



## **I. INTRODUCTION**

[1] On November 23, 2003, Richard Warman filed a complaint with the Canadian Human Rights Commission against Craig Harrison. Mr. Warman's complaint alleges that Mr. Harrison is "discriminating against persons or groups of persons on the basis of religion, race, colour, and national or ethnic origin by repeatedly communicating messages through an Internet Website that would likely expose Italians, Mexicans, Puerto Ricans, Haitians, francophones, blacks, First Nations persons, East Asians, non-whites and Jews to hatred and contempt contrary to section 13(1) of the *Canadian Human Rights Act*."

[2] The Canadian Human Rights Commission, the (Commission) fully participated at the hearing into the complaint and was represented by legal counsel.

## **II. FAILURE OF CRAIG HARRISON TO BE PRESENT AND ATTEND THE WHOLE HEARING**

[3] Mr. Harrison attended the opening of the hearing on June 12, 2006. He had requested that he be represented by his common law wife, Ms. Susen Holmes. Less than ninety minutes into the hearing and during Mr. Warman's testimony, Mr. Harrison started yelling at the witness forcing the Tribunal to order an adjournment. Mr. Harrison then stormed out of the hearing room while still yelling obscenities at Mr. Warman.

[4] At the resumption of the hearing, neither Mr. Harrison nor Ms. Holmes were present. I then adjourned the hearing until June 13, 2006 and ordered that a letter be served on Mr. Harrison informing him that the hearing would resume on that date and, should he not be present, the Tribunal would proceed in his absence.

[5] An Affidavit of Paul Mitchell, a process server from the City of Brampton, was filed as evidence. In his affidavit, Mr. Mitchell informed the Tribunal that he attended at the Respondent's residence in Georgetown, Ontario, at 4:10 p.m. on June 12, 2006 to serve the Tribunal's letter on Mr. Harrison. There being no answer, he attended again at the same address at 7:30 p.m. and again there was no answer. He further added that he heard voices inside the house and that he continued to knock but no one answered the door. He then left a copy of the Tribunal's letter in an envelope addressed to Craig Harrison stuck in the door. Five minutes latter, he phoned the residence and a woman who identified herself as Susen Holmes answered and told him that she had found the letter and would make sure that Craig Harrison received it.

[6] On June 13, 2006, the Tribunal was informed by Ms. Holmes via telephone that Mr. Harrison would not participate in the hearing.

[7] The Tribunal is satisfied that Mr. Harrison and his representative Ms. Holmes had notice that the hearing would resume at 9:30 a.m. on June 13, 2006 and that they chose not to participate.

## **III. THE ISSUES**

[8] 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:

- a) Did Mr. Harrison communicate, or cause to be communicated, repeatedly, the messages found on the various Websites in issue?
- b) Were these messages communicated in whole or in part by means of a telecommunication undertaking within the legislative authority of Parliament?
- 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?

[9] In the event that the complaint is substantiated, the issue of the appropriate remedy will also have to be addressed.

#### IV. THE SECTION 13 COMPLAINT

##### A. General Approach

[10] Section 13(1) of the *Canadian Human Rights Act*, R.S. 1985, chap. H-6, (the "Act") 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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[11] 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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[12] The *Act* is especially designed to prevent the spread of prejudice and to foster tolerance and equality. The purpose of the *Act* is found in section 2 which states:

<p>2. The purpose of this Act is to extend</p>	<p>2. La présente loi a pour objet de</p>
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the laws in Canada to give effect, within the purview of matters coming within the legislative authority of Parliament, to the principle that all individuals should have an opportunity equal with other individuals to make for themselves the lives that they are able and wish to have and to have their needs accommodated, consistent with their duties and obligations as members of society, without being hindered in or prevented from doing so by discriminatory practices based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability or conviction for an offence for which a pardon has been granted.

compléter la législation canadienne en donnant effet, dans le champ de compétence du Parlement du Canada, au principe suivant : le droit de tous les individus, dans la mesure compatible avec leurs devoirs et obligations au sein de la société, à l'égalité des chances d'épanouissement et à la prise de mesures visant à la satisfaction de leurs besoins, indépendamment des considérations fondées sur la race, l'origine nationale ou ethnique, la couleur, la religion, l'âge, le sexe, l'orientation sexuelle, l'état matrimonial, la situation de famille, la déficience ou l'état de personne gracée.

[13] It is this purpose - the promotion of equal opportunity unhindered by discriminatory practices based on the enumerated grounds - which informs the objective of section 13(1). In denoting the activity described in this section as a discriminatory practice, Parliament has indicated that it views repeated telephonic communications likely to expose individuals or groups to hatred or contempt by reason of their being identifiable on the basis of certain characteristics as contrary to the furtherance of equality (See *Canada (Human Rights Commission) v. Taylor*, [1990] 3 S.C.R. 892).

[14] It is also important to keep in mind that 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).

[15] 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...

[16] In *Nealy v. Johnston* (1989), 10 C.H.R.R. D/6450, at para. 45697, the Tribunal stated that the use of the word "likely" in s. 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 commented by the Tribunal in *Warman v. Winnicki*, 2006 CHRT 20, at paras. 46 and 49:

[46] ... 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.

[49] ...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.

[17] Hate messages can cause harm in two significant ways. First they undermine the dignity and self-worth of the targeted group members and secondly they 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.

[18] 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.

[19] How is the likelihood of exposure to harm to be determined? In *Citron v. Zündel*, (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.

[20] As stated earlier, three elements must be proven on a balance of probabilities to establish a violation of section 13 :

- (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?

**B. Did Mr. Harrison communicate or cause to be communicated repeatedly the messages found on the Websites in issue?**

[21] Mr. Warman's interest in the area of hate groups and hate propaganda began approximately 15 years ago when he started monitoring the activities of various individuals that were prominent within white supremacist and Neo-Nazi groups. Five or six years ago, with the advent of the Internet, he became interested in its use by these groups and by individuals promoting similar ideas to disseminate hate propaganda.

[22] His complaint relates to messages posted on different Websites. One of these Websites is called "Freedomsite". This Website is described by Mr. Warman "as a collection of a number of different white supremacist or Neo-Nazi groups". According to the complainant, the opening page of the message board of this Website includes a list of

"Conferences" which includes headings entitled "Immigration", "Religion", "Enemies of Freedom", and "Jokes and Trivia". Under these headings individual "threads" were posted. "Threads" can be described as subcategories to the broader headings in the "Conferences".

[23] He states that he visited the Freedomsite Website and its message board on various occasions and that during these visits he found that seventy-one (71) messages had been posted between May 13, 2002 and January 21, 2003, by an individual using the login names "realcanadianson" and "rump". To be more precise the messages under the login name "realcanadianson" were posted during five days between May 13 and May 21, 2002; those using the login name "rump" appeared on November 13, 2002, as well as on January 19 and January 21, 2003. Finally, as we will see later, other messages using the login name "realnorthamerican" were posted between January 27 and January 24, 2004 and again on February 2 and 5, 2004 on another Website.

[24] In the course of his research, Mr. Warman sought to learn the identity of this person. He noticed that all the postings using the login names "realcanadianson" also included the email address susen@sympatico.ca. According to Bell Sympatico's account information, this email address is that of Susen Holmes whose residence is the same as that of Craig Harrison, the Respondent, in Georgetown, Ontario.

[25] Furthermore, on the issue of identity, a print-off of a page from the "Freedomsite" posted in May 2002, by "realcanadianson susen@sympatico.ca" had the following message: "i did two years in jail for kicking a half breed chink, spear chucker in 96." In another posting on May 14, 2002, again from "realcanadianson susen@sympatico.ca", we can read: "you're my hero. i got 2 years in jail in 96 because i beat down a half breed child molestor (sic) in Georgetown ont. hey im (sic) a hero too." Again on the same day another posting from "realcanadianson susen@sympatico.ca": "i went to jail for 2 years because i punched out a fucken nigger in georgetown. i am a real canadian hero like my grandfathers in the wars wre (sic). hey guess what?the french didnt fight in the wars because they were cowards and should be driven into the sea." On May 16, 2002, the same person using the same login name and email address posted the following message: "skin head remember me?im (sic) the guy from georgetown who got 2 years for thumpin that nigger on main street.come back soon .we need you here for the cause.god bless and take care."

[26] The evidence shows that in 1996, Mr. Harrison was convicted for assault causing bodily harm and was sentenced to two years less a day in jail. This assault occurred in Georgetown, Ontario.

[27] A newspaper article, dated May 29, 1996, from the *Georgetown Independent* entitled "Store owner viciously attacked", describes an assault on a business owner of Chinese-African background, in front of his store on Main Street, in Georgetown. It adds that the individual who had been charged with the assault was one Craig Harrison. The article specifies that the victim was in front of his business when he was approached by a young white man who shouted racial slurs, pushed him to the ground and started punching and kicking him.

[28] During his brief appearance before the Tribunal, Mr. Harrison did not deny that he was responsible for the events described in the article. On the contrary, while Mr. Warman was giving evidence regarding this incident, Mr. Harrison took offence to the characterization of this attack as being racially motivated. He started yelling: "It wasn't

racist...Nothing racist about it. Got it? Good. Let's go[talking to Susen Holmes] have a smoke. This guy's a jerk." Mr. Harrison also used other abusive words which were not recorded. This attitude and the aggressive reaction of Mr. Harrison confirms in my mind that he is the same person as the one referred to in the newspaper article.

[29] Court documents referring to this incident were also put into evidence. These documents were issued by the Central West Region Criminal Court and they refer to charges against Mr. Harrison for the assault in Georgetown. Mr. Harrison's address on these documents is exactly the same as the one the Tribunal has on file and where the process server delivered the Tribunal's letter on June 12, 2006.

[30] Mr. Warman further testified that after seeing the email address "susen@sympatico.ca" on the various postings using the pseudonym "realcanadianson", it was fairly easy for him to do a search on that email address. What resulted from this search was a posting, dated December 4, 2002, in a guestbook of another Website hosted by Canadian Heritage Alliance, in which Craig Harrison had identified himself by name. He had then given his email address as "susen@sympatico.ca," and indicated that he lived in Georgetown, Ontario, "Dominion of Canada"(sic).

[31] Mr. Warman's searches also turned up a certain number of postings under the login name "rump". These posting are very similar in style to the one posted by "realcanadianson". They were all in lower case lettering, had the same sort of run-through punctuation and basically covered the same topics in terms of the targets of the attack. One posting in particular dated November 13, 2002, was signed "c s h a real canadian". According to Mr. Warman, the importance of this signature for identity purposes is that Mr. Harrison's full name, as indicated in the court documents, is Craig Steven Harrison (initials "C.S.H.").

[32] Furthermore, in some of the posting using the login name "rump", the author identifies his home town as being Georgetown.

[33] An affidavit by Hannya Rizk, an investigator with the Canadian Human Rights Commission, dated June 8, 2006, was put into evidence by the Commission. The Respondent, who at that time was still present at the hearing, did not oppose the filing of this affidavit, nor did he ask to cross-examine its author.

[34] In the Investigator's Report annexed to her affidavit, Ms. Rizk indicated that on February 25, 2004, Mr. Harrison called the Commission and provided his defence to the complaint over the phone. He was asked by Ms. Rizk if he had ever visited the "Freedomsite" Website. He responded that he had, on that day, but that he could not access it because it had been shut down. He was then asked if he had visited the site prior to February 25, 2004 and he answered that "he might have". She also asked if he had ever posted messages on the Website, he answered that "he might have".

[35] Ms. Rizk asked Mr. Harrison if he had ever used the pseudonyms "realcanadianson" and "rump". He answered `no' adding that he did not have an email address but that he did use on occasion the email address of his girlfriend Susen Holmes, which he identified as being "susen@sympatico.ca".

[36] During the hearing, the Commission also filed as evidence an affidavit from Marc Lemire, the webmaster of the "Freedomsite.org" Website, which up until January 2004 included the message board where the messages with the login names "realcanadianson" and "rump" were posted. Mr. Lemire explained in his affidavit that to register a user account on the message board, a person had to give his first and last name, his login name

and an email address. He added that there was no verification done on the first and last name or the login name. The only verification was to ensure that a valid email address was provided. When an individual signed up a new account, a password was emailed to the address he or she provided.

[37] In his affidavit, Mr. Lemire annexed the user profile for the login names "realcanadianson" and "rump". For the login name "realcanadianson", the user's name was given as "Craig Harrison", the location was Georgetown, Ontario and the email address was [susen@sympatico.ca](mailto:susen@sympatico.ca). For "rump" the user's name was registered as "Lomp Pomp" and the location was given as "Yukom, Ontario polop2". It is obvious that these are fictional. The email address though is still [susen@sympatico.ca](mailto:susen@sympatico.ca), the same as the one used by "realcanadianson".

[38] Mr. Warman further alleges that Mr. Harrison is responsible for postings on another Website located at [www.ypenterprise.net](http://www.ypenterprise.net), which is host to a forum called "Yoderanium" under the login name "realnorthamerican". There are a lot of similarities in the style used and in the themes advocated by "realnorthamerican" and those of "realcanadianson" and "rump". The characterization of French Canadian as "cowards" and "draft dodger" is a recurrent theme in all of these postings. Also a very distinctive trait is the attacks on people of Dutch origin on the immigration that followed the Second World War and the references to former Prime Minister Trudeau. Although the evidence concerning the login name "realnorthamerican" is circumstantial, it is sufficient to establish a *prima facie* case that "realcanadianson" is another login name used by Mr. Harrison.

[39] The ultimate burden rests on the complainant and the Commission to establish their case on a balance of probabilities. Once a *prima facie* case has been made out, it is incumbent upon the Respondent to provide a reasonable explanation demonstrating that he was not the author of the offending messages, that the alleged discrimination never occurred or that his conduct was somehow non-discriminatory.

[40] In his reply to the complaint, Mr. Harrison and his representative, Susen Holmes suggested that he had been wrongly accused and that in fact, they did not at the relevant time own a computer or that another individual had used their computer and posted the messages. They indicated that they looked forward to presenting their versions of the facts. But they opted otherwise and decided that they would not participate in the hearing or lead evidence to support their explanations. The Tribunal cannot take stock of mere hints or innuendos tossed in the reply to the complaint, if there is ultimately no evidence introduced to sustain these assertions.

[41] Mr. Harrison's decision not to give evidence or to submit himself to cross-examination allows the Tribunal to draw an inference that his evidence may indeed have been detrimental to him. In *Nealy v. Johnston, supra*, the Tribunal noted at paragraph 45628 :

As Sopinka and Lederman, *supra* state:

[F]ailure on the part of a defendant to testify...once a *prima facie* case has been made out against the defendant, may be the subject of an adverse inference. (p. 537)

The learned authors also note that an unfavourable inference can also be drawn when a party litigant does not testify or fails to call a witness, who would have knowledge of the facts, and who might have given important supporting evidence if the case of the litigant had been sound. (p. 145).

[42] In the present case, Mr. Harrison did not testify, nor did he call anyone else as a witness. As I indicated earlier, a *prima facie* case has been made out by the complainant that Mr. Harrison posted these messages and, under the circumstances of this case, it is appropriate for the Tribunal to draw an adverse inference from the Respondent's decision not to offer a reply.

[43] Based on the evidence before me, I find that Craig Harrison is the author of the messages posted on the "Freedomsite" and of those posted in the "Yoderanium" forum under the login names "realcanadianson", "rump" and "realamericanson".

[44] In regards to the element of repetition, the Tribunal held in *Schnell supra*, at para. 129, that the use of the word "repeatedly" in s. 13(1) suggests that this section 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 (See *Warman v. Winnicki*, 2006 CHRT 20, at para. 36). I am of the view that Internet messages exchanged on a Website accessible to anyone are not intended to be private communications. I note that in the present case, Mr. Warman had no difficulty "surfing" his way to the Websites where these messages were posted. Since these messages could be viewed at any time by anyone using the Internet, they were indeed being communicated "repeatedly".

[45] The fact that a Website 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 messages to the Websites, Mr. Harrison communicated the material in issue (See *Schnell v. Machiavelli and Associates Emprize Inc*, 43 C.H.R.R. d/453, at para.127; and, *Warman v. Kyburz*, 2003 CHRT 18, at para. 9).

[46] Furthermore, by using the Internet, "the slow, insidious effect of a relatively isolated bigoted commentary" as described in *Canada (Human Rights Commission) v. Canadian Liberty Net*, [1998] 1 S.C.R. 626, at para 48, where the telephone was being used, has now changed to a form of communication having a widespread circulation. The messages on the Internet are much more easily accessible and pervasive than any previous telecommunication medium. The content of a Website can also easily be mirrored and replicated *ad infinitum* with virtually no control by the originator (*Barrick Gold Corp. v. Lopehandia*, [2004] O.J. No. 2329).

[47] Therefore, I conclude that the Complainant and the Commission have established a *prima facie* case that Craig Harrison did communicate or cause to be communicated repeatedly the messages found on the Websites in issue.

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

[48] The substantive evidence against Mr. Harrison consists primarily of copies of email postings on the Internet.

[49] 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) *supra*, which deals expressly with matters communicated by means of the Internet.

[50] 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. Even if this had not been the case, we must remember that the earlier version of section 13 had been found to encompass Internet communications in both *Citron et al v. Zündel, supra*, and in *Schnell v. Machiavelli and Associates Emprize Inc. et al, supra*.

**D. 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. Harrison?**

[51] In his complaint, Mr. Warman alleges that Mr. Harrison posted messages, which would likely expose Italians, Mexicans, Puerto Ricans, Haitians, francophones, blacks, First Nations persons, East Asians, non-whites and Jews to hatred and contempt, by reason of their religion, national or ethnic origin, race or colour.

[52] While the language used is quite offensive and debasing, to say the least, I feel that it is relevant to the issues to be resolved to quote from some of these messages. The following are excerpts of the messages posted by Mr. Harrison under the various login names:

*Under the login name "realcanadianson" :*

May 14, 2002 12:06 A.M.

" why does aqua velva come in different colours? because indians like shooters too."

12:08 A.M.

"what does an indian woman say when she is losing her virinity (sic)? Get off me dad your squishing my smokes."

12:47 A.M.

"no we should not be on the hook for them .it was a good idea at the time [Referring to residential schools] and most indians were for it .i wish my ancestors had killed them all so they wouldn't be whinning (sic) today."

3:43 P.M.

"liberals killed canada.did you know trudeau was a filthy french draft dodger?didn't want to fight for canada and his family should be killed."

4:36 P.M.

"kill anyone who is not white because god says so."

4:44 P.M.

"i call on all my white brothers to rise up and kill non whites because god gave canada to the white man."

4:51 P.M.

"jews make good lamp shades."

4:58 P.M.

"we have to kill the french forigners (sic) from quebec"

10:51 P.M.

"we all need to rise up and kill non whites because that's gods (sic) solution amen."

10:55 P.M

"i love you wolfgan (sic)<sup>1</sup>.your the best.i was thinking of you when i was in the hole at maplehurst oops i mean niggerhurst. i did two years for beating a half breed child molestor (sic). i guess were (sic) both heroes."

May 15, 2002 9:37 A.M.

"fuck buying it back. i say go out and kill anything non white and insure yourself a place beside god."

9:38 A.M.

"i told you the only good french man is a dead french man."

May 21, 2002 12:37 P.M.

"the indian heathens should all be killed says i. a message from gods (sic) chosen one."

12:42 P.M.

"if you are not white than you are not allowed in halton hills. If you come here god has told me to kill you."

12:52 P.M.

"the government should focus on giving land to veterans and there (sic) families before dealing with the indian devils."

12:53 P.M.

"you should be killed for saying that you pigg (sic) indian lover."

*Under the login names "rump":*

January 19, 2003 9:56 A.M.

"first off canada needs a canadian prime minister not some french man who wre (sic) draft dodgers in the wars.<sup>3</sup><sup>rd</sup> world immigrant shit keeps them in power.if you are worried about health care then you have your priorities backwards.its (sic) not what your country can do for you.but what can you do for your country

!refugees dont (sic) land at airports.real ones are in camps you liberal fall down creeps.GO BACK TO FRANCE YOU GARBAGE WASTE OF FLESH AND SPACE."

9:42 P.M.

"god says rise up and kill all whites who date blacks."

9:45 P.M.

"georgetown has just declared itself all white and the others must go.its my town so fuck off d.p.<sup>2</sup> scum and the french and dutch sell outs."

10:03 P.M.

"GOD says tot (sic) take your guns to jane and finch (nigger town) and open fire on the heathens .you will have 20 virgins waiting for you in the after life."

January 21, 2003 10:03 A.M.

"if i ever see any niggers or chinks dealing in my town[i represent g-town] i will kill them and anybody who dares testify."

10:16 A.M.

"it s (sic) okay to not like someone because they look different.no matter what the french scum in Ottawa say.GO BACK TO FRANCE NOBODY CONSIDERS YOU CANADIANS ANYWAY."

*Under the login name "realnorthamerican":*

January 28, 2004

"dont (sic) be fooled by what that french scum bag [referring to General Roméo Dallaire] has to say!he doesn't deserve to be called canadian anyway!the french in canada were notorius (sic) for refusing to serve and fight for canada in the wars!they were whinning

(sic) cowards PERIOD NO REBUTTEL (sic) NEEDED!no french man is worthy to run canada!look at what trudeau did to canada!now no one knows what a canadian looks like!"

"i saw a film clip on the holohoax were(sic) a kid and his mother were separated in the camps!imagine how more worse the world would be if hitler hadnt (sic) fried all those jews!i wish i could have been in charge of the gas chambers!"

"canada has been the victim of illegal aliens since the liberal government enacted political correctness on an un suspecting (sic) population!trudeau who was p.m. for 15 years was a french draft dodger and pro nazi and commie!his buddy was fidel castro for fukin sake!the immigrants in canada vote in blocks and not independently (sic)!they vote for a party and not the person in other words!they hold free speechers (sic) like zundel in solitary confinement (sic) and let nigger and paki terrorists post 1000 dollar bonds and walk away!these scum bags flush there (sic) travel papers down the air plane toilet!remember people real refugees cant afford plane tickets they are selected from camps!"

January 29, 2004

"we could use the french as slaves I guess!and no english come first in canada because we have done most good for canada!NOBODY LIKES THE FRENCH OR THE DUTCH!MY OLD MAN CALLED THE DUTCH THE JEWS OF THE NORTH!HOW TRUE!"

January 30, 2004

"i guess your ancestors havent (sic) been in canada long or you dont (sic) know canadian history very well!when the french came to north America they brought no women with them!so guess what!THE SQUAWS must have looked pretty good because canada has 7 million french people who in fact are really half indian and not really french at all!dont believe me then you know nothing of canadian history!french women are easier and more dirtier in bed because there (sic) indian ancestors had loose morals!lokk (sic) it up what you have heard above is a little canadian history the french seem to want to hide."

"Canadians support the pallistinians (sic) and not the invading jews! i hope they blow up lots of crowded buses."

"i know a greek guy who went to york university in north york above Toronto there and he used to call it JEW U!i guess they had a lot of jews there so if any arab terrorist reads this then you know where to start picking them off!have a nice day!"

February 2, 2004

"there is nothing canadian about the people who came to canada after the war and there (sic) offspring born here!that is a myth about Italians building toronto!toronto and a lot of its building were here before those grease balls showed up!the wops were nazi remember!"

February 5, 2004

"like my name says buddy i am a real canadian-my grand fathers fought for this country in the wars and those people are more canadian than any other period!indians or metis have no culture period-no written language, no religion, no wheel, no common currency.doesnt (sic) seem to be culture to me but lack of a culture instead!so why (sic) you guys are whinning (sic) about your jew masters i actually get things done."

[53] It is not the role of the Tribunal to regulate the free exchange of ideas. There may be elements of a legitimate political debate, although I fail to see them, in some of these

postings and nobody would quarrel with the fact that the Respondent has a right to his political views. But it is also clear that the majority of these postings go beyond the legal parameters of public debate and contravene the provisions of the *Act*. The call for violence toward Aboriginals, francophones, blacks and other non-whites, as well as attacks on others groups and individuals based on their religion, colour, national or ethnic origin using racial slurs and degrading stereotypes does not constitute legitimate political debate. It promotes hatred and contempt.

[54] The themes of these postings deal essentially with the killing of non-whites and other targeted communities such as the French Canadians, blacks and people of the Jewish faith. They exhort whites to do the killing because, according to the author "god has instructed them to do so" or because "god gave Canada to the white man." They attack in a demeaning and humiliating way members of various cultural and religious communities. We can feel in these posting an obsessive hatred of the aboriginal, francophone and, for that matter, of all communities who are not white, Christian or from English ancestry.

**(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?**

[55] In order to address this question, the meaning of the words "expose", "hatred" and "contempt" must be considered. The Canadian Human Rights Tribunal, as well as the Federal Court and the Supreme Court of Canada, have had occasions to consider the meaning of these terms in previous decisions.

[56] The terms "hatred" and "contempt" have been judicially considered in previous section 13 cases. In *Canada (Human Rights Commission) v. Taylor, supra*, the Supreme Court of Canada cited with approval the definitions of these terms in *Nealy v. Johnston* (1989), 10 C.H.R.R. D/6450 at 6469 (C.H.R.T.). In *Nealy*, the Tribunal said:

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 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.

[57] The Tribunal in *Nealy* also considered the meaning of the word "expose" as it is used in section 13:

"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 defence; 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 *Canadian Human Rights Act*.

(See also the Tribunal's decision in *Schnell, supra*, at paras. 85-89)

[58] In my view, there can be no doubt that the messages contained in the postings are likely to expose persons who are non-Christian, non-Caucasian and non-English in origin, to hatred or contempt. These persons are laid open to ridicule, ill feelings, hostility and violence creating the right conditions for hatred or contempt against them to flourish.

[59] The supposed humour found in postings under the heading "Jokes" unquestionably exposes these groups to hatred and contempt. These jokes blatantly treat people of the Jewish faith and aboriginals with disdain and as being inferior. They are demeaning and disdainful. In general, the messages serve to dehumanize people belonging to the targeted groups. The use of racial slurs and degrading stereotypes are derogatory, insulting, offensive and of themselves they display hatred and contempt in regard to these groups. The call for violence against members of these groups denotes feelings of extreme ill will.

[60] The author's extreme ill will and malevolence towards these groups pervades these postings. Statements exhorting violence and death, suggest that the victims lack any redeeming qualities, thereby dehumanizing them. These comments unquestionably expose the members of these groups to hatred, contempt and real physical danger by suggesting that they are legitimate targets of indiscriminate violence. These messages serve to develop and encourage envy, mistrust or resentment towards these individuals and groups, which in turn breeds hatred against them.

[61] For all these reasons, I conclude that the messages are 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.

#### **E. Finding regarding the section 13 complaint**

[62] Article 19 of the *Universal Declaration of Human Rights* provides that an individual has the "freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media...". This right to hold and express one's opinions is a cornerstone of a free and democratic society and a right that Canadians value dearly. It also forms part of the *Canadian Charter of Rights and Freedoms*.

[63] In the *Taylor* case *supra*, the Supreme Court of Canada had occasion to scrutinize the reach of section 13 of the *Canadian Human Rights Act* in light of the fundamental guarantee of freedom of opinion and expression protected by international law and the *Canadian Charter of Rights and Freedoms*. The Court concluded that while section 13 infringed the right of freedom of opinion and expression, this infringement was justified in light of Canada's international commitments to eradicate hate propaganda and its commitment to the values of equality and multiculturalism.

[64] As this Tribunal has already stated, the values underpinning hate propaganda are fundamentally inimical, even antithetical to the rationale underlying the protection of freedom of expression and directly contradict other values equally vindicated by the *Canadian Charter of Rights and Freedoms* (*Canadian Human Rights Commission v. Winnicki*, 2005 FC 1493, at para. 29).

[65] I think it is fair to say that the materials that were posted on the Websites referred to earlier and of which I have reproduced extracts in this decision, are likely to expose people of the Jewish faith, Aboriginal, francophones, blacks and others to hatred and contempt. They are undoubtedly as vile as one can imagine and not only discriminatory but threatening to the victims they target.

[66] Having found that Craig Harrison did communicate, repeatedly, by means of the facilities of a telecommunication undertaking within the legislative authority of Parliament, matters that are likely to expose people or members of these groups to hatred or contempt by reason of the fact that they are identifiable on the basis of a prohibited ground of discrimination, I conclude that Mr. Warman's section 13 complaint is substantiated.

## V. REMEDY

[67] Having substantiated Mr. Warman's section 13 complaint, the final issue to be determined is that of remedy.

### A. Cease and Desist Order

[68] 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. 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 the eradication of racial and religious intolerance.

[69] 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.

[70] Messages posted by individuals on various Websites of the Internet present a particular challenge for the Tribunal in crafting a meaningful remedy. As the Tribunal said in *Warman v. Kyburz*, *supra*, at par. 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."

[71] Despite these challenges, I adopt the words of the Tribunal in the *Zündel* decision *supra*, 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.

[72] Therefore, 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 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.

[73] Accordingly the Tribunal orders that Craig Harrison or any other individuals who act in concert with Craig Harrison, cease the discriminatory practice of communicating telephonically or causing to be communicated telephonically by means of 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 a person, or persons, are identifiable on the basis of a prohibited ground of discrimination, contrary to section 13 of the *Canadian Human Rights Act*. For the sake of clarity, the Tribunal orders that Craig Harrison cease and desist from posting any such messages on the Internet immediately upon being notified of the Tribunal's decision.

#### **B. Penalty**

[74] Subsection 54(1)c) of the *Act* allows the Tribunal to order a respondent in a section 13 complaint to pay a penalty of up to \$10,000. As was indicated by this Tribunal in *Warman v. Kyburz, supra*, at para. 92, "[t]he 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."

[75] In deciding whether to order Mr. Harrison to pay a penalty in this case, Parliament has directed that the Tribunal take several factors into account. Subsection 54(1.1) provides:

<p>(1.1) In deciding whether to order the person to pay the penalty, the member or panel shall take into account the following factors:</p> <p>(a) the nature, circumstances, extent and gravity of the discriminatory practice; and</p> <p>(b) 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.</p>	<p>(1.1) Il tient compte, avant d'imposer la sanction pécuniaire visée à l'alinéa (1)c) :</p> <p>a) de la nature et de la gravité de l'acte discriminatoire ainsi que des circonstances l'entourant;</p> <p>b) de la nature délibérée de l'acte, des antécédents discriminatoires de son auteur et de sa capacité de payer.</p>
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[76] Each of these factors will be considered in turn. Insofar as the nature, circumstances, extent and gravity, the Tribunal finds that Mr. Harrison repeatedly communicated messages regarding persons who are non-Christian, non-Caucasian and non-English in origin that were nasty, vicious and extreme. These persons were laid open to ridicule, ill feelings, hostility and violence creating the right conditions for hatred or contempt against them. The messages are demeaning and disdainful. They serve to dehumanize

people belonging to the targeted groups. The use of racial slurs and degrading stereotypes are derogatory, insulting and offensive. The repeated call for violence against members of these groups denotes feelings of extreme ill will. Statements exhorting violence and death, suggest that the victims lack any redeeming qualities, thereby dehumanizing them. These comments unquestionably expose the members of these groups to hatred, contempt and real physical danger by suggesting that they are legitimate targets of indiscriminate violence. These messages serve to develop and encourage envy, mistrust or resentment towards these individuals and groups, which in turn, breeds hatred against them.

[77] I find that the messages clearly demonstrate that its author is being led by his ill-conceived views of society and his incapacity to accept others. The evidence clearly establishes that the Respondent intended to expose members of the targeted groups to hatred and contempt and that he intended to convince people to think as he did. He clearly communicated his messages in wilful disregard of the likely consequences of his conduct. I also take notice of the fact that the Respondent has previously been found guilty of an assault on an individual which was racially motivated.

[78] On the mitigating side, I also find that the messages put in evidence were posted in a relatively short period of time and that there seems to have been no new posting since 2004. Also, I note that the Respondent is not responsible for the Websites; he is but a participant to these various Websites. No evidence was introduced to show that there is a possibility of any recurrence of such postings by the Respondent.

[79] Subsection 54(1.1) mandates that the Tribunal consider the respondent's ability to pay a penalty before levying a fine. As was indicated by the Tribunal in the *Warman v. Kyburz* case *supra*, the burden of proof relating to the ability to pay rests with the respondent. Considering the decision of the Respondent not to participate in the hearing and submit evidence, there is no evidence before the Tribunal to suggest that Mr. Harrison may have limited resources.

[80] Taking all of these factors into account, I order the Respondent to pay a penalty in the amount of \$1,000. The order that the Respondent pay this penalty is imposed essentially by reason of the violent nature of the postings. Society cannot take lightly calls for the murder of persons because of their race, religion or ethnic origin.

[81] 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. Harrison being notified of this decision.

## **VI. ORDER**

[82] For the foregoing reasons, the Tribunal declares that Mr. Warman's rights under the *Canadian Human Rights Act* have been contravened by Craig Harrison, and orders in relation to the section 13 violation that:

- i) Craig Harrison, and any other individuals who act in concert with Mr. Harrison cease the discriminatory practice of communicating telephonically or causing to be communicated telephonically by means of the facilities of a telecommunication undertaking with 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 and contempt by reason of the fact that a 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*.

- ii) Mr. Harrison shall pay a penalty in the amount of \$ 1,000. 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 Canadian Human Rights Tribunal within 35 days of Mr. Harrison being notified of this decision.

"signed by"

Michel Doucet

OTTAWA, Ontario

August 15, 2006

<sup>1</sup> « Wolfgan » refers to Wolfgang Droege the then National Director of the Heritage Front, one of the groups that forms part of the Freedom site.

<sup>2</sup> « d.p. » stands for « displaced persons » a term used to identify post World War II refugees.

#### PARTIES OF RECORD

TRIBUNAL FILE:	T1072/5305
STYLE OF CAUSE:	Richard Warman v. Craig Harrison
DATE AND PLACE OF HEARING:	June 12 to 14, 2006 Toronto, Ontario
DECISION OF THE TRIBUNAL DATED:	August 15, 2006
APPEARANCES:	
Richard Warman	For himself
Giacomo Vigna	For the Canadian Human Rights Commission
Craig Harrison Susen Holmes	For the Respondent