

**CANADIAN HUMAN RIGHTS TRIBUNAL TRIBUNAL CANADIEN DES DROITS DE LA  
PERSONNE**

**RICHARD WARMAN**

**Complainant**

**- and -**

**CANADIAN HUMAN RIGHTS COMMISSION**

**Commission**

**- and -**

**NORTHERN ALLIANCE AND JASON OUWENDYK**

**Respondents**

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2009/03/13

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## I. THE COMPLAINTS

[1] This is a decision regarding two complaints filed by Richard Warman against the Northern Alliance and Jason Ouwendyk on January 21, 2006 alleging that the Respondents discriminated against persons or groups of persons on the basis of religion, sexual orientation, race, colour, national or ethnic origin and disability by repeatedly communicating messages through an Internet website that would likely expose Muslims, Hindus, Jews, gays and lesbians, East Asians, Hispanics, blacks, Arabs, and other non-whites, Somalians, Eastern Europeans, Roma (aka Gypsies), and the mentally and physically disabled to hatred and/or contempt contrary to s. 13 (1) of the *Canadian Human Rights Act* (the "Act").

[2] The complaints allege that the impugned conduct occurred between September 29, 2002 and the Fall of 2005. None of the examples of impugned messages included with the complaints appear to have been posted on the Internet website after January 2004. Reference, however, was also made in the complaints to photographs that were designed to expose persons or groups of persons to hatred or contempt on the basis of discriminatory grounds that according to archival information allegedly were available on the Internet until March 5, 2005.

[3] The inquiry by this Tribunal into the complaints was requested by the Canadian Human Rights Commission (the "Commission") as being warranted pursuant to s. 44 (3) (a) of the *Act* by letter dated April 5, 2007. On receipt of such a request, pursuant to s. 49 (2) of the *Act*, the Chair of the Tribunal is required to institute an inquiry. On November 30, 2007 the Tribunal directed that both complaints would be consolidated and heard together in one hearing. Notice of the hearing was given to the parties on May 30, 2008.

## II. PRELIMINARY ISSUES

### A. Withdrawal by the Commission

[4] Following its request that the Tribunal institute an inquiry, the Commission vigorously participated in the pre-hearing phase of this matter through its counsel until August 11, 2008 - one week before the hearing was scheduled to begin. On August 11, 2008, Mr. Daniel Poulin, Counsel for the Commission, advised the Tribunal and the parties in a three line letter that "... in light of the change of circumstances ... the Commission will no longer participate in the present hearing."

[5] On August 12, 2008, following a request by the Tribunal for more information regarding the Commission's decision to no longer participate, Mr. Poulin wrote a letter to the Tribunal and the parties advising that "... in all of the circumstances, there is no longer a public interest justifying the Commission's participation in this matter". The "circumstances" cited by Mr. Poulin were that:

- (i) the material that formed the basis of the impugned conduct was no longer on the Internet; and
- (ii) as a result of the acceptance by the creditors of a Consumer Proposal of Mr. Ouwendyk in December of 2004 under the *Bankruptcy and Insolvency Act*, (the "Consumer Proposal"), the financial claims (both the claim for pain and suffering and the penalty) of Mr. Warman against Mr. Ouwendyk in this matter were stayed. In the material attached to Mr. Poulin's letter there was a letter from the Administrator of the Consumer Proposal wherein he indicated that Mr. Warman was a creditor of Mr. Ouwendyk and was receiving dividends from the Consumer Proposal.

[6] At the request of the Tribunal, Mr. Poulin appeared on behalf of the Commission at the outset of the hearing. In elaborating on the reasons for the Commission's decision to no longer participate in the hearing, Mr. Poulin advised that:

- (i) The impugned material that was the subject of the complaints was no longer available on the Internet and had not been available for some time; and
- (ii) The Internet website and the domain name [www.northernalliance.ca](http://www.northernalliance.ca) which was the website referred to in the complaints had been sold some time earlier to a third party that was not related to the Northern Alliance or any person, including Mr. Ouwendyk, related to the Northern Alliance; and
- (iii) As a result of the Consumer Proposal the Tribunal could not issue Orders in respect of financial claims against either Respondent (Mr. Ouwendyk being the agent or the only member served and possibly representing the Northern Alliance) as such claims would be stayed.
- (iv) On the basis of the above noted considerations, as well as others that Mr. Poulin was not able to share, it was the Commission's position that neither Orders to cease and desist or for financial remedies would be effective in respect of the Respondents and, as such, there was no public interest for the Commission to continue to participate in the hearing.

[7] As a result of the Commission's withdrawal, the record was amended to remove the Commission as a party. Mr. Fromm, on behalf of Mr. Ouwendyk, requested that the complaint be dismissed as a result of the Commission's decision not to participate. As Mr. Warman was present and prepared to proceed, I ruled that the matters would proceed with Mr. Warman acting on his own behalf against Mr. Ouwendyk who was present and represented by Mr. Fromm and against the Northern Alliance who did not appear and were not represented but who had received proper notice of the hearing. Mr. Fromm also requested that the complaint be dismissed on the basis that the impugned conduct occurred more than one year before the complaint was filed.

[8] Section 51 of the *Act* has been interpreted to allow the Commission to not continue to participate in a hearing if, in its opinion, it is not in the public interest to do so. This does not affect a prior decision by the Commission under s. 44 (3) (a) and s. 49 (1) of the *Act* to request the Tribunal to institute an inquiry on the basis that it feels that it is warranted to do so. The Tribunal is obliged by virtue of s. 49 (2) of the *Act* to institute an inquiry following the request by the Commission to do so and to hold a hearing in respect thereof. The Tribunal has no authority or jurisdiction to not hold a hearing as a result of a decision by the Commission to withdraw from participating in the hearing after the inquiry has been requested. The Consumer Proposal of Mr. Ouwendyk under the *Bankruptcy Act* may be a stay of proceedings in respect of financial claims related to the complaints. However, it does not preclude the Tribunal from holding an inquiry as requested by the Commission into the complaints. It is to be noted that following the withdrawal from the proceedings by the Commission, the Complainant amended his Statement of Particulars to remove the financial claims against Mr. Ouwendyk. Finally, a decision by the Commission to request an inquiry by the Tribunal where the alleged conduct occurred more than a year before the complaint was filed is contemplated by ss. 41 (1) (e) and 44 (3) of the *Act*. Again, in these circumstances, the Tribunal is required to hold a hearing.

[9] In spite of the foregoing, it is troubling that the Commission decided not to participate in the hearing less than one week before its commencement. The Commission was aware as early as February of 2008 when Mr. Ouwendyk filed his Statement of Particulars that he maintained that the impugned material had been taken off the Internet sometime earlier and was no longer available, and that he had made a Consumer Proposal that Mr. Warman was participating in as a creditor. These facts were referred to in paragraphs 2 and 5 of Mr. Ouwendyk's Statement of Particulars of February 5, 2008 which was delivered to the Commission over six months prior to a decision by the Commission to not participate in the hearing.

## **B. Ruling by the Tribunal on Charter Challenge of Jason Ouwendyk**

[10] On May 8, 2008 the Chair of the Tribunal, Mr. J. Grant Sinclair made a ruling with respect to a Notice of Intention filed by Mr. Ouwendyk to question the constitutional applicability, validity and effect of ss. 13, 54 (1) and 54 (1.1) of the *Act*, wherein he alleged that these provisions violated ss. 2 (a), 2 (b), 2 (d) and 7 of the Canadian Charter of Rights and Freedoms and that they were not saved by s. 1 thereof. In his ruling, Chair Sinclair noted that in *Warman v. Lemire*, Tribunal File T1073/5405, another s. 13 case already underway, the respondent had raised a virtually identical Charter challenge to the same provisions of the *Act*. Accordingly, Chair Sinclair ruled as follows:

The Tribunal therefore directs that the hearing into this complaint should proceed at this time, but solely on the evidence regarding the complaint's allegations. The hearing on the question of the constitutional validity of the impugned sections of the *Act* will be deferred pending the outcome in *Lemire*. If the complaint is substantiated, the Tribunal will not issue any order until the final determination by the Courts of the constitutional question.

[11] Accordingly, this hearing was held solely on the evidence regarding the allegations contained in the complaints.

### **III. DECISION**

[12] For the reasons set out below, I have determined that the complaints against the Respondents Jason Ouwendyk and the Northern Alliance have been substantiated.

### **IV. SECTION 13 OF THE ACT**

[13] In order for a complaint under s. 13 (1) to be substantiated, it must be established that 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;
- was communicated telephonically or caused 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;
- by a person or group of persons acting in concert.

[14] Prohibited grounds of discrimination include religion, sexual orientation, race, colour, national or ethnic origin and disability (s. 3).

### **V. WHAT ARE THE IMPUGNED MESSAGES IN THIS CASE?**

[15] Mr. Warman testified on his own behalf. He was the only witness to give evidence in this case. He is an experienced lawyer who has spent a good deal of time and effort researching and pursuing persons or groups of persons whom he believes are responsible for hate messaging.

[16] Mr. Warman's evidence involved going through a binder of proposed exhibits that had been prepared for this case by the Commission while it was still involved in the case. Mr. Warman submitted several other documents in evidence that did not appear in the Commission's binder, including several documents that he had previously given to the Commission but had not been included with the binder in spite of having been referred to in the original complaints. The binder included almost entirely pages from the Northern Alliance Website [www.northernalliance.ca](http://www.northernalliance.ca) (and related or linked Websites) including photographs that were downloaded by Mr. Warman during 2003. Aside from the photographs which were in a "Photo Gallery" of the Northern Alliance Website, many of the pages downloaded and entered as exhibits were from the Northern Alliance "Forum", a chat room where members could develop "threads" on subjects that could then be discussed by postings from members. According to Mr. Warman, the Northern Alliance Website was managed by Mr. Ouwendyk as the administrator. To participate in the chat and post, one had to be a member, however, membership was not difficult to obtain and anyone could view the postings by simply clicking onto [www.northernalliance.ca](http://www.northernalliance.ca) and then clicking on "Forum". According to Counsel for the Commission this Website has been sold to an unrelated third

party and has not been in existence for a number of years - probably as far back as the beginning of 2006. The site would have ceased operation before when Mr. Warman filed his complaints with the Commission.

[17] Mr. Warman testified in regard to each of the downloaded pages and photographs, and he explained how, in his view, they contained hate messages that the Respondents were responsible for communicating. He also identified a number of members of the Northern Alliance as authors of the material including Mr. Ouwendyk, who participated in the Website by pseudonym and was the webmaster or administrator of the Website, according to Mr. Warman.

[18] Mr. Warman highlighted passages and images from the Northern Alliance Website, including the "Forum" and a "Photo Gallery" which targeted the following persons or groups of persons on the basis of the following prohibited grounds of discrimination:

**(i) Roma (aka Gypsies), Eastern Europeans - Ground: National or Ethnic Origin**

[19] In a thread titled "Canadian skinheads and Gypsies" downloaded in September of 2003 from the Northern Alliance Website, the following verbatim posts appear to have been made during September of 2003.

...good stuff. Damn gypsy's, I hope they got deported back to the czech republic where they belong!

... we hope all eastern euro mutts are deported because they don't belong in my country!

[...]

I think someone needs to learn the difference between Eastern Europeans and Roma's.

Eastern Europeans are of Scandinavian descent while Roma are of a mongrel mix of european/asia minor ancestry.

Roma populations are higher in Romania, Hungary, and Bulgaria and then thin out as they go west and north into countries like the Czech Rep. and Slovakia and nowadays in Western countries "thanks" to the fall of the Iron Curtain. At least with the Iron Curtain, it helped keep these disgusting people on their side of the imaginary wall.

**(ii) Gays and Lesbians - Ground: Sexual Orientation**

[20] In a thread titled "We Have To Stop The Menace!!" downloaded in November of 2003 from the Northern Alliance Website, the following verbatim posts appear to have been made during November of 2003.

In today "normal" world it is okay to discriminate WHITE NON-HOMOSEXUAL MALE! But it is wrong to tell what u think about non-whites, queers and females (I have no problem with last one! I even support normal WHITE feminists)

The situation with homosexuals is same as situation with nigroes! A few years ago they afraid to sit near with white person, now they bullshiting us with their rights. Today liberals allow same-sex marriage, tomorrow those dickheads will give freedom to freaks like pedophilies! Yeah, the dream of each parent is their kid wathcing "Gay/Pedophilie Pride Parade" instead of cartoons!

[...]

We have to fight! Otherwise the world we know will disappear and our race will be slaughtered!

In addition a picture posted on the Northern Alliance Website on July 14, 2003 showed a person at an anti-gay pride parade holding a sign that read:

There is a cure for Homosexuality - It's Aids.

**(iii) Mentally and Physically Disabled -Ground: Disability**

[21] In a thread titled "Don't argue on the net because:" downloaded in July of 2003 from the Northern Alliance website, the following image and verbatim posts appear to have been made during May, June and July of 2003.

[22] There is a photograph of a young person with Down's Syndrome running a race to the finish line with his arms open. The captions read "Arguing on the internet is like running in the Special Olympics" "Even if you win, you're still retarded" "A very special message from JRR's Shut The Fuck Up Foundation". The captions are followed by these verbatim posts:

[...]

A mongoloid.

Or should I say, intellectually disadvantaged.

[...]

A genetic defect like that Mongoloid may be White, but that does not automatically make him worthy. He is flawed and were he to reproduce, he would have genetically damaged offspring.

Perhaps we should discuss the benefits of Eugenics.

[...]

Best way to practice Eugenics without backlash is to have doctors mistreat patients than inform parents and concerned persons the patient did of complications. If the Jews can get away with killing millions of white babies via abortion doctors, I am sure others could implement similar but more usefull programs.

[...]

I support euthanasia for mongoloids and other incurable illnesses. They are of no benefit to anyone and are only a burden to all.

My God ... what a horrible creature!

Perhaps we could use it as fuel.

Good idea! There's enough of them here to turn the tables on OPEC!

[23] Also in a thread titled "A Website demoting Miscegenation" downloaded in November 2003 from the Northern Alliance Website, the following verbatim post appears to have been made during November of 2003:

I am glad to see Jews are sticking to their own kind ... now if we could only setup a site like this for Niggeroids and Mongoloids we'd be all set.

**(iv) Hispanics - Ground: National or Ethnic Origin/Race**

[24] In a thread titled "Jessica Lynch" downloaded in November of 2003 from the Northern Alliance Website, the following verbatim posts appear to have been made during November of 2003.

I know many of you already know that Private Lynch is a race traitor engaged to be married to a wetback, but in case you haven't seen them together, here is a photo.

May be we can do Saving Private Lynch Part II by going down there and getting back from the spics. Who knows it may make a great movie. Anyone know where we can get our hands on a couple of Blackhawks, nightvision goggles and M16s?

**(v) Chinese, East Asians - Ground: National or Ethnic Origin/Race**

[25] In a thread titled "Chinese Culture (pictures)" downloaded in October of 2003 from the Northern Alliance Website, the following verbatim posts appear to have been made during October of 2003.

There are over one million Chinese in Canada already

[...]

Beware of the silent invasion

What defence could our 80,000 man army mount against the one million gooks living in Canada?

Sars was just a test!

[26] Also, in a thread titled "Food for thought" downloaded in September, 2003 from the Northern Alliance Website, the following verbatim posts appear to have been made during September of 2003:

[...]

YOU BITCHES NEED TO WAKE UP AND FIGHT BACK! THERES NO BACK BONE IN ANY OF YOU!! BEAT DOWN A HALF BREED IN G TOWN IN 96 AND DID 2 YEARS IM A REAL CANADIAN HERO!

I remember reading about that in the newspaper. I seem to recall it being a Paki store clerk in Georgetown that was assaulted.

(vi) **Blacks, Asians, Native Aboriginal persons and other Non-Whites- Ground: Race/Colour/National or Ethnic Origin**

There were many postings that referred to Blacks. Among them were the following:

[27] In a thread titled "certain white women" downloaded in October of 2003 from the Northern Alliance Website, the following verbatim posts appear to have been made during October of 2003.

how come every time I see a white chick with a darky I just want to kill them both! is this a natural feeling to have?

[...]

It bothers me as well but I do not get mad at the guy for being with a white woman - I get more mad at the white woman.

In a thread titled "Immigrant Criminal Steals White Woman" downloaded in November of 2003 from the Northern Alliance Website, the following posts appear to have been made during November of 2003."

What else could you expect when from the multiracialists.....

[...]

There have been many recent examples of race mixing sluts getting killed, raped, or abducted by their mud lovers right here in London.

You'd think this would sound off some alarm bells with the mud loving sheep!

If not, they get what they deserve.

The results of sleeping with non-Whites is apparent in London, ON this month:

The White Woman from London in this story was raped by a Nigger:

As well, other non-whites, Asians and Aboriginal persons were also targeted as follows:

[28] In a thread titled "Actors' daughter dies in shootout outside club" downloaded from the Northern Alliance Website in January of 2004, the following verbatim post appears to have been made during January of 2004.

Non-White gangs are roaming Canada's streets engaging in gun battles with each other and taking the lives of White Canadians in their wake. The citizens of B.C. should form a lynch mob and oust these "Indo-Canadians" responsible for murdering a White woman. This story also shows what can happen to those who chose to betray their race and associate and protect Asian gang members.

[29] In a thread titled "The Governator" downloaded in October of 2003 from the Northern Alliance Website, the following verbatim posts appear to have been made during October of 2003.

[...]

Arnold is the in thing in Californicate ....

Will he clean it up or fuck it up? And don't just drop your opinion like some dog's calling card on the lawn and then split; explain it. Let's see how many of us really have two brain cells to rub together and what the friction produces...

[...]

It would certainly take a big man to clean up the mud-infested state that is California. Let's hope Arnie is that man.

[30] In a thread titled "Manitoba university offers oboriginal arts degree" downloaded in January of 2004 from the Northern Alliance Website, the following verbatim post appears to have been made during January of 2004.

Commentary: It's good to know that there will be people with degrees in teepee building. Our country has a glut of skilled labour of that sort. With this degree, I guess a person could get a major in scalping and a minor in smoking the peace pipe.

...

**(vii) Jews, Muslims and Arabs - Ground: Religion/Race/National or Ethnic Origin**

Jews, Muslims and Arabs were targeted in many of the postings. Among them were the following:

[31] In a thread titled "Israel's Neonazis" downloaded in November of 2003 from the Northern Alliance Website, the following verbatim post appears to have been made during November of 2003.

[...]

Screw the Jew!

[32] In a thread titled "Whom do U Support In Iraq??" downloaded in November of 2003 from the Northern Alliance Website, the following verbatim posts appear to have been made during November of 2003.

[...]

...U right that those muslim-shit will run to my, your home and to rest of Europe! But those impudent shit even worst than niggers!

[...]

I noticed that many people here are "okay" with muslim-scum. But guys muslim are the worst of our enemy! All drugs are coming from them (niggers just sell it on streets! They're just a pawns), half of Europe are under muslims. In France there are already a lot of WHITE PEOPLE have taken muslim religion, not so far ago there was a case to separete males and females in a swimpool, in England was case about letting muslim's females to cover their faces for photo on ID, driving license etc. (same case was in US and in Canada I believe), in Russia those scums just cut and kill Russians. Those scums multiply like rabbits, and soon ZOG will look like poor fluffy thing comparing to muslims.

[...]

Don't misunderstand: by no means do I want Arabs immigrating to Europe at the rate they are now, it is obscene, but you have to understand that this itself is a result of Europe's own ZOG's, and can be solved with any number of quick fixes once we have control..., namely through telling them to fuck off and go home...

[...]

I forgot to notice that most of muslim scum whom I talked to (quite a big number since I'm ESL guy), don't like their womens! They like White Canadian, French, Russian, German...girls. To cooperate with muslim extrinist is a really great risk, and the first thing we have to do - is to get rid of all muslims in our homes!

[...]

Muslim attack whites because they see enemy in us! That is all! By the way - jews and arabs are both semites!! Even though they hate each other. Semites MUST DIE!

[...]

The muslim is not your friend. The only thing that he wants from you is your neck under his boot in the name of sharia.

[...]



You, my friend, dearly need to determine who is the greater threat. Who are breeding like rodents? If you had a muslim, a jew and only one bullet: who would you shoot??

[...]

Chu, do not be fooled. The ZIONIST is the greatest threat to our race. It is why, time after time, they have been persecuted against throughout history. Like a parasite, they have no permanent home. They cling onto a host until they kill it, and then move on in search of a new host. I give the muslims kudos, they are fierce fighters up against a multi-faced enemy.

[...]

Pakistan has nukes ... they sure do, but somehow I think they might be a bit less inclined to use them, if every word out of our diplomats' mouths were not tainted by the Star of David painted on our foreheads.

We should not pay any less attention to these countries than we do now, aside from invading them cause Israel says so. Let's get rid of every Arab who tries to bring nuclear weapons to his country ... let's forcibly show them never to challenge the West again...But how about we do it AFTER we're free and able to make our own decisions, with our own economy, and for our own benefit?

[33] In a thread titled "Holohoax Rally!" downloaded in July of 2003 from the Northern Alliance Website, the following verbatim posts appear to have been made during July of 2003.

[...]

Good post connovar. Jews were persecuted for the same reasons they are today. They control a large amount of wealth and political influence and redistribute these things only to benefit themselves. By playing the anti-semitism card they forever enslave us because we are afraid to be publicly persecuted by the zionists (i.e. Zundel, Hale, Lane). Most people agree that the jews control the majority of wealth in North America ... and it is a dangerous thing when a small interest group controls the minds and pockets of the majority.

[...]

Hitler stood up against the Jews. I know a lot of media uses Hitler to make things difficult for modern white nationalists, but we musn't blame him. It's the Jews who are using Hitlers actions to keep the white race down, this is no fault of Hitler. If it hadn't been for Hitler they Jewish media would be using someone else to keep us down.

[...]

Next, I do not believe that "millions" of jews were exterminated as media would have you to believe. I also don't believe that there were over 600 thousand. I believe that 60,000 would be a more appropriate number. But the question I have is ..... who cares?

... at least the "60,000" was a damn good start!!!!!!

[...]

[34] A Photo Gallery was also posted on the Northern Alliance Website and downloaded in November of 2003 with a title page collage of photos that stated the following: "They claim that race is only a matter of skin colour and we are all equal - We tend to disagree". There then appeared a number of images or pictures which were entered into evidence as exhibits including the following prefaced by the title page:

- Women wearing what appears to be traditional middle Eastern clothing engaging in the mutilation of their children
- East Indian and other non-white males engaging in a variety of mouth or other body piercings
- Apparently African Blacks in particular washing themselves in what appears to be animal urine and drinking what appears to be animal urine
- Black children appearing to be emaciated and covered in flies
- Images of non-white males accompanied by a caption describing them as "shitskins". Apparently South Asian children shown with rats

- Men appearing to be Muslims self-mutilating themselves
- People who appear to be Chinese or East Asian slaughtering and eating cats
- Apparently Africans or East-Africans engaging in brutal bludgeoning murders and/or immolation of individuals
- Non-whites engaging in cannibalism and using their bodies to breast-feed pigs and monkeys.

## VI. ANALYSIS

### A. Is the material likely to expose a person or persons to hatred or contempt by reason of the fact they are identifiable on the basis of a prohibited ground of discrimination within the meaning of s. 13 (1)?

[35] The words "hatred", "contempt", "likely" and "expose" have been interpreted by the Tribunal and by the Courts.

[36] In *Canada (Human Rights Commission) v. Taylor* [1990] 3 S.C.R. 892, the Supreme Court of Canada adopted the Tribunal's definition of the words "hatred" and "contempt" as established in *Nealy v. Johnston* (1989), 10 C.H.R.R. D/6450; and *Taylor and the Western Guard Party v. Canadian Human Rights Commission and Attorney General of Canada* (1979), T.D. 1/79. "Hatred" involves feelings of active dislike, detestation, enmity, extreme ill-will and malevolence. It means, in effect, that one finds no redeeming qualities in the object of one's detestation. It does not necessarily involve the mental process of "looking down" on another or others. It is possible to "hate" someone who one feels is superior to one in intelligence, wealth, or power. "Contempt" on the other hand does involve the process of "looking down" on or treating as inferior another or others.

[37] The Tribunal in *Nealy v. Johnston* stated that the use of the word "likely" in s. 13 (1) means that it is not necessary to prove that any particular individual or group took the messages seriously and directed hatred or contempt toward others. Nor is it necessary to show that, in fact, anyone was so victimized.

[38] The word "expose" has been held by the Tribunal in *Taylor* and *Nealy* to be a more passive word than "incite". "To expose", in this context, means to leave one unprotected or to lay open to danger, ridicule or censure. In other words, the Tribunal has stated that, 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 then falls within the compass of s. 13 (1) of the *Act*.

[39] Words and photographic images are among the most powerful forms of communication. They can be used productively either to create, advance, advocate and support positive things or to oppose, criticize, dissent and protest negative things. They are a manifestation of thought. In a democratic society, such as ours, free thought and expression represents the lifeblood needed to maintain our liberty and freedom. Often, they inform, educate, entertain, motivate and even inspire us. In many cases, they either have no particular value or are even of negative value. For every Shakespearean sonnet in existence, there are many more exploitive and violent messages communicated to us by various means. In virtually all cases the communication of words and photographic images are and should be protected uncensored as free speech and expression notwithstanding that in some cases they are of no value or even of negative value. There are, however, communications that are not only valueless or of negative value but beyond that are likely to expose persons or groups of persons to hatred and/or contempt on the basis of discriminatory grounds such as religion, sexual orientation, race, colour, national or ethnic origin and disability. Parliament has enacted s. 13 of the *Act* to prohibit these types of communications. The Tribunal and the Courts have, in the past, held that these types of messages are not protected because they are the antithesis of free speech and expression, inimical to the objectives of a free and democratic society and harmful to the individual rights and freedoms of persons against

whom they are directed. Such hate messages have been held to be contradictory to the purposes of the *Act* which seeks to protect and uphold the principle expressed in s. 2 thereof, which states that:

The purpose of this *Act* is to extend 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.

[40] In *Taylor*, the Supreme Court of Canada considered both the general purpose of the *Act*, and, more specifically, the harm addressed by s. 13 (1). Writing for the majority, Dickson C.J. begins by reference to the general purpose of the *Act* set out in s. 2, and succinctly summarizes the legislative intent as "the promotion of equal opportunity unhindered by discriminatory practices". He then goes on to find that in enacting s. 13, Parliament has expressed the view that the repeated telephonic communication of "hate messages" is contrary to the furtherance of equality.

[41] A review of the report of the Special Committee on Hate Propaganda in Canada, also known as the Cohen Committee, led Dickson C.J. to comment as follows:

The Cohen Committee noted that individuals subjected to racial or religious hatred may suffer substantial psychological distress, the damaging consequences including a loss of self-esteem, feelings of anger and outrage and strong pressure to renounce the cultural differences that mark them as distinct. This intensely painful reaction undoubtedly detracts from an individual's ability to, in the words of s. 2 of the *Act*, "make for himself or herself the life that he or she is able and wishes to have". As well, the Committee observed that hate propaganda can operate to convince listeners, even if subtly, that members of certain racial or religious groups are inferior. The result may be an increase in acts of discrimination ... and even incidents of violence.

[42] Dickson C.J. continued by noting that since the release of the Cohen Report, several other studies had similarly found that hate propaganda poses a "serious threat to society", and he concluded that:

...messages of hate propaganda undermine the dignity and self-worth of target groups members and, more generally, contribute to disharmonious relations among various racial, cultural and religious groups, as a result eroding tolerance and open-mindedness that must flourish in a multicultural society which is committed to the idea of equality.

[43] The messages quoted and referred to above from the Northern Alliance Website are not simply nasty, crude, and vicious. They express the idea that people should be hated or held in contempt because of who they are rather than what they have done. It is unknowable whether the people who communicate these messages do so out of fear or ignorance of someone different or because of a basic malevolence that exists in some of us. These messages associate stereotypical negative themes passed down through the ages about various people or groups of people who are not white Christian Western European heterosexuals and who are perceived to be disabled. The effect of these messages is to expose such people or groups of people to hatred or contempt on the basis of their religion, sexual orientation, race, colour, national or ethnic origin or disability. In these communications, Jews are held out to be dishonest, money hungry and striving to control the world to their benefit and to everyone else's detriment. It is said that they have exaggerated the Holocaust for self serving purposes. Muslims are portrayed as dirty, violent and dangerous. Gays and Lesbians are depicted as deviant criminals who prey on children. Blacks, Arabs and other non-whites are shown as

ignorant and inferior. The mentally and physically disabled are described as horrible creatures who ought not to be allowed to live. It is suggested that many of these targeted groups should be eliminated. It is likely that the people posting these messages have never spent any meaningful time with or come to know individuals in the group or groups of people that they stereotypically seek to describe in negative, contemptuous and hateful terms. Education would probably help to eliminate this type of behaviour. In the meantime, Parliament has through s. 13 (1) of the *Act* sought to prohibit this kind of communication for the reasons referred to above.

[44] The impugned messages quoted and referred to above, fall within the meaning of the definitions of "hatred" and "contempt" in the cases earlier referenced. The communication of the impugned messages is "likely to expose" the targeted persons to hatred or contempt on the basis of a prohibited ground of discrimination as those terms are defined by the cases earlier referenced.

[45] In reading the text of and observing the images produced in evidence in this case and reproduced earlier, it seems clear that these messages also fall within the following "hallmarks of material that is more likely than not to expose members of the targeted group to hatred or contempt" as developed in the analysis of the s. 13 (1) jurisprudence that was conducted by Member Jensen in *Warman v. Kouba*, 2006 CHRT 50:

- The "Powerful Menace" Hallmark: the targeted group is portrayed as a powerful menace that is taking control of the major institutions in society and depriving others of their livelihoods, safety, freedom of speech and general well-being.
- The "True Story" Hallmark: the messages use "true stories", news reports, pictures and references from purportedly reputable sources to make negative generalizations about the targeted group.
- The "Predator" Hallmark: the targeted group is portrayed as preying upon children, the aged, the vulnerable, etc.
- The "Cause of Society's Problems" Hallmark: the targeted group is blamed for the current problems in society and the world.
- The "Dangerous or Violent by Nature" Hallmark: the targeted group is portrayed as dangerous or violent by nature.
- The "No Redeeming Qualities" Hallmark: the messages convey the idea that members of the targeted group are devoid of any redeeming qualities and are innately evil.
- The "Banishment" Hallmark: the messages communicate the idea that nothing but the banishment, segregation or eradication of this group of people will save others from the harm being done by this group.
- The "Sub-human" Hallmark: the targeted group is de-humanized through comparisons to and associations with animals, vermin, excrement, and other noxious substances.
- The "Inflammatory Language" Hallmark: highly inflammatory and derogatory language is used in the messages to create a tone of extreme hatred and contempt.
- The "Trivializing or Celebration of Past Tragedy" Hallmark: the messages trivialize or celebrate past persecution or tragedy involving members of the targeted group.
- The "Call to Violent Action" Hallmark: calls to take violent action against the targeted group.

[46] As such, I find that these messages are likely to expose persons identifiable on the basis of a prohibited ground of discrimination to hatred or contempt, within the meaning of s. 13 (1) of the *Act*.

**B. Were the communications made repeatedly, in whole or in part, by means of the facilities of a telecommunication undertaking within the legislative authority of Parliament, within the meaning of s. 13 (1) of the *Act*?**

[47] The Tribunal has held in the past that material communicated via the Internet is by that medium's innate characteristics alone, a repeated communication, particularly where no

obstacles are put in place that would prevent anyone connected to the Internet from "surfing" his or her way to a Website and viewing the material (see *Warman v. Beaumont*, 2007 CHRT 49 at paras. 51-7; *Warman v. Harrison* 2006 CHRT 30 at para. 44; *Warman v. Kulbashian*, 2006 CHRT 11 at para. 62; *Warman v. Tremaine*, 2007 CHRT 2 at paras. 116-9). Mr. Warman testified that he was able to view the material simply by clicking on to the Internet address of the Northern Alliance Website which led him to the links found on the Website to the impugned material. He gave evidence that he was easily able to download the impugned material from the Northern Alliance Website, as the evidence adduced was that access thereto was public and unrestricted.

[48] Section 13 (2) of the *Act*, confirms that s. 13 (1) applies to matters communicated by means of the Internet.

[49] I therefore find that the communications were made repeatedly, in whole or in part by means of a telecommunication undertaking within the legislative authority of Parliament, contrary to s. 13 (1) of the *Act*.

**(i) Did Jason Ouwendyk and the Northern Alliance, acting in concert, communicate or cause to be communicated the impugned messages by means of the Northern Alliance Website within the meaning of s. 13 (1) of the Act?**

[50] Mr. Warman presented clear uncontradicted documentary evidence that Jason Ouwendyk, by his own admission, not only was one of the members of the Northern Alliance but was also elected unanimously to be its spokesperson and the webmaster and administrator of the Northern Alliance Website. Further, there was also clear evidence that Mr. Ouwendyk himself, under the pseudonym "Jay" posted some of the impugned material quoted and referred to earlier.

[51] Mr. Ouwendyk appeared at the Hearing and chose not to give evidence to rebut Mr. Warman's evidence. As such, I find that Mr. Ouwendyk is responsible for both communicating and causing to be communicated the impugned messages on the Northern Alliance Website.

[52] The Northern Alliance does not appear to be active lately and the Northern Alliance Website appears no longer to be in existence and seems to have been sold to an unrelated third party according to the Commission. The Northern Alliance as a group and its Website clearly were in existence when the impugned messages were communicated according to the uncontested evidence of Mr. Warman.

[53] The evidence, again uncontradicted, presented at the Hearing included:

- (i) Pictures showing as a group, the members of the Northern Alliance under their banner identified by Mr. Warman - some of whom attended the Hearing including Mr. Ouwendyk and Mr. Rudd who were identified at the hearing and can easily be seen to be the same people as in the pictures produced by Mr. Warman in his evidence;
- (ii) The Northern Alliance symbol and letterhead on correspondence, pictures and threads including the Website url [www.northernalliance.ca](http://www.northernalliance.ca) and its Forum from where the posts were downloaded;
- (iii) Various documentation showing posts with an official postal box and e-mail address for the Northern Alliance, a newsletter, a financial account for payment and donations and the name of at least one official officer of the group - Jason Ouwendyk.

[54] In spite of the fact that the Northern Alliance is not incorporated, all of the above is indicative of the Northern Alliance constituting a group of persons acting in concert, in accordance with jurisprudence on this subject including: *Smith et. al v. Western Guard Party* [1979] CHR 1/79; *Taylor; Khaki v. Canadian Liberty Net; Nealy; Chilliwack Anti-Racism Project Society v. Scott; Warman v. Western Canada For Us* 2006 CHRT 52.

[55] As such, I find that Jason Ouwendyk and the Northern Alliance, acting in concert, as well as Mr. Ouwendyk acting individually, communicated or caused to be communicated the impugned messages by means of the Northern Alliance Website within the meaning of s. 13 (1) of the *Act*.

## VII. REMEDIES

[56] Mr. Warman requested that I make the following Orders:

- i. Pursuant to s. 54 (1) (a) of the *Act* that both the Respondents Jason Ouwendyk and the Northern Alliance and/or any others acting in concert with them be ordered to cease the discriminatory practice of communicating telephonically or causing to be communicated telephonically by means of the facilities of a telecommunication undertaking within the legislative authority of Parliament, material of the type that was found to violate section 13 (1) in the present case, or any other messages 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*; and
- ii. Pursuant to s. 54 (1) (c) of the *Act* that the Respondent the Northern Alliance (but not the Respondent Jason Ouwendyk) pay a penalty of \$7,500.00; and
- iii. Pursuant to s. 54 (1) (b) of the *Act* that the Respondent the Northern Alliance (but not the Respondent Jason Ouwendyk) pay compensation of \$6,000.00.

[57] The purpose of a Cease and Desist Order under s. 54 (1) (a) of the *Act* is to both remediate conduct found to be contrary to s. 13 (1) of the *Act* and to send a message to others that such conduct is not acceptable. In the present case, the Northern Alliance Website is no longer in existence as it was apparently sold to an unrelated party several years ago. Contrary to Mr. Warman's Statement of Particulars, there is no evidence that the impugned conduct by the Respondents has continued to the present time. Instead it appears to have been discontinued well before the complaints were instituted. To a certain extent, there would not appear to be anything to remediate. However, one has no way of knowing whether the cessation of activity by the Respondents was related to a genuine understanding by the Respondents that their prior conduct was discriminatory and a firm resolve that it would not be repeated at any time in the future. To be on the safe side, therefore, I will make an Order along the lines requested by Mr. Warman under s. 54 (1) (a) of the *Act*. If the Respondents do not engage in the impugned conduct again in the future, they will have nothing to fear from such an Order. In view of the ruling by the Chairperson of the Tribunal, Mr. J. Grant Sinclair, referred to earlier in this Decision, this Order will not be issued until a final determination by the Courts of the constitutional question in the *Lemire* case.

[58] In regard to the other remedies sought by Mr. Warman, I have decided not to grant any relief under these provisions for the following reasons.

[59] During his cross-examination, Mr. Warman admitted (after initially denying) that he had participated in communicating messages on Internet Websites similar to the Northern Alliance Website utilizing pseudonyms such as "Pogue Mahone" and "Axetogrind".

[60] In one of several such communications that was entered into evidence during his cross-examination that Mr. Warman admitted having made, Mr. Warman using the name as "Pogue Mahone Forum Member" posted the following on the stormfront.org/forum Website on July 18, 2004: (The bolded words are Mr. Warman's. The italicized words are a quote that he has included from a previous post made by a "S88")

**Re: Irwin Cotier (Jewish) as Minister of Justice in Canada**

*Quote:*

*Originally Posted by S88*

*Did you know our minster of justice is jewish?*

*He has previously expressed a clear interest in the promotion of the interest in the promotion of the interests of Israel and the Jewish people, who represent a very small fraction of our nation's population.*

*A recent announcement by your Federal government regarding a planned initiative to combat racism in response to recent anti-Semitic crimes is evidence of a misguided agenda. Such a plan will not only be a monumental waste of tax payer's money, but will also lead Canada down the path towards Stalinist-style oppression.*

*Let's look at the recent anti-Semitic crimes that have been used as an example for implementing this plan:*

- *spray paint on Jewish houses and cars in Vaughan (backwards swastikas) - no arrests yet*
- *spray paint in Toronto equating a star of David with a swastika - Iranian immigrant arrested.*

- *Tomb stones overturned in a Jewish cemetery in Toronto - Jewish teenagers arrested and only charged with mischief*

- *Fire in a Jewish school in Montreal - note left on scene blaming Jews for the murder of Palestinian Hamas spiritual leader*

*These incidents hardly seem like the rebirth of Kristallnacht, as Jewish leaders would have us believe. Jews themselves committed some of the vandalism and the rest was committed by Muslims, who are expressing the anger about events in the Middle East.*

*Spending much needed tax dollars on a scheme to further impose the will of Israel-firsters on Canadians is not what voters want.*

*With increasing immigration from third-world countries, old-world prejudices will continue to be expressed in Canada. If we really need to stop hate in Canada, then we need to look at ending immigration from third-world countries.*

*These information was taken from A Letter to Prime Minister of Canada by Jason Ouwendyk..*

*Heil Victory*

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**Did you know we had an election and the new cabinet hasn't been named yet? We still have scum in government but we have to wait and see which scum goes where.**

[61] In another posting entered into evidence during his cross-examination and the authorship of which was admitted to by Mr. Warman, Mr. Warman as "Axetogrind Junior Member" posted the following on the "VNN (Vanguard News Network) Forum" on January 5, 2005.

*Quote:*

*Originally Posted by Thexder 3D*

*Is everything written there true?*

*I'm surprised those ADL Jews print quotes such as: Schoep, waving a noose, yelled to the crowd that he came to Kansas "to speak the truth for my race, my people, my nation."*

*Certainly that's something that might spark curiosity in (not yet racist) whites.*

**I agree. Keep up the good work Commander Schoep! 88**

[62] Mr. Warman stated that the communications quoted in the previous two paragraphs did not "cross the line" into hate messaging nor did they provoke hate messages by others. He stated that the inclusion in his postings of possible hate messages from others were inadvertent slips by him in sending messages over the Internet. He further stated that his postings were intended to assist him in his quest for information about persons using the Internet to communicate discriminatory hate messages.

[63] I do not see any acceptable reason for Mr. Warman to have participated on the Stormfront or Vanguard sites, since there appears to be ample easily obtained messages on these sites available without his involvement. Moreover, it is possible that his activity in this

regard, could have precipitated further hate messages in response. His explanation for including other hate messages in his postings by mistake seems very weak to me.

[64] Mr. Warman has, with the assistance of the Commission, instituted most of the s. 13 (1) complaints under the *Act* that have come before the Tribunal. He has been very successful in these cases and has garnered accolades for his work in this regard. The evidence in this case of his participation on Internet sites similar to the Northern Alliance site is both disappointing and disturbing. It diminishes his credibility. For this reason and because the activities of the Respondents have ceased for a lengthy period of time, I will not make any further Orders in this matter.

*"Signed by"*  
Edward Peter Lustig

OTTAWA, Ontario  
March 13, 2009

#### PARTIES OF RECORD

TRIBUNAL FILE:	T1216/2807 and T1217/2907
STYLE OF CAUSE:	Richard Warman v. Northern Alliance and Jason Ouwendyk
DATE AND PLACE OF HEARING:	August 18 to 20, 2008 Hamilton, Ontario
DECISION OF THE TRIBUNAL DATED:	March 13, 2009
APPEARANCES:	
Richard Warman	For himself
(No one appearing)	For the Canadian Human Rights Commission
Paul Fromm	For the Respondent Jason Ouwendyk
(No one appearing)	For the Respondent Northern Alliance