyone else. It seems to me that discrimination is your way of life...

You poor fellow. You cry like a baby who misses his mother. Do you think that I should simply take your abuse, your terrorist tactics against myself, your frauds, your lies, your coercion, your threats, your underhandedness, your intimidation, your vile behaviour against me? Don't think that I am your run-of-the-mill victim! You started this fight, you better don't [sic] chicken out now. Show what you are made of. I hate to deal with cowards. You will realize very quickly now that the shit that you stirred up will not settle down quickly. You will find yourself enmeshed in a lawsuit fairly soon - too soon for your liking. You might even face two or more lawsuits. They will be easy to deal with compared to the flyers you will have to face if you don't re-instate my web site with Rackspace with David Icke's web site before the flyers are being distributed [\(22\)](#)...

If the Commissioners continue with their investigation against me they will face the same exposure I will give you. You have an interesting time ahead of you. Brace yourself and know that I am not the only one utterly disgusted with your criminal behaviour. [Emphasis in the original text]

[64] Mr. Kyburz' threats against Mr. Warman become even more explicit in the next posting, where he states:

I just found out today that Mr. Richard Warman will have to face charges of libel and extortion by the end of August. I might take this same approach if this investigation against myself and my web site is not dropped immediately and Mr. Warman has not re-instated my web site with Rackspace and David Icke's web site. Mr. Warman will not be the only defendant should I choose to take this same approach. Every Commissioner as well as you [here Mr. Kyburz names two Commission employees] will be named in the suit. That will be your least worry though. The flyers will be much worse to contend with than the lawsuit. Once the flyers have started they will not stop. The flyers have the capacity to ruin your professional career as well as your life. This is not a threat, it is a warning and fair notice to you all. Careers of judges and police officers have been severely impeded if not destroyed as well as their family lives. Folks, crime does not pay, remember that. Devious accusations by the guilty parties against the people who try to spread the truth will not be successful any longer either.

I have given you repeated warnings. I do not wish to destroy anyone's life or career. But people who do not respect the law of the land will have to pay the price for their reckless violations of individual's common law rights and freedoms. Let me tell you: Crime does not pay and a career built on crime will have to be stopped.

Mr. Kyburz signs this posting "Ernst-Friedrich Kyburz". This posting indicates that it is being copied to Members of Parliament and Senators, Members of the Alberta Legislature, Chief

Justice Richard, the Commissioners of the Canadian Human Rights Commission and "many others".

[65] In a posting dated June 11, 2002, Mr. Kyburz reproduces an article from the National Post dealing with measures being taken by Transport Canada to deal with the threat of terrorism. After commenting on what he says are the criminal actions of government, Mr. Kyburz says "I wonder if this idea was concocted by Richard Warman or one of his ilk? These are the people who have the most evil ideas of restricting freedom everywhere. They are the specialists in terrorism, murder and genocide...." After having identified Mr. Warman as a terrorist, Mr. Kyburz goes on to state "We have to use every possible method to rid Canada of terrorists."

[66] Mr. Kyburz's subsequent web postings contain repeated references to Richard Warman. Some of these are disparaging comments, often related to his perceived Jewish faith. Some are more in the nature of implied threats, such as the comment that Richard Warman has "spoiled his future". In some postings, the threat is more direct: the July 22 posting includes a lawyer joke, sent to Mr. Warman to "brighten his day". Mr. Kyburz explains sending the joke, saying "I know you are feeling down knowing that criminal charges coming your way and flyers in the making about your fine character." On August 1, 2002, Mr. Kyburz says "Richard Warman, we have figured you and your devilish racket out. Bra[c]e yourself, the law of action and reaction is in effect."

[67] Six days later, Mr. Kyburz posted a news story regarding the death of a police officer named Eric Taylor. Officer Taylor was allegedly shot to death by a man named Don Matthews. The article indicates that Mr. Matthews was the president of the National Constitutional Academy, "a group that believes police have no law enforcement power." After asserting that he "... detest[s] violence from any side", Mr. Kyburz says:

What will people do when they are pushed into the corner without an escape?  
What will they do when they can observe day in and day out the relentless assault on our rights and freedoms - when they experience the reckless and devious lying and twisting of the law of the land for purposes of everyone's enslavement by any and every government agency, including the courts and the police?

Do the people in these government agencies think that they will escape their devious actions scot free? Do they think that everyone will wait to be slaughtered without any resistance? I am afraid that a number of people will act as Don Matthews did - line one of the NWO flunkies up in the cross hairs and pull the trigger.

And yes, Mr. Richard Warman, you have been noted by a number of people, as you are well aware. People do not take kindly any longer to your abusive, menacing, libelous and lawless behaviour. This is not a threat, it is a warning for your consideration before you get yourself in deeper trouble than you are in already. Your Zionist tactics are noted by the enemies you created for yourself. You will not be able to handle them - not even with the help of your Zionist brethren. They will drown themselves in the pig shit they tried to get the entire

world into.

## **B. The Undisclosed Messages**

[68] Included in the material filed with the Tribunal are a group of messages posted on the Patriots on Guard web forum shortly before the hearing was to begin. Counsel for the Commission asked to file this material, notwithstanding that the documents had not been disclosed to Mr. Kyburz in advance of the hearing, as required by the Tribunal's Interim Rules of Procedure. The Tribunal allowed the material to be filed at the hearing, reserving our decision as to what, if any, weight would be attributed to the documents, given that they were not disclosed to Mr. Kyburz before the hearing.

[69] The non-disclosure of the documents presents the Tribunal with an interesting dilemma. The disclosure obligations imposed on parties under the Tribunal's Interim Rules of Procedure are designed to ensure that each party is aware of the case that they have to meet in advance of the hearing. In the case of respondents, pre-hearing disclosure also ensures that the respondent is aware of the full extent of the allegations against him, thus enabling the respondent to gauge the extent of his potential exposure.

[70] In this case, while Mr. Kyburz would arguably not have been aware of the Commission's intention to rely on the most recent postings, Mr. Warman's complaint did allege that the discriminatory practice was ongoing. Further, had Mr. Kyburz appeared at the hearing, the Tribunal would likely have allowed the Commission to adduce the additional evidence, as it would have been difficult for Mr. Kyburz to demonstrate that he was surprised by the documents, or prejudiced in any way, in that the documents appear to have originated from Mr. Kyburz himself. This raises the question of whether a respondent should be able to put himself in a more advantageous position by refusing to participate in a Tribunal hearing than he would have been in, had he shown up.

[71] At the end of the day, however, we do not need to resolve this issue. The additional documents add little to the complaint, in that they simply consist of further examples of the type of messages already described.

## **C. Analysis of the Retaliation Complaint**

[72] There can be no doubt that Mr. Kyburz both retaliated and threatened to retaliate against Mr. Warman for having filed his section 13 human rights complaint with the Canadian Human Rights Commission.

[73] The most obvious example of actual retaliation is the letter Mr. Kyburz apparently sent to Chief Justice Richard, in an effort to get Mr. Warman fired from his employment with the Federal Court of Canada. It does not matter that this effort does not appear to have been successful - a section 14.1 violation is made out when a respondent tries to inflict harm on a

complainant for having filed his complaint.—<sup>(23)</sup> By copying the letter to numerous other individuals, Mr. Kyburz clearly intended to maximize the damage to Mr. Warman's reputation.

[74] Of even greater concern are the threats to Mr. Warman's life. A reasonable reading of Mr. Kyburz' expression of ostensible concern that someone might "line one of the NWO flunkies up in the cross hairs and pull the trigger" comment, immediately followed by the reference to Mr. Warman's activities having been noted, is that this was intended as a veiled warning that Mr. Warman's life was in danger. Similarly, the statement in the June 11, 2002 forum posting linking Mr. Warman to terrorism, followed by the exhortation to "... use every possible method to rid Canada of terrorists" can reasonably be interpreted as a threat to Mr. Warman's life.

[75] There are also clear and repeated threats to subject Mr. Warman to a "flyer" campaign, with the avowed intent of ruining his career and his life, as well as numerous verbal attacks on Mr. Warman, his character, and his motivations in filing the complaint.

[76] While Mr. Kyburz had included references to Mr. Warman in his web postings even before Mr. Warman filed his human rights complaint, as a result of Mr. Warman's efforts to shut down the Patriots on Guard web site, both the content and the frequency of the comments changed after the complaint was filed with the Canadian Human Rights Commission. Not only are the references to Mr. Warman more frequent - they also became more vitriolic. Many messages make direct reference to Mr. Warman's complaint or to the Commission investigation process. As noted, other messages include threats to harm Mr. Warman in various ways. It is clear that the filing of Mr. Warman's complaint was a significant factor in the escalation of Mr. Kyburz' campaign against Mr. Warman. This clearly establishes a breach of section 14.1 of the *Canadian Human Rights Act*, and accordingly this aspect of Mr. Warman's complaint is also sustained.

[77] Before leaving the issue of retaliation, it should be noted that Mr. Warman also testified to his belief that Mr. Kyburz was involved in the laying of criminal charges against him. While this could most certainly constitute retaliatory activity, the documentary evidence before us raises a real question as to whether Mr. Kyburz was behind the laying of the charges.—<sup>(24)</sup> While Mr. Kyburz was most certainly kept advised as to what was happening in relation to the criminal charges, it appears that the charges themselves were actually laid by two other individuals, who had their own objections to Mr. Warman's activities. Having regard to all of the evidence before us in relation to this issue, we are not persuaded that the laying of the criminal charges against Mr. Warman constitutes retaliation by Mr. Kyburz for Mr. Warman having filed his section 13 complaint. Mr. Kyburz does, however, threaten to file criminal charges of his own against Mr. Warman, which, in this context, is a further example of retaliatory conduct.

## **VI. THE COPYRIGHT NOTICE**

[78] As was noted earlier, Mr. Kyburz sent the Tribunal a document entitled "Copyright Notice", relating to the name Ernst-Friedrich Kyburz. Mr. Kyburz did not, however, provide the Tribunal with any explanation of what he hoped to achieve by this action. Suffice it to say that one cannot

insulate oneself from liability for breach of a statute such as the *Canadian Human Rights Act* by the delivery of a copyright notice.

## **VII. REMEDY**

[79] Having substantiated both Mr. Warman's section 13 complaint and his section 14.1 complaint, the final issue to be determined is that of remedy. Sections 13 and 14.1 of the *Canadian Human Rights Act* each engage different remedial provisions of the *Act*, and thus the appropriate remedy for each complaint will be dealt with separately.

### **A. The Section 13 Complaint**

#### **(i) Cease and Desist Order**

[80] 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, and to take measures in consultation with the Commission to redress the practice or to prevent the same or a similar practice from occurring in the future.

[81] Internet communications present a particular challenge for the Tribunal in crafting a meaningful remedy. 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.

[82] Despite these limitations, as was noted by the Tribunal in *Zündel*, a cease and desist order can have both practical and symbolic consequences. On a practical level, such an order should prevent the respondent himself from continuing to communicate material of the nature described in this decision. Further, there is an important symbolic value to the public denunciation of the actions which form the subject matter of Mr. Warman's section 13 complaint. We adopt the observation of the Tribunal in *Zündel*, that "Parliament, on behalf of all Canadians, has determined that the telephonic communication of hate messages is not to be tolerated in our society.... [T]he victims of hate are entitled to obtain the benefit of the full weight of [the Tribunal's] authority".

[83] Accordingly, the Tribunal orders that Fred Kyburz, and any other individuals who act in concert with Mr. Kyburz, 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, matters of the type contained in Exhibits HR-1 and HR-2, 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*. For sake of clarity, this order includes the requirement that Mr. Kyburz cease publicizing the Patriots on Guard web site material now posted on the Archive.org web site, or referring anyone to the Archive.org site.

[84] Although Mr. Warman's section 13 complaint was filed in relation to the Patriots on Guard web site, it is apparent that since the filing of the complaint, Mr. Kyburz has used the Patriots on Guard web forum as a vehicle for the transmission of his hateful messages. Accordingly, the Tribunal's order extends to cover material posted on the Patriots on Guard forum. Recognizing that some time may be required to dismantle the existing web forum, the Tribunal orders that Mr. Kyburz shut down the Patriots on Guard web forum within seven days of being notified of this decision. This should not be interpreted as giving Mr. Kyburz licence to say what he wants to in the interim period. To this end, the Tribunal orders that Mr. Kyburz cease and desist from posting any new Internet communications of the type that form the subject matter of the section 13 complaint, whether on the Patriots on Guard web forum or elsewhere on the Internet, immediately upon being notified of the Tribunal's decision.

[85] The Commission asked that the Tribunal order that service of the Tribunal's decision on Mr. Kyburz could be effected by priority courier and e-mail. Having regard to the very serious potential consequences for Mr. Kyburz if he does not comply with the Tribunal's ruling, the Tribunal is of the view that such an order is not appropriate. Further, in that it is the Federal Court, and not the Tribunal that is responsible for the enforcement of the Tribunal's orders, we are of the view that it would not be appropriate for this Tribunal to purport to dictate to the Federal Court what should constitute sufficient notice to Mr. Kyburz, should enforcement proceedings become necessary.

[86] The Commission also asked that the Tribunal order Mr. Kyburz to contact Archive.org in order to have the Patriots on Guard web site material removed from the Archive.org site. We have concerns about the enforceability of such an order. Such a request would in all likelihood require an explanation from Mr. Kyburz as to why he was asking that the material be removed. This could potentially compel Mr. Kyburz to say something that he does not believe to be true, a result that the Federal Court found to be problematic in *Stevenson v. Canadian Security and Intelligence Service*.<sup>(25)</sup> Further, in the event that Mr. Kyburz' efforts are unsuccessful, questions could subsequently arise as to the sincerity of his request, requiring the type of subjective assessment that could make enforcement difficult. It seems to us that a request from the Commission to Archive.org, accompanied by a copy of this decision, is much more likely to be effective, and thus we decline to make the order requested. In the absence of statutory authorization, the Tribunal cannot make an order against a non-party to this proceeding. However, we would encourage the proprietors of the Archive.org web site to give serious consideration to removing the offending material from the site.

## **(ii) Special Compensation**

[87] Where a victim is specifically identified in the communications that constitute the discriminatory practice under section 13 of the *Canadian Human Rights Act*, subsection 54(1)(b)

of the *Act* authorizes the Tribunal to order a respondent to pay special compensation of up to \$20,000. Subsection 54(1)(b) incorporates by reference subsection 53(3) of the *Act*, which provides that such compensation may be ordered if the Tribunal finds that "... the person is engaging or has engaged in the discriminatory practice wilfully or recklessly".

[88] In assessing the appropriateness of such an order in this case, it should be kept in mind that the discriminatory practice in issue here is the communication of hate messages contrary to section 13 of the *Act*. As a consequence, the only messages in issue at this point are those which form the subject of Mr. Warman's section 13 complaint - that is, the messages that appeared on the Patriots on Guard web site. While the e-mail message to Mr. Warman from Mr. Kyburz and the messages appearing on the Patriots on Guard web forum are relevant to the remedy to be awarded with respect to the section 14.1 violation, we have not considered those messages in connection with the section 13 remedy.

[89] Mr. Kyburz began including regular references to Mr. Warman, who he identified by name, in his postings on the Patriots on Guard web site as a result of Mr. Warman's efforts to shut down the site. The references to Mr. Warman are noteworthy for their degree of vitriol, motivated, at least in part, by Mr. Kyburz' perception that Mr. Warman was himself Jewish. This reflects a recurring pattern in Mr. Kyburz' web postings: as soon as anyone disagrees with his views, that person immediately becomes part of the world-wide Jewish conspiracy.

[90] Mr. Warman testified that he was not Jewish. In our view, the fact that Mr. Warman was not himself Jewish does not detract in any way from the viciousness of the attacks launched against him by Mr. Kyburz. These attacks were clearly motivated, at least in part, by Mr. Kyburz' perception that Mr. Warman was Jewish. Based upon this belief, Mr. Kyburz ascribed very negative character traits, as well as criminal behaviour to Mr. Warman. Mr. Warman, quite understandably, found this conduct to be very hurtful. In our view, Mr. Warman is a victim of the discriminatory practice.

[91] Mr. Kyburz' behaviour was both willful and repeated. In our view, Mr. Warman is entitled to a significant award under this head. Accordingly, the Tribunal awards Mr. Warman the sum of \$15,000 as special compensation, pursuant to subsection 54(1)(b) of the *Act*.

### **(iii) Interest**

[92] Interest is payable on non-pecuniary awards made under the *Canadian Human Rights Act*.<sup>(26)</sup> Interest shall be paid on the monies awarded pursuant to this decision by way of special compensation, in accordance with Rule 9(12) of the Canadian Human Rights Tribunal Interim Rules of Procedure. Interest will start to run from the date of this decision to the date of payment. In no case, however, should the total amount payable on account of special compensation, including interest, exceed \$20,000.<sup>(27)</sup>



#### **(iv) Penalty**

[93] Subsection 54(1)(c) of the *Act* permits the Tribunal to order a respondent in a section 13 complaint to pay a penalty of up to \$10,000. The inclusion of this provision in the 1998 amendments to the *Act* represents a significant departure from the traditional approach that damage awards in human rights cases were primarily remedial, and not punitive. To date, no order has been made by the Tribunal under this provision.

[94] Awards of special compensation made under subsection 54(1)(b) in relation to section 13 complaints are intended to compensate individuals specifically named in hate messages. In contrast, penalties levied pursuant to subsection 54(1)(c) of the *Act* are intended to reflect society's opprobrium for the respondent's conduct.<sup>(28)</sup>

[95] In deciding whether to order Mr. Kyburz to pay a penalty in this case, Parliament has directed that we take several factors into account. These include "... the nature, circumstances, extent and gravity of the discriminatory practice", as well as "the wilfulness or intent of the person who engaged in the discriminatory practice, any prior discriminatory practices that the person has engaged in and the person's ability to pay the penalty."<sup>(29)</sup> Each of these factors will be considered in turn.

[96] Insofar as the nature, circumstances, extent and gravity of the discriminatory practice are concerned, we have found that Mr. Kyburz repeatedly communicated messages regarding Jewish people that were nasty, vicious and extreme. Not only did these messages attribute numerous and varied criminal acts to people of the Jewish faith, described therein as innately corrupt and devious, but some messages went so far as to openly advocate the extermination of Jews "root and branch as a class". This weighs heavily in favour of the assessment of a significant penalty.

[97] We have found that Mr. Kyburz was responsible for the communications on the Patriots on Guard web site. It is clear from the messages themselves that he communicated this information wilfully, knowing that it was upsetting to many people. There is, however, no evidence before the Tribunal to suggest that Mr. Kyburz has been involved in any prior discriminatory practices, which serves as a mitigating factor.

[98] The final consideration for the Tribunal is Mr. Kyburz' ability to pay a penalty. In this regard, we note that the only information that we have in relation to this issue is the unsworn assertion contained in one of Mr. Kyburz' web postings that he is impecunious.<sup>(30)</sup> In closing argument, counsel for the Commission suggested that the burden in this regard lay not on the Commission to show that Mr. Kyburz had resources, but rather on Mr. Kyburz to show that he was unable to pay, as this type of information would be largely within Mr. Kyburz' control.

[99] There is at least some jurisprudence to support the Commission's position. In *R. v. Noseworthy*<sup>(31)</sup>, the Newfoundland Court of Appeal considered the issue of the burden of proof with respect to an individual's ability to pay, noting that:

In the ordinary course of any litigation, it is the duty of the party pleading or otherwise relying on a specific circumstance to lead the evidence necessary to establish that circumstance. Because of the presumption of innocence, a criminal trial is different. The entire burden of establishing, beyond a reasonable doubt, all facts necessary to a conclusion of guilt rests with the Crown from beginning to end. The presumption of innocence, however, ends with the conclusion by the trial court that the accused person is guilty of the offence as charged. From then on, any position that is pleaded or relied upon is dealt with on the basis of the normal principle that the party pleading or relying upon a specific factual circumstance has the burden of leading the evidence necessary to establish it.

[100] It should be noted that the Court's comments in *Noseworthy* were made in the criminal law context. The Court noted that the *Criminal Code* does not impose a general duty on a trial judge to inquire into an individual's ability to pay, except in limited circumstances. In contrast, subsection 54(1.1) mandates that the Tribunal consider the respondent's ability to pay before levying a fine. That said, we are of the view that the Court's comments regarding the burden of proof relating to the ability to pay are equally applicable to our deliberations under this provision of the *Canadian Human Rights Act*.

[101] In this case, there is some evidence before us, albeit evidence that is unsworn and untested by cross-examination, to suggest that Mr. Kyburz may have limited resources. Because of the way the evidence was adduced, we do not feel that we can attribute it much weight, although we have considered it. We have also taken into account the fact that this is evidently a 'first offence' for Mr. Kyburz. While the seriousness of the section 13 breach would otherwise call for a fine at or near the maximum permissible under the legislation, these factors have persuaded the Tribunal that a somewhat reduced penalty is appropriate. Having regard to all of the circumstances enunciated in subsection 54(1.1), we order that Mr. Kyburz pay a penalty in the amount of \$7,500.

[102] 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 35 days of Mr. Kyburz being notified of this decision.

## **B. The Section 14.1 Complaint**

### **(i) Cease and Desist Order**

[103] Remedies with respect to violations of section 14.1 of the *Canadian Human Rights Act* are governed by section 53 of the *Act*. Where the Tribunal deems it appropriate to do so, subsection 53(2)(a) empowers the Tribunal to order the respondent to cease the discriminatory practice.

[104] Mr. Kyburz is ordered to cease and desist from retaliating against Mr. Warman for having filed his human rights complaint with the Canadian Human Rights Commission. This order

covers retaliatory conduct including, but not limited to, e-mail communication and web postings, whether on the Patriots on Guard web forum or elsewhere on the Internet, that is similar to the material contained in Exhibits HR-1 and HR-2. Mr. Kyburz is further ordered to cease threatening Mr. Warman, or attempting to interfere with Mr. Warman's employment, whether it be through the use of the Internet, or by other means.

[105] Unlike the dismantling of the web forum, which requires some positive action on the part of Mr. Kyburz, we see no reason to delay the effect of this portion of our order. Mr. Kyburz is directed to cease his retaliatory activity immediately upon becoming aware of the Tribunal's decision.

### **(ii) Compensation for Pain and Suffering**

[106] Subsection 53(2)(e) allows the Tribunal to make an award of up to \$20,000 to compensate the victim of a discriminatory practice for any pain and suffering that he experienced as a result of the discriminatory practice. In this case, the Commission asks that Richard Warman be awarded the maximum award permissible under the legislation.

[107] Certainly, the retaliatory actions taken by Mr. Kyburz in this case were very serious. Not only did Mr. Kyburz repeatedly disparage Mr. Warman publicly in the most negative terms, it appears that he actively attempted to interfere with Mr. Warman's employment, going so far as seeking to have him fired from his job. Even more worrisome are the veiled threats that Mr. Kyburz made to Mr. Warman's life.

[108] It was clear from his testimony that Mr. Warman was somewhat shaken by his experiences with Mr. Kyburz. He described the fear that he felt for his own safety, as well as for the safety of those close to him. He also testified to the impact that Mr. Kyburz' retaliatory actions have had on his day-to-day life, and the measures that he has felt it necessary to take for his own safety, which have included involving the police.

[109] That said, Mr. Warman strikes the Tribunal as a resilient individual, who was clearly on something of a personal mission to stop people such as Mr. Kyburz from disseminating their vitriol over the Web. It appears that Mr. Warman's conviction as to the justness of his cause has served to insulate him somewhat from the negative effects that Mr. Kyburz' actions may have otherwise had on a less strong individual. In this regard we note that there is no medical or other evidence before us that would suggest that Mr. Warman has suffered any health-related consequences as a result of Mr. Kyburz' actions.

[110] In all of the circumstances, we are of the view that an award of \$15,000 for Mr. Warman's pain and suffering is appropriate.

### **(iii) Interest**

[111] Interest shall be paid on the monies awarded pursuant to this decision for Mr. Warman's pain and suffering, in accordance with Rule 9(12) of the Canadian Human Rights Tribunal Interim Rules of Procedure. Interest will start to run from the date of this decision to the date of payment. In no case, however, should the total amount payable on account of pain and suffering, including interest, exceed \$20,000.<sup>(32)</sup>

#### **(iv) Special Compensation**

[112] Although subsection 53(3) of the *Act* allows for an award of special compensation in relation to the violation of section 14.1, no such remedy was requested here, and none is being awarded.

### **VIII. ORDER**

[113] For the foregoing reasons, we declare that Mr. Warman's rights under the *Canadian Human Rights Act* have been contravened by Fred Kyburz, and order in relation to the section 13 violation that:

i) Fred Kyburz, and any other individuals who act in concert with Mr. Kyburz 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, matters of the type contained in Exhibits HR-1 and HR-2, 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*. This order includes the requirement that Mr. Kyburz cease publicizing the Patriots on Guard web site material now posted on the Archive.org web site, or referring anyone to the Archive.org web site;

ii) Mr. Kyburz shall have seven days from the date on which he is notified of the Tribunal's decision to shut down the Patriots on Guard web forum. The Tribunal further orders that Mr. Kyburz cease and desist from posting any new Internet communications of the type which form the subject matter of the section 13 complaint, whether on the Patriots on Guard web forum or elsewhere on the Internet, immediately upon being notified of the Tribunal's decision;

iii) Mr. Kyburz shall pay to Mr. Warman the sum of \$15,000 as special compensation, pursuant to subsection 54(1)(b) of the *Act*;

iv) Interest shall be paid on the monies awarded to Mr. Warman as special compensation, in accordance with Rule 9(12) of the Canadian Human Rights

Tribunal Interim Rules of Procedure. Interest will start to run from the date of this decision to the date of payment. In no case, however, should the total amount payable on account of special compensation, including interest, exceed \$20,000; and

v) Mr. Kyburz shall pay a penalty in the amount of \$7,500. 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 35 days of Mr. Kyburz being notified of this decision.

With respect to the section 14.1 violation, the Tribunal orders that:

i) Immediately upon becoming aware of the Tribunal's decision, Mr. Kyburz shall cease and desist from retaliating against Mr. Warman for having filed his human rights complaint with the Canadian Human Rights Commission. This order covers conduct including, but not limited to, e-mail communication and web postings, whether on the Patriots on Guard web forum or elsewhere on the Internet, that is similar to the material contained in Exhibits HR-1 and HR-2. Mr. Kyburz is further ordered to cease threatening Mr. Warman, or attempting to interfere with Mr. Warman's employment.

ii) Mr. Kyburz shall pay to Mr. Warman the sum of \$15,000 for Mr. Warman's pain and suffering; and

iii) Interest shall be paid on the monies awarded to Mr. Warman for his pain and suffering, in accordance with Rule 9(12) of the Canadian Human Rights Tribunal Interim Rules of Procedure. Interest will start to run from the date of this decision to the date of payment. In no case, however, should the total amount payable on account of pain and suffering, including interest, exceed \$20,000.

\_\_\_\_\_  
(Original signed by)

Anne L. Mactavish, Chair

\_\_\_\_\_  
(Original signed by)

Shirish Chotalia, Member

\_\_\_\_\_  
(Original signed by)

Eve Roberts, Q.C., Member

OTTAWA, Ontario

May 9, 2003

**CANADIAN HUMAN RIGHTS TRIBUNAL**

**COUNSEL OF RECORD**

TRIBUNAL FILE NO.: T726/3102

STYLE OF CAUSE: Richard Warman v. Fred Kyburz

PLACE OF HEARING: Ottawa, Ontario

(March 17 and 18, 2003)

DECISION OF THE TRIBUNAL DATED: May 9, 2003

APPEARANCES:

Richard Warman On his own behalf

Pam MacEachern For the Canadian Human Rights Commission

1. <sup>1</sup> The exchange of e-mails appearing at Tab 30 of Exhibit HR-1 suggest that Mr. Kyburz has returned documents sent to him by both the Commission and the Tribunal with similar annotations, and that these actions reflect a strategic decision on his part.

2. <sup>2</sup> *Payzant et al. v. McAleer and Canadian Liberty Net*, 26 C.H.R.R. D/271, Aff'd 26 C.H.R.R. D/280 (F.C.T.D.).

3. <sup>3</sup> *Schnell v. Machiavelli and Associates Emprize Inc.*, 43 C.H.R.R. D/453, at para. 127.

4. <sup>4</sup> S.C. 2001, c.41, section 88.

5. <sup>5</sup> According to Mr. Warman, the Patriots on Guard site and its contents can still be accessed through the Internet at the Archive.org web site. Mr. Warman explained that Archive.org is a service established by an American university with the stated goal of collecting and cataloging as much of the World Wide Web as possible. There is no indication that Mr. Kyburz asked to have his material archived by Archive.org. Thus it may be Archive.org that is communicating the information at this point, and not Mr. Kyburz.

6. <sup>6</sup> (2002), 41 C.H.R.R. D/274. See also *Schnell*, supra.

7. <sup>7</sup> Dr. Mock, the expert called by the Commission, explained that Ashkenazi Jews are Jews of European descent.

8. <sup>8</sup> In earlier messages, Mr. Kyburz identified the Khazars as the group of Medieval Europeans who chose Judaism as a religion, and became the Ashkenazi Jews.

9. <sup>9</sup> Dr. Mock explained that the 'New World Order' is a somewhat derogatory term used to describe the realignment of power allegedly being effected by Jewish forces.

10. <sup>10</sup> Exhibit HR-1, Tab 20

11. <sup>11</sup> Exhibit HR-1, Tab 21

12. <sup>12</sup> Exhibit HR-1, Tab 22

13. <sup>13</sup> At different points in the material, it is alleged that Jews control the media, courts, police, the United Nations, schools and universities, the entertainment industry, the banking system, the United States of America, the Canadian government, pharmaceutical companies, the medical profession and international corporations.

14. <sup>14</sup> [1990] 3 S.C.R. 893

15. <sup>15</sup> (1989), 10 C.H.R.R. D/6450 at D/6469. (C.H.R.T.)

16. <sup>16</sup> It should also be noted that Dr. Mock testified that Ashkenazi Jews make up the majority of the world's Jewish population.

17. <sup>17</sup> *Québec (Commission des droits de la personne et des droits de la jeunesse) v. Montréal (City); Québec (Commission des droits de la personne et des droits de la jeunesse) v. Boisbriand (City)*, [2000] 1 S.C.R. 665. See also *Via Rail Canada Inc. v. Canada (Human Rights Comm.) (No. 2)* (1999), 33 C.H.R.R. D/127 (CHRT).

18. <sup>18</sup> G.A. Res. 217A (III), U.N. Doc. A/810 (1948). See also the *International Covenant on Civil and Political Rights*, 999 U.N.T.S. 171, art.19.

19. <sup>19</sup> *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being schedule B to the *Canada Act 1982* (U.K.), 1982, c.11, section 2.

20. <sup>20</sup> Members of the "de-tax movement" evidently reject the legal authority of federal and provincial governments to levy taxes or to require that drivers of motor vehicles be licenced. (Exhibit HR-1, Tab 13)

21. <sup>21</sup> The Tribunal was not provided with any explanation with respect to the reference to "David Icke's web site".

22. <sup>22</sup> In earlier web postings, Mr. Kyburz alludes to what he calls 'the flyer program'. This appears to be a tactic used when individuals cross Mr. Kyburz, and seems to consist of the distribution of flyers regarding a target individual's alleged misdeeds in that individual's neighborhood.

23. <sup>23</sup> It should be noted that there is no evidence that the letter to Chief Justice Richard was actually sent, beyond Mr. Kyburz' unsworn assertion that he sent it. Regardless of whether the letter was actually sent to the Chief Justice or not, by posting a copy on the web forum, where Mr. Kyburz knew that Mr. Warman and others would see it, Mr. Kyburz clearly intended to upset Mr. Warman, and to damage his reputation, in violation of section 14.1.

24. <sup>24</sup> See Exhibit HR-2, Tab 50

25. <sup>25</sup> 2003 FCT 341

26. <sup>26</sup> *Canada (Attorney General) v. Morgan*, [1992] 2 F.C. 401. (F.C.A.)

27. <sup>27</sup> *Hebert v. Canada (Canadian Armed Forces)*, (1993), 23 C.H.R.R. D/ 107 (F.C.T.D.)

28. <sup>28</sup> *Schnell*, supra., at para. 163.

29. <sup>29</sup> *Canadian Human Rights Act*, subsection 54(1.1)

30. <sup>30</sup> Exhibit HR-1, Tab 33, at p. 256



31. <sup>31</sup> [2000] N.J. No. 255

32. <sup>32</sup> See *Hebert*, supra.