

**CANADIAN  
HUMAN RIGHTS  
TRIBUNAL**



**TRIBUNAL CANADIEN  
DES DROITS  
DE LA PERSONNE**

**BETWEEN/ENTRE:**

RICHARD WARMAN

**Complainant**

**Plaignant**

**and/et**

CANADIAN HUMAN RIGHTS COMMISSION

**Commission**

**Commission**

**and/et**

ELDON WARMAN

**Respondent**

**Intimé**

**BEFORE/DEVANT:**

PAUL GROARKE

CHAIRPERSON/  
PRÉSIDENT

LINDA BARBER

REGISTRY OFFICER/  
L'AGENTE DU GREFFE

**FILE NO./N° CAUSE:**

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CANADIAN HUMAN RIGHTS TRIBUNAL/  
TRIBUNAL CANADIEN DES DROIT DE LA PERSONNE

HEARING HELD IN HEARING ROOM NO. 1 OF THE CANADIAN HUMAN RIGHTS  
TRIBUNAL, 160 ELGIN STREET, 11TH FLOOR, ON THURSDAY, MAY 26,  
2005, AT 1:30 P.M. LOCAL TIME.

CASE FOR HEARING/CAUSE DEVANT ÊTRE ENTENDUE

IN THE MATTER of the complaint filed under section 13(1) of the  
Canadian Human Rights Act by Richard Warman, dated June 1, 2003,  
against Eldon Warman. The Complainant alleges that the  
Respondent has engaged in a discriminatory practice on the  
grounds of religion and national and ethnic origin in a matter  
related to the usage of a telecommunication undertaking.

APPEARANCES/COMPARUTIONS

Richard Warman	on his own behalf
Valerie Phillips Monette Maillet	Counsel for the Canadian Human Rights Commission

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Ottawa, Ontario

1  
2 --- Upon resuming on Thursday, May 26, 2005  
3 at 1:30 p.m.

4 REGISTRY OFFICER: Good afternoon.

5 The hearing in the matter of the complaint filed under  
6 section 13(1) of the Canadian Human Rights Act by  
7 Richard Warman, dated June 1st, 2003, against Eldon  
8 Warman is now resumed.

9 Presiding is Dr. Paul Groarke.

10 The Tribunal now calls for  
11 appearances.

12 MS PHILLIPS: Valerie Phillips and  
13 Monette Maillet for the Commission.

14 MR. WARMAN: Richard Warman.

15 THE CHAIRPERSON: Good afternoon.

16 REGISTRY OFFICER: Is Eldon Warman in  
17 attendance at these proceedings today, or is there  
18 anyone in attendance who has been appointed to  
19 represent Eldon Warman?

20 Let the record reflect that no  
21 response was received.

22 THE CHAIRPERSON: In the  
23 circumstances, I think we will take 15 minutes and then  
24 come back, just to make absolutely sure.

25 --- Upon recessing at 1:31 p.m.

1 --- Upon resuming at 1:47 p.m.

2 REGISTRY OFFICER: Is Eldon Warman in  
3 attendance at these proceedings today, or is there  
4 anyone in attendance who has been appointed to  
5 represent Eldon Warman?

6 Let the record reflect that no  
7 response was received.

8 Mr. Chair, I have a document to be  
9 filed, which was sent to Eldon Warman by the Canadian  
10 Human Rights Tribunal, copies of which I distributed to  
11 the parties prior to reconvening.

12 The document, which will be filed as  
13 Tribunal Exhibit T-6, is an Affidavit of Service dated  
14 the 9th day of May 2005, indicating that Randy Milnes,  
15 Process Server, Calgary, Alberta, substitutionally  
16 served Eldon Warman by affixing the following documents  
17 to the main entry door at 702 - 54 Avenue S.W.,  
18 Calgary, Alberta: Notice of Resumption of Hearing,  
19 dated May 2nd, 2005, indicating and highlighting the  
20 date and location for this hearing; letter from the  
21 Tribunal, dated May 3rd, 2005, enclosing this notice;  
22 and a copy of the Order for Substitutional Service  
23 issued by the Canadian Human Rights Tribunal on May  
24 4th, 2005.

25 EXHIBIT NO. T-6: Affidavit of

1 Service dated the 9th day of May  
2 2005, indicating that Randy  
3 Milnes, Process Server, Calgary,  
4 Alberta, substitutionally served  
5 Eldon Warman by affixing  
6 documents to the main entry door  
7 at 702 - 54 Avenue S.W.,  
8 Calgary, Alberta

9 THE CHAIRPERSON: I think we turn to  
10 the Commission, do we?

11 MS PHILLIPS: The Commission has two  
12 Affidavits of Service to file. The first is  
13 supplemental to the Affidavit of Service that was filed  
14 at our tab C3, which was the original personal service  
15 of Eldon Warman.

16 The process server decided to draft a  
17 supplemental affidavit, detailing a bit more the events  
18 of that day.

19 THE CHAIRPERSON: Was there an  
20 incident? Someone was throwing a rock, I think.

21 MS PHILLIPS: That's correct, which  
22 hadn't been detailed in the Affidavit of Service that  
23 was filed previously.

24 THE CHAIRPERSON: All right. We will  
25 have that marked.

1                   REGISTRY OFFICER: Is this to replace  
2 the previous affidavit, or is it supplementary?

3                   MS PHILLIPS: It can replace the  
4 previous affidavit.

5                   THE CHAIRPERSON: Then we would  
6 actually expunge it from the record.

7                   I think it is better to add it as a  
8 supplementary document. I want as full a record as  
9 possible.

10                   It won't affect anything, but I would  
11 like it marked as a new exhibit.

12                   MS PHILLIPS: That's fine.

13                   REGISTRY OFFICER: The Affidavit of  
14 Service dated the 25th day of May 2005, signed by Alex  
15 de Muinck of the City of Calgary, in the Province of  
16 Alberta, regarding service on the 31st day of March  
17 2005 on Eldon Warman, will be filed as Commission  
18 Exhibit HR-50.

19                   EXHIBIT NO. HR-50: Affidavit of  
20 Service dated the 25th day of  
21 May 2005, signed by Alex de  
22 Muinck of the City of Calgary,  
23 in the Province of Alberta,  
24 regarding service on the 31st  
25 day of March 2005 on Eldon



1 Warman

2 THE CHAIRPERSON: I should note on  
3 the record that I have read this. There was an  
4 exchange of some sort when there was an attempt to  
5 serve Mr. Warman.

6 I will read it into the record.

7 "The said Respondent then picked  
8 up a rock about the size of his  
9 hand. I turned and advised him  
10 that if he touched me that I  
11 would charge him with assault.  
12 He then stated 'you couldn't  
13 charge me with assault because  
14 I'm going to fucking kill you'.  
15 I then ran to my car and left  
16 the area."

17 I think it is significant to have  
18 those details. It does say something about the  
19 attitude of Mr. Warman.

20 Do you have another affidavit?

21 MS PHILLIPS: Yes. The second  
22 affidavit is the Affidavit of Attempted Service.  
23 Attached to that affidavit is the letter I wrote to Mr.  
24 Eldon Warman and a copy of the Tribunal Order that was  
25 attached.

1                   The process server made three  
2                   attempts to serve Eldon Warman and was unsuccessful.

3                   THE CHAIRPERSON: Did the process  
4                   server, in the end, leave it at his residence? Is that  
5                   basically what happened?

6                   MS PHILLIPS: No, he did not, because  
7                   we did not have an order of substitutional service.  
8                   They left their card each time, asking him to contact  
9                   them.

10                  THE CHAIRPERSON: I see. Were there  
11                  any communications with anyone?

12                  Obviously they went to the door of  
13                  what appears to be Mr. Warman's residence.

14                  I am reading it: "...received no  
15                  answer..."

16                  All right. We will have it marked as  
17                  an exhibit.

18                  REGISTRY OFFICER: The Affidavit of  
19                  Attempted Service, signed by Raymond Kirk, sworn on May  
20                  25th, 2005, regarding attempted service on Eldon Warman  
21                  on May 7th, May 8th and May 11th, will be filed as  
22                  Commission Exhibit HR-51.

23                  EXHIBIT NO. HR-51: Affidavit of  
24                  Attempted Service, signed by  
25                  Raymond Kirk, sworn on May 25th,

1 2005, regarding attempted  
2 service on Eldon Warman on May  
3 7th, May 8th and May 11th

4 THE CHAIRPERSON: This contained a  
5 letter, did it? I would like to read the letter, if I  
6 could have a minute.

7 --- (Pause)

8 THE CHAIRPERSON: Again, I will read  
9 this into the record. This is your letter to Mr.  
10 Warman.

11 "I am also writing at the  
12 request of the Tribunal to  
13 provide you with notice that the  
14 Commission is seeking a \$10,000  
15 penalty under s. 54(1)(c) of the  
16 Canadian Human Rights Act as  
17 part of the remedies sought  
18 against you in this hearing..."

19 Then there is an order attached to  
20 that, which, of course, deals with those parts of the  
21 request for remedy that we dealt with at the previous  
22 sitting.

23 There were three attempts to serve  
24 those documents, and, of course, as well, he had the  
25 substitutional service from the Tribunal. The Notice

1 of Resumption of Hearing was taped to his door.

2 I must say that it was highlighted in  
3 a way which would make it very obvious to anyone who  
4 removed that document that the hearing was proceeding  
5 today in Ottawa.

6 I understand the situation. Is there  
7 anything else that you want to enter or deal with?

8 MS PHILLIPS: No.

9 THE CHAIRPERSON: We will move to  
10 your submissions, then, on the second part of the  
11 remedy.

12 SUBMISSIONS ON BEHALF OF THE CANADIAN HUMAN  
13 RIGHTS COMMISSION

14 MS PHILLIPS: As I mentioned at our  
15 last sitting, the Commission is seeking a penalty of  
16 \$10,000 pursuant to section 54(1)(c) of the Canadian  
17 Human Rights Act.

18 In 1998, Bill S-5 amended section 54  
19 to include the penalty provision. In doing so, it  
20 expanded the order-making power of the Tribunal under  
21 section 54 where a person was found to have engaged in  
22 a discriminatory practice under section 13.

23 As was just mentioned, an order in  
24 regards to that practice has already been made by this  
25 Tribunal.

1                   This amendment was made in a direct  
2 response to the rising incidents of hate crimes around  
3 the world.

4                   The justice minister at the time,  
5 Alan Rock, stated:

6                                 "The government believes that  
7 stronger measures are needed to  
8 deter individuals and  
9 organisations from establishing  
10 hate lines."

11                   At that time they were dealing with  
12 telephone lines.

13                                 "It hopes to accomplish this by  
14 allowing victims of such lines  
15 to apply for compensation and  
16 subjecting offenders to  
17 financial penalty."

18                   The first and only decision awarding  
19 the penalty was the Kyburz decision, which is at tab 7  
20 of the Commission's book of authorities. The  
21 discussion of penalty begins at page 21 of that  
22 decision.

23                   Chairperson Mactavish, as she then  
24 was, discussed the nature of the penalty in paragraphs  
25 93 to 95. She states:

1 "The inclusion of this provision  
2 in the 1998 amendments to the  
3 Act represents a significant  
4 departure from the traditional  
5 approach that damage awards in  
6 human rights cases were  
7 primarily remedial, and not  
8 punitive. To date, no order has  
9 been made by the Tribunal under  
10 this provision."

11 In paragraph 94 she says:

12 "In contrast, penalties levied  
13 pursuant to subsection 54(1)(c)  
14 of the Act are intended to  
15 reflect society's opprobrium for  
16 the respondent's conduct."

17 Then there is a discussion of the  
18 factors that are to be considered when awarding a  
19 penalty.

20 In that case, Mr. Kyburz also chose  
21 not to participate in the Tribunal's hearing, and  
22 Chairperson Mactavish awarded a \$7,500 penalty against  
23 him.

24 The first factor that must be  
25 considered by the Tribunal is the nature,

1           circumstances, extent and gravity of the discriminatory  
2           practice.

3                           In this case, the Respondent, Eldon  
4           Warman, used the internet to spread hatred and contempt  
5           toward Jewish people. In using this medium, he was not  
6           only able to reach a national audience, but an  
7           international audience. This means that Jews  
8           throughout Canada and the world may be exposed to this  
9           material, which was, at times, vicious and vile in  
10          nature.

11                          In the Taylor decision, which is at  
12          tab 2 of the Commission's book of authorities, the  
13          Supreme Court of Canada also discussed the influence  
14          that this type of material might have on people other  
15          than the targeted groups. At page 24, paragraph 78,  
16          Justice Dickson was actually quoting the Tribunal  
17          decision -- there is a long quote in paragraph 78 --  
18          and there was discussion of the attractions and  
19          advantages of telephone communication to racists and  
20          white supremacists in terms of connecting with and  
21          attempting to influence those in the community who are  
22          for one reason or another bewildered or disaffected by  
23          events and forces over which they feel they have no  
24          control.

25                          The Tribunal in that case also

1 discussed how the authors of hate messages are able,  
2 through subtle manipulation and juxtaposition of  
3 material, to give a veneer of credibility to the  
4 content of the messages.

5 "The combination of the  
6 telephonic medium and the  
7 material is, we believe,  
8 particularly insidious, because,  
9 while a public means of  
10 communication is used, it is one  
11 which gives the listener the  
12 impression of direct, personal,  
13 almost private, contact by the  
14 speaker, provides no realistic  
15 means of questioning the  
16 information or views presented  
17 and is subject to no counter-  
18 argument within that particular  
19 communications context."

20 It is the view of the Commission that  
21 this analysis also applies to internet communications,  
22 and perhaps even more so, because of the legitimacy of  
23 the written word and the repeated messaging.

24 The second factor is wilfulness or  
25 intent and prior discriminatory practices.



1 Eldon Warman, despite being  
2 challenged on numerous occasions by other contributors  
3 to the news groups, including persons pointing out the  
4 offensive nature of his postings, continued, and, in  
5 fact, his postings became even more vicious and  
6 hateful.

7 We saw, for example, the escalation  
8 against "Joe the Jew Boy" in the materials.

9 The Respondent was also aware that  
10 his associate, Fred Kyburz, had his internet site shut  
11 down as a result of the material that contained and  
12 made mention of this in his postings.

13 The third and final factor is Mr.  
14 Eldon Warman's ability to pay.

15 In the Kyburz decision, again at tab  
16 7, page 22, there was a discussion about who has the  
17 onus to adduce evidence about ability to pay, and the  
18 Tribunal found that the onus is on the Respondent to  
19 adduce that evidence.

20 Eldon Warman has adduced no evidence  
21 regarding his financial circumstances.

22 THE CHAIRPERSON: You mean that the  
23 onus is on the Respondent or the Complainant?

24 MS PHILLIPS: It is on the  
25 Respondent.



1 paragraph 100 she discusses the fact that the  
2 Noseworthy decision was a criminal decision, but she  
3 found that this particular principle applied within the  
4 Tribunal context.

5 THE CHAIRPERSON: She says: "...we  
6 do not feel that we can attribute it much weight,  
7 although we have considered it."

8 Were there references in the material  
9 to Mr. Warman's financial abilities?

10 I am trying to remember.

11 MS PHILLIPS: The only comment he  
12 made was in an e-mail to Mary Dufford, which was  
13 actually Richard Warman, in which he said "I have no  
14 assets that they can find."

15 THE CHAIRPERSON: Do you know where  
16 that is, by chance?

17 MS PHILLIPS: At tab C1 --

18 THE CHAIRPERSON: Yes, I remember the  
19 e-mail now. He said in the e-mail -- am I wrong in  
20 suggesting that he was almost boastful?

21 MS PHILLIPS: That's right.

22 THE CHAIRPERSON: That was the tone  
23 of it.

24 MS PHILLIPS: He says:

25 "I don't have any assets they

1 can find, so they can do  
2 whatever they wish. My website  
3 is on a server in Panama, so  
4 Canada de facto gov cannot do  
5 too much about that."

6 He is not saying "I have no assets";  
7 he is saying that the Canadian government can't find  
8 them.

9 THE CHAIRPERSON: I don't know that  
10 it really addresses, in any event, the ability to pay.  
11 I don't know if it was the same in the Kyburz case.

12 Really, it is your position that I  
13 don't have credible evidence or information before me  
14 that would raise the issue. Isn't that your position?

15 MS PHILLIPS: That's correct.

16 THE CHAIRPERSON: Perhaps you are  
17 going to go to it, but I notice that she also states  
18 that it was a first offence.

19 MS PHILLIPS: Chairperson Mactavish  
20 states that?

21 THE CHAIRPERSON: Yes.

22 MS PHILLIPS: She did see that as a  
23 mitigating factor; however, the Commission would argue  
24 that Mr. Eldon Warman was aware of the order against  
25 Fred Kyburz. He was aware that there was an order for

1 him to take down the site, and it is referenced in the  
2 evidence. So I am not sure if we can view it in the  
3 same way that the Tribunal analyzed Mr. Kyburz's  
4 conduct, because Mr. Eldon Warman was made aware  
5 through Mr. Kyburz's decision that this section of the  
6 Act existed, that a cease and desist order had been  
7 made, and the ramifications of that, essentially.

8 THE CHAIRPERSON: I was going to ask  
9 you about the maximum. From taking a very quick look  
10 at that decision, I gather that was the essential  
11 reason why they didn't levy the maximum \$10,000  
12 penalty.

13 Is that your reading of the case?

14 MS PHILLIPS: That is the only  
15 portion where I believe they say that it is a  
16 mitigating factor.

17 I believe that Chairperson Mactavish  
18 also referenced the material that Mr. Kyburz had  
19 posted, which said that he had no assets. She took  
20 that as unsworn evidence and weighted it accordingly.

21 THE CHAIRPERSON: Right. I see she  
22 says that they considered it, but didn't give it much  
23 weight.

24 Basically, it sounds as if the  
25 significant factor was the first offence.

1                   They were in the same position, I  
2 gather. The respondent wasn't there.

3                   MS PHILLIPS: That's correct.

4                   THE CHAIRPERSON: Was the material in  
5 that case similar? Would you compare the two?

6                   MS PHILLIPS: I think, in nature,  
7 yes, it was. It was anti-Semitic. I think the  
8 difference was, maybe, venue. Mr. Kyburz ran a website  
9 called "patriotsonguard". Mr. Eldon Warman posted in a  
10 variety of different fora. But the material itself was  
11 hateful in nature, and mostly, I believe, directed  
12 toward people of the Jewish faith.

13                   THE CHAIRPERSON: What is your  
14 position with respect to -- you seem to be suggesting  
15 that it is almost automatic, that I should --

16                   Do you want to make further  
17 submissions?

18                   I have two questions for you.

19                   MS PHILLIPS: That's fine.

20                   THE CHAIRPERSON: One question has to  
21 do with the maximum. If there is a maximum, I assume  
22 it is there for the very worst kind of case, and I  
23 suppose you could imagine a worse case.

24                   There is some proportionality built  
25 into the system.

1                   You seem to be suggesting that I  
2                   should start with the maximum.

3                   What is your position?

4                   MS PHILLIPS: What I am suggesting  
5                   is, in looking at the three factors that need to be  
6                   assessed under the Act, my position is that there is no  
7                   evidence at this point, as the Respondent has chosen  
8                   not to participate, to mitigate and bring down the  
9                   penalty from the maximum.

10                   I think, as we go through all of  
11                   those factors -- the nature, circumstances, extent and  
12                   gravity, wilfulness, intent, et cetera -- prior,  
13                   discriminatory practices, if that is something that the  
14                   Tribunal is considering -- I think the evidence clearly  
15                   states that there was repeated -- this is not one  
16                   posting that may expose people to hate, there were  
17                   numerous, repeated postings that got progressively more  
18                   vicious and vile in nature.

19                   THE CHAIRPERSON: I think I would  
20                   agree with you. I don't see much in terms of  
21                   mitigation.

22                   I still would think that one has to  
23                   somehow -- everything is on a scale, so there could be,  
24                   as I say, cases which are less or more offensive.

25                   I do have some concerns about -- if

1 it is a matter of awarding the maximum and somehow, in  
2 awarding the maximum, finding that this is the worst  
3 possible case --

4 It is not the worst case I could  
5 contemplate. I could contemplate, quite frankly, worse  
6 cases. That is obviously not approving of anything, it  
7 is just that, if there is some scale that applies  
8 here --

9 I'm sorry to say it, but I could  
10 imagine cases where the material is yet more offensive.

11 I wonder about that.

12 I did want to ask you the second  
13 question, which ties in to this. It has to do with the  
14 exercise that you have just gone through in trying to  
15 serve him with some kind of notice that you are seeking  
16 the penalty. Should I take into account the fact that  
17 Mr. Warman has refused to participate in the process?

18 I don't even know if that is the  
19 right way to say it. He certainly seems to have --  
20 there is some refusal to accept the legitimacy of this  
21 process.

22 I would be very interested in the  
23 Commission's view as to whether that is a relevant  
24 consideration.

25 MS PHILLIPS: I think, absolutely, it



1 is. I think that, through the materials, Eldon Warman  
2 has demonstrated a lack of respect for the laws and  
3 rules and conventions -- and many other things -- of  
4 Canada. He has chosen, in the tax forum, to not pay  
5 taxes, and he counsels people on how to not pay taxes.

6 He has been served personally with  
7 notice of these proceedings and has chosen not to  
8 attend.

9 THE CHAIRPERSON: I think I have to  
10 work on the assumption, at this point, that he has been  
11 advised of the process on repeated occasions, and I  
12 have to work on the assumption --

13 I shouldn't say assumption. I don't  
14 know what the right word is, but I think I have to  
15 proceed on the basis that he knows about the process  
16 and is deliberately evading service and refusing to  
17 participate.

18 Am I right in this view?

19 MS PHILLIPS: Yes, absolutely.

20 There was discussion in the House of  
21 Commons and there was discussion in the Kyburz decision  
22 about the nature of the penalty section, why it was  
23 implemented, and, clearly, it was meant to send a  
24 message to the respondent in that case, and it was also  
25 meant to send a message to other respondents that this

1 conduct will not be tolerated.

2 But I think that, in this particular  
3 case, evasion of service, failure to participate,  
4 failure to recognize the jurisdiction of the  
5 Tribunal --

6 THE CHAIRPERSON: There is something  
7 offensive in that.

8 MS PHILLIPS: Absolutely; not just  
9 this Tribunal, but any court and any law in Canada. I  
10 think there is something offensive in someone choosing  
11 to ignore it and make a mockery of it.

12 THE CHAIRPERSON: Even the comments  
13 that you refer to, those kinds of comments would feed  
14 into this. There is an attitude. The attitude that  
15 the Respondent has displayed to the process is -- it is  
16 more than regrettable, it is offensive in itself.

17 It seems to me that that is the kind  
18 of consideration -- if you just take the facts of this  
19 case, and if you just look at the e-mails, I don't  
20 think you are talking about the maximum.

21 But, as you know, I have myself, as  
22 the member in this case, gone out of my way to see that  
23 Mr. Warman is aware of the process and appreciates that  
24 this complaint is being heard, and there is some very  
25 obstinate refusal to accept the authority of the

1 process and the Tribunal, and somehow, when you add it  
2 all up, I can't help but wonder if that exacerbates the  
3 situation and if that isn't something I should  
4 consider.

5 I need to think about the situation,  
6 but it is your position that that is something that  
7 somehow aggravates -- that is an aggravating  
8 circumstance and that would justify the imposition of a  
9 higher penalty.

10 MS PHILLIPS: Yes, and I think, in  
11 reading the three factors, as I mentioned, the House of  
12 Commons discussion and Chairperson Mactavish's comments  
13 in Kyburz -- I think, when you put all of that  
14 together, that is in line with the purpose of this  
15 section.

16 THE CHAIRPERSON: Perhaps I should  
17 say on the record, too, that I consider it regrettable  
18 that Mr. Warman wasn't here and didn't participate.  
19 The Tribunal would have been happy to have accommodated  
20 him, in terms of venue or any other aspect of the  
21 process.

22 Of course, the Human Rights process  
23 is educational. That is part of what is supposed to be  
24 going on.

25 But we are in a very difficult

1 position, where a respondent refuses to participate.

2 I appreciate your comments. I  
3 understand your position. I will have to consider the  
4 situation.

5 Do you want to add anything?

6 MS PHILLIPS: I just have the  
7 concluding paragraph of my submissions.

8 The evidence demonstrates that Eldon  
9 Warman authored and repeatedly posted messages on the  
10 internet which are likely to expose people of the  
11 Jewish faith, national or ethnic origin to hatred or  
12 contempt.

13 His repeated message is that Jewish  
14 people have no redeeming qualities. There is a pattern  
15 of singling out Jews and ascribing extremely negative  
16 characteristics to them as a group and as individuals.  
17 He denies or diminishes the Holocaust, one of the  
18 single biggest atrocities in history.

19 The Respondent's actions are a clear  
20 violation of not only section 13 of the Canadian Human  
21 Rights Act, but of the very spirit of the legislation.  
22 It is, therefore, an appropriate case to award a  
23 penalty.

24 I am hopeful that the Tribunal will  
25 reach the same conclusion and send a clear message to

1 the Respondent and to others posting hateful and  
2 contemptuous messages that it is not only unacceptable,  
3 but contrary to human rights law and, therefore, will  
4 not be tolerated.

5 THE CHAIRPERSON: Thank you.

6 Mr. Warman?

7 SUBMISSIONS BY MR. RICHARD WARMAN

8 MR. WARMAN: I have very brief  
9 submissions. In the main, I am content to adopt the  
10 submissions of Ms Phillips for the Commission.

11 The only things that I would mention  
12 in specific response to issues raised by yourself would  
13 be in terms of the nature, circumstances, extent and  
14 gravity of the discriminatory practice. I don't intend  
15 to revisit the listing that Ms Phillips went through at  
16 the end of the previous hearing, but I would point out  
17 three or four specific things.

18 THE CHAIRPERSON: Certainly.

19 MR. WARMAN: The first is that Mr.  
20 Warman suggests that Jews were in fact responsible for  
21 the Holocaust. That is at tab 42, page 2. I believe  
22 it is HR-49.

23 The next is that Mr. Warman suggests  
24 that Jews are mass murderers, evil criminals, robbers,  
25 jackboot thugs, extortionists, liars, genocidalists, et

1 cetera. That is found at --

2 THE CHAIRPERSON: The first  
3 reference -- I think I can say that there was a strange  
4 inversion there. The material suggests that somehow  
5 the Third Reich was -- in some sense there were Jewish  
6 individuals behind the Third Reich. Is that right?

7 MR. WARMAN: Yes.

8 THE CHAIRPERSON: I am trying to  
9 recollect.

10 MR. WARMAN: Yes.

11 THE CHAIRPERSON: That is where the  
12 reference to murderers and jackboots and all of the  
13 rest of it comes in.

14 MR. WARMAN: No, sorry. That is the  
15 first one, which was at tab --

16 THE CHAIRPERSON: No, I am saying in  
17 terms of understanding the second comment. I think  
18 that is what is going on, with all respect to Mr.  
19 Warman -- the other Mr. Warman -- in his mind. I think  
20 that is why he is making those kinds of statements.

21 That's what I was trying to --

22 MR. WARMAN: Yes.

23 THE CHAIRPERSON: Let's be specific  
24 about that. Perhaps there is something particularly  
25 offensive or appalling in that kind of inversion. You

1 take a persecuted group and you somehow invert what  
2 happened historically, and they become the persecutors.

3 Is there something particularly  
4 offensive in that?

5 MR. WARMAN: I believe there is. I  
6 think if you look at the effect that this would be  
7 likely to have, and that Mr. Eldon Warman would know  
8 that it would be likely to have upon the Jewish  
9 community, and upon everyone of good will within the  
10 community --

11 THE CHAIRPERSON: I think I can  
12 say -- and I have a public position -- I think I can  
13 say that it is hard to imagine something more offensive  
14 to a Jewish person.

15 MR. WARMAN: Indeed.

16 He suggests that Jews were in fact  
17 responsible for slavery. That is at tab 38, HR-45,  
18 page 5.

19 And the last specific example that I  
20 would point out would be HR-44, which is tab 37, page  
21 1. Mr. Warman suggests that Jews may in fact be  
22 subject to total extermination.

23 THE CHAIRPERSON: Could I have that  
24 reference again, please?

25 MR. WARMAN: It is HR-44, which is

1 tab 37, page 1 of 2.

2 THE CHAIRPERSON: Can you give me the  
3 full reference, please?

4 MR. WARMAN: Yes. He states:

5 "My life DOES NOT revolve around  
6 Jew hatred - it is just very  
7 stupid of anyone in North  
8 America to not recognize that  
9 the people who are destroying  
10 our countries and putting  
11 millions of our people in grave  
12 jeopardy are ZIONIST-NAZI Jews.  
13 And, Jews are obviously not the  
14 only NAZI-ZIONISTS in this grand  
15 scheme of world domination and  
16 destruction of mankind on Planet  
17 Earth. Are all Jews in the  
18 category of Zionists? I think  
19 not. But, those other Jews had  
20 better damned well come out with  
21 whom they choose to side, or  
22 they all will be categorized as  
23 'WORLD TERRORISTS', and could  
24 very well be subject to total  
25 extermination - if and when



1 people wake up to what is REALLY  
2 going on."

3 It goes beyond simple statements of  
4 hatred. It goes into the realm of menacing, and it  
5 goes into the realm of threatening.

6 When you look at the historical  
7 record of the Holocaust having existed in World War II,  
8 and then you look at someone who is repeating similar  
9 threats that they could, in fact, be subject to total  
10 extermination, I think that is an aggravating factor.  
11 If anything, that, again, tilts the scale toward the  
12 worst under the spectrum.

13 As I said, Ms Phillips did a very  
14 thorough job of cataloguing many of the other comments  
15 that Mr. Eldon Warman had to make in her closing during  
16 the last session. The only other thing I would mention  
17 is, with regard to the ability to pay, in the Kyburz  
18 decision, which is at tab 7, I would point out  
19 paragraph 99, in which the Tribunal in Kyburz reviews  
20 the Noseworthy case and indicates:

21 "The presumption of innocence,  
22 however, ends with the  
23 conclusion by the trial court  
24 that the accused person is  
25 guilty of the offence as

1 charged. From then on, any  
2 position that is pleaded or  
3 relied upon is dealt with on the  
4 basis of the normal principle,  
5 that the party pleading or  
6 relying upon a specific factual  
7 circumstance has the burden of  
8 leading the evidence necessary  
9 to establish it."

10 That, in fact, was support for the  
11 Tribunal members' position in the Kyburz case that  
12 there was no evidence before them; and, in this case,  
13 as well, similarly, Mr. Eldon Warman has submitted no  
14 evidence in that regard.

15 THE CHAIRPERSON: He has made it very  
16 difficult for the Tribunal and for himself, because you  
17 are suggesting that the party with the obligation to  
18 bring forward any mitigating factors is Mr. Warman  
19 himself, and he, of course, refuses to appear. I think  
20 I could say that he refuses to participate in the  
21 process.

22 All right. I have your submissions,  
23 and I appreciate them.

24 I have a question for the parties. I  
25 notice that in Kyburz:

1 "Payment of the penalty shall be  
2 made by certified cheque or  
3 money order, payable to the  
4 'Receiver General for Canada',  
5 and must be received by the  
6 Tribunal within 35 days of Mr.  
7 Kyburz being notified of this  
8 decision."

9 Is that how this should work?

10 Probably Ms Maillet knows better than  
11 anyone.

12 MS PHILLIPS: We had this discussion  
13 in Oakville with Member Hadjis, as well, and we did a  
14 bit of research on it. It is under the Financial  
15 Administration Act where it dictates that penalties are  
16 payable to the Receiver General.

17 THE CHAIRPERSON: It is a bit  
18 unusual -- I had contemplated even asking you about  
19 what would happen once the order was given, but I  
20 assume -- the general rule under the Act -- and I am  
21 not looking at it right now -- is that orders are filed  
22 with the Federal Court. So it seems a bit strange -- I  
23 would have thought that it would be the Federal Court  
24 that would have the authority and the obligation to  
25 enforce the order, once it is filed with the Federal

1 Court.

2 MS PHILLIPS: If the penalty is not  
3 paid, then the order would be registered for the  
4 purpose of enforcement.

5 THE CHAIRPERSON: You have reviewed  
6 the situation and the Commission is satisfied that that  
7 is the appropriate way of handling it?

8 MS PHILLIPS: Yes.

9 THE CHAIRPERSON: I haven't really  
10 had to deal with this before, but that is the nature of  
11 the wording that you want, payable to the Receiver  
12 General, but it should be sent to the Tribunal.

13 MS PHILLIPS: Yes.

14 THE CHAIRPERSON: Do we notify you at  
15 some point if we don't receive it? Is that how this  
16 works? We simply inform you, perhaps by  
17 correspondence, that we haven't received a cheque or a  
18 money order, and then we leave it with you, and that is  
19 when the enforcement procedure takes place?

20 MS PHILLIPS: The order in Kyburz  
21 gave Mr. Kyburz 35 days within being notified of the  
22 decision.

23 THE CHAIRPERSON: That is a problem,  
24 too, of course.

25 MS PHILLIPS: That is a problem.

1 THE CHAIRPERSON: How would you like  
2 me to deal with that?

3 MS PHILLIPS: I would ask for a  
4 substitutional service order to serve him with notice.

5 THE CHAIRPERSON: In the manner that  
6 the Notice of Resumption of Hearing was served?

7 MS PHILLIPS: Yes.

8 THE CHAIRPERSON: I think I would be  
9 uncomfortable if it wasn't, at least, left at the  
10 residence, in this circumstance.

11 How many days should we be talking  
12 about?

13 MS PHILLIPS: In this case it was 35  
14 days.

15 THE CHAIRPERSON: I see that, but is  
16 that an appropriate time?

17 MS PHILLIPS: I believe so.

18 THE CHAIRPERSON: It is very hard  
19 without Mr. Warman being here.

20 What would you request -- 35 days,  
21 the same as the Kyburz case?

22 MS PHILLIPS: I think that is  
23 reasonable notice.

24 THE CHAIRPERSON: He can always ask  
25 for more.

1 MS PHILLIPS: That's right.

2 THE CHAIRPERSON: It is probably  
3 either 30 days or three months. I will decide. I will  
4 consider it. I do like to accommodate people as much  
5 as possible, but I understand how you want me to  
6 proceed.

7 Is there anything else to say on  
8 that?

9 MS PHILLIPS: No, not on that issue.

10 THE CHAIRPERSON: Mr. Warman, is  
11 there anything you want to say on that?

12 MR. WARMAN: No, thank you.

13 THE CHAIRPERSON: I think that is  
14 what we had to deal with today, unless there is  
15 something else --

16 MS PHILLIPS: The only thing I wanted  
17 to mention was that you had asked about the inversion  
18 of Jewish people being the aggressors --

19 THE CHAIRPERSON: Yes.

20 MS PHILLIPS: Just for your  
21 information, in the Zundel decision, which is at tab 3,  
22 there was some discussion of that. There was an  
23 expert, Dr. Prideaux, who was qualified as an expert in  
24 the field of discourse analysis, and he talked about  
25 the inversion strategies "where those widely understood

1 as the victims in Nazi Germany become the aggressors,  
2 and the aggressors become the victims."

3 There is a little bit of discussion  
4 in the Zundel decision which might be of interest to  
5 you.

6 THE CHAIRPERSON: Yes, I think that  
7 would be of interest. Can you give me the paragraph?

8 MS PHILLIPS: It is paragraph 127,  
9 and it is at page 28.

10 THE CHAIRPERSON: What I was  
11 wondering in terms of the maximum is, I do think that  
12 one has to have a scale, and you need to look for  
13 aggravating factors, and this does strike me as  
14 something which might make these communications even  
15 more offensive than they might initially appear to be.  
16 There seems to be something fundamentally offensive in  
17 reversing the hierarchy of oppression, or whatever the  
18 appropriate term would be.

19 I will consider that, and I will look  
20 at Zundel. I appreciate that reference.

21 Unless there is something further, we  
22 will leave it at that. I appreciate your participation  
23 today. Thank you.

24 --- Whereupon the hearing concluded at 2:30 p.m.

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I HEREBY CERTIFY, to the best of my skill and ability, that the foregoing is a true and accurate transcript of the proceedings

  
\_\_\_\_\_

Susan B. Villeneuve

Verbatim Court Reporter

StenoTran