

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

RICHARD WARMAN

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

**WESTERN CANADA FOR US
AND GLENN BAHR**

Respondents

REASONS FOR DECISION

MEMBER: Julie C. Lloyd

2006 CHRT 52
06/12/01

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I. THE COMPLAINTS

[1] The complainant, Richard Warman, has filed a complaint alleging that in 2004, Glenn Bahr and Western Canada For Us ("WCFU"), communicated messages over the Internet that would likely expose Jews, First Nation Canadians, gays, lesbians, bisexuals, blacks, other non-whites and the mentally disabled to hatred and/or contempt within the meaning of section 13(1) of the *Canadian Human Rights Act (CHRA)*.

[2] The Canadian Human Rights Commission fully participated at the hearing into the complaint and was represented by legal counsel. Mr. Warman and Mr. Bahr attended at the hearing and neither were represented by legal counsel, though it is noted that Mr.

Warman is himself a lawyer. Mr. Bahr was represented by Mr. Paul Fromm. Mr. Fromm is not a lawyer. Mr. Bahr did not give evidence at the hearing.

[3] The respondent, WCFU, did not appear at the hearing and was not represented by counsel. In an earlier written submission, Mr. Fromm alleged on behalf of WCFU that it was not a proper party to this complaint as it was neither a person nor a corporation. While this respondent did not appear at the hearing, I will deal with the substance of its position in these reasons.

II. WHAT CIRCUMSTANCES GAVE RISE TO THE COMPLAINTS?

[4] Mr. Warman alleged that in the early months of 2004 he became aware of a group called Western Canada For Us (WCFU). In March of 2004 WCFU established a webpage on the Internet. The complainant viewed the content of this website and believed that some of the content violated s. 13 of the *CHRA*. Mr. Warman alleged that he was able to determine that the Respondent, Glenn Bahr, was the leader of WCFU, and that this respondent was instrumental in first the creation and later the control of the website. Mr. Warman filed the present complaint in June of 2004.

III. WHAT QUESTIONS NEED TO BE ADDRESSED IN THIS CASE?

[5] The following questions must be addressed in considering this complaint:

A. What is the material that is alleged to violate s. 13 of the *CHRA*?

a) The material available for download from the website:

- (i) The International Jew
- (ii) White Power
- (iii) The Turner Diaries

b) Postings made to the discussion forum on the website

- (i) The Treaty Song posting
- (ii) The Homosexual posting #1
- (iii) The Application posting
- (iv) The Homosexual posting #2

B. Was the impugned material communicated in whole or in part by means of a telecommunications undertaking within the authority of Parliament?

C. Was the material communicated repeatedly?

D. Was this material likely to expose a person or persons to hatred or contempt by reason that such person or persons are identifiable on the basis of a prohibited ground of discrimination?

E. Did the Respondent, Glenn Bahr, communicate or cause to be communicated the impugned material?

a) Was the person employing the monikers "SS-88" and "Glenn" on the WCFU website Glenn Bahr?

b) Did Glenn Bahr control the WCFU website?

c) Did Glenn Bahr communicate, or cause to be communicated, the literature available for download on the website?

d) Did Glenn Bahr communicate the two posts made by "SS-88" on the WCFU website?

F. Did the Respondent, WCFU, communicate, or cause to be communicated, the impugned material?

a) Preliminary issue: Is WCFU a proper party to this complaint?

- b) Did WCFU communicate, or cause to be communicated, the literature available for download on the site?
- c) Did WCFU communicate, or cause to be communicated, the postings made on the discussion forum?

[6] I find, for the reasons set out herein, that the material in question is of a quality that falls within the ambit of s. 13(1) of the *CHRA*. I find further that both Glenn Bahr and WCFU communicated the material or caused the material to be communicated as contemplated in that section. I find that the complaint is substantiated against both of the respondents.

A. What is the material that is alleged to violate s. 13 of the *CHRA*?

[7] Two "snapshots" of the WCFU website were introduced into evidence. The snapshots were copies of the entire website that had been downloaded onto computer discs. One snapshot was taken on March 31, 2004 and the other on May 7, 2004. The discs containing these snapshots were entered into evidence at the hearing. Most of the material alleged to fall within s. 13 of the *CHRA* was contained in these snapshots.

[8] The homepage of the WCFU website contains a number of links that assist a viewer in navigating a site. When a link is selected by the viewer, he or she is quickly moved to the corresponding section of the website. Much of the impugned material was located in the "Downloads" section of the website.

(i) The literature available for download from the website

[9] The Downloads link lead to a menu of literature contained on the website. The material could be viewed on the website, printed, or downloaded by a person to their own computer. The complainant alleges that the following literature contained in this section of the website fell within the ambit of s. 13 of the *CHRA*.

a) The *International Jew*

[10] The *International Jew* is a book written by Henry Ford and first published in the early 1920s. The thesis of this book is that Jewish people across the world are actively engaged in a global conspiracy to obtain control of the world's finances and the world's governments. The Jews are described in this book as being well on their way to global domination, controlling many industries in the United States and elsewhere, as well as controlling many of the world's governments, the entertainment industry and much of the world's news media.

[11] This book describes how, by manipulating the industries they control, Jews create disruption aimed at weakening and ultimately destroying non-Jewish civilization, described as Christendom. Financial control is exercised to cause economic strife. The author states: "the amount of our National debt is the measure of our enslavement to Jewish World Finance." Jewish control of liquor and tobacco industries allows the Jews to promote these commodities for the purpose of further weakening Christendom; control of the entertainment and other media is used to entice Christendom to debauchery and excess, thereby weakening its social and moral fabric.

[12] According to the book's author, one of the strategies employed by the Jews to achieve their goal of world domination was to encourage the immigration of non-white persons into Christian society, and at the same time to promote the values of tolerance and liberalism. The Jews, the book states, use their control over the media to confuse citizens by extolling what the author describes as 'the poison of liberalism.' Members of Christian society are tricked into embracing tolerance and liberal values and are made to

feel guilt over racist thoughts or opinions. In the result these non-white immigrants, depicted as an inherently destructive force in Christian society, become empowered and entrenched.

[13] Jewish people are described as unscrupulous, deceptive, dishonest and immoral. The author urges that Jews have engineered most of the world's ills, revel in them and rely on them as essential steps in their thirst for world domination. The solution to the "Jewish problem" is to eliminate Jews from Christian society.

b) *White Power*

[14] *White Power* was written by George Lincoln Rockwell, the then leader of the American Nazi Party, and published in the mid-1960s. The thesis of this book is summarized in the following excerpt (page 88):

"There you have the Jewish-Communist program in a nut shell - the USE of the backward, childish and savage Negro race to destroy the White Race, which stands between the Jews and their mad goal of domination from Israel. The Jews, comprising only a fraction of one percent of the world's people, are too few to produce their own mobs, and they are too un-fond of physical violence to provide any amount of their own 'muscle.' They need vast numbers of peanut-brained, violent but robot-like "troops." The Negro race is perfect for the needs of the Jews in fomenting their mutiny. But before the blacks can do the Jews and the Marxists any good, they must first be placed in position and conditioned."

[15] This book, like the *International Jew*, discussed above, speaks of the Jewish "program" of encouraging tolerance and multiculturalism; a program designed to destroy the white race. The aim of this deception is to destroy the spirit of the "elite White Race," filling members of the white race with guilt over any inclination toward racism. Non-white persons are assimilated into white society and empowered so that the Jews, ". . . and their army of mongrels (will) overwhelm the White champion of civilization by sheer numbers."

c) *The Turner Diaries*

[16] *The Turner Diaries* is a book written by William Luther Pierce, the leader of the National Alliance, a White Supremacist group with origins in the United States of America. This book, a work of fiction, presents the story of a white revolutionary named Earl Turner and his organization of white people, that wages a violent racial revolution in the United States in violent opposition to the Jews, and to what is described as the "equality hoax" perpetrated by the Jews. The struggle escalates to a global genocide, and leads to the extermination of all Jews, all non-whites and those whites who associate or sympathize with Jews or non-whites. The violence depicted in this work is horrific. Jews, described as Satan's spawn, are shot, stabbed, burned alive and hanged singly and in groups, as are other non-whites and "race criminals" - those who support or associate with non-white persons or groups.

(ii) Postings made to the discussion forum on the website

[17] The WCFU website contained a discussion forum that allowed individuals to post material on the site. The forum was organized into different topic "threads," and people were invited to contribute comment or material to the threads. The complainant, Richard Warman, testified that while one had to be a registered member to contribute, membership could be obtained quickly and easily on the website by providing minimal information. The postings to the forums contained numerous typographical errors. What

follows are verbatim transcriptions of the impugned postings with no editing for spelling or grammar.

[18] The Complainant identified two postings alleged to come within s. 13 and alleged to have been made by the Respondent, Glenn Bahr.

a) The Treaty Song Posting

[19] On March 18, 2004, "SS-88", a pseudonym the complainant and the Commission allege to have been used by the respondent, Glenn Bahr, made a posting to the WCFU site titled "The Treaty Song." This posting was not contained in either of the two "snapshots" of the website filed in evidence. This Tribunal heard evidence that the posting was discovered on the WCFU website on or about March 18, 2004, and downloaded. The posting, a copy of which was filed as an exhibit in the hearing, read in part as follows:

"Well I wish I had my treaty card in this land of equality, I wouldn't have to work I could party all night and sleep till after three. I'd get a big fat squaw that could `pop' out kids at the rate of two a year. I'd get a pretty good welfare cheque, play the VLTs and I'd never run out of beer."

...

"Well I wish I had a treaty card in this land of equality, cause if my house burned down or I just smashed it up, well I wouldn't frown I'd get another one from whitey for free. I wouldn't have to work or go to school, I wouldn't have to pay not tax. I'd just hold out my hand and say you stole my land and I'd be riding on the gravy train!

I sure wish I had a Treaty card."

b) Homosexual posting #1

[20] On March 10, 2004, "SS-88" made a posting to a discussion thread on the WCFU website titled, "Homosexuals." This posting was included in one of the two snapshots of the website filed as evidence in the hearing and read in part as follows:

"I believe no matter how or why you are a homosexual your life should be terminated. . . They should be terminated along with retards and any other degenerates that nature would do away with in the wild. What gives us the right to prolong a life that would have been terminated by nature."

c) The Application post

[21] The complainant alleges that certain postings alleged to have been made by persons other than the respondent, Glenn Bahr to the WCFU discussion forum also fall within s. 13. The first was posted by a person using the pseudonym, "TowerDB." This posting was not included in either of the webpage "snapshots." The Tribunal heard evidence that the posting was discovered on the WCFU website on or about March 18, 2004 and downloaded. A copy of the posting was entered as an exhibit during the hearing and reads in part as follows:

APPLICATION TO BE A INDIAN

Department of Indain & Unimportant Affairs

...

Address (if living in automobile, give make, model and licence number)

Name of Mudder Name of Fudder

Automobile (Check One) Cadillac Buick Stationwagon

If Auto is financed, what is the repossession date?

Color of car Blue Pink Multi Primer Other

Approximate estimate of Income ____ Welfare ____ UIC ____ Theft ____
____ Beer bottles

Place of Birth __ Hospital __ Back Alley __ Ditch __ back of car

Tools or Machines you can operate __ Crowbar __ Pinball __ Knife __ Bingo Dabber
__ Match __ TV Remote __ Slot Machine __ Other

Check Illnesses you had the last year __ Vanilla Poisoning __ Alcohol Poisoning __ Lung
Burns (due to gasoline inhalation) __ Other

Number of Children __ 1st Wife __ 2nd Wife __ 3rd Wife __ Neighbor's Wife
__ Shackups

...

Have you ever been arrested? __ Yes __ No If No, Explain.

How many refrigerators and junk cars are in your front yard: _____

Other than living for free and drinking all the taxpayers money away, what is your
greatest goal in life besides nothing?

d) Homosexual posting #2

[22] A second posting was made by a person using the pseudonym
"WhiteEuroCanadian." This person contributed a posting to the discussion forum thread
titled "Homosexuals" on March 9, 2004. The posting was included in the website
"snapshot" and read in part as follows:

"These are not human beings, they are sexual perverts in the same category as
pedophiles, bestiality, S&M etc. Why in the world of descent morals must the majority
of the population be subjected to sexual deviants like homosexuals? It is a SEX thing.

Why give them special status that normal Canadians enjoy? . . ."

B. Was the impugned material communicated in whole or in part by means of a telecommunications undertaking within the authority of Parliament?

[23] S. 13 of the *CHRA* was amended in 2001 by the addition of s. 13(2), which reads as
follows:

For greater certainty, subsection (1) applies in respect of a matter that is communicated
by means of a computer or a group of interconnected computers, including the Internet,
or any similar means of communication . . .

[24] The amendment clarifies that section 13(1) applies to matters communicated by
means of the Internet. I find that the impugned material communicated was
communicated for the purposes of s. 13.

C. Was the impugned material communicated repeatedly?

[25] The *CHRA* requires in s. 13(1) that material be communicated "repeatedly." Member
Sinclair, in his decision in *Schnell (supra)* considered the meaning of this word for the
purpose of the section. Member Sinclair found that the requirement of repetition in s.
13(1) suggests that the section is directed not at private communication, but rather at
material intended for wider, public circulation (See also *Warman v. Kyburz* [2003],
CHRT 18 at para. 10).

[26] While there was no evidence led about the number of persons who viewed each of
the impugned communications, I note that the March 31, 2004 snapshot of the website
indicates that on that date, a mere three weeks after the website had been established, the
discussion forum had received 1,193 postings and the website identifies that 90 persons
had registered as members on the site. The May 7, 2004 snapshot of the website indicates
that membership had grown to 205 members, and that there had been 2,848 postings

made to the website. Further, the material was available to the complainant and any person who accessed the website from their computer by means of the Internet. The website was not a private communication, but was intended for wider, public circulation. I find that the material on the website was communicated repeatedly.

D. Was this material likely to expose a person or persons to hatred or contempt by reason of the fact that such person or persons are identifiable on the basis of a prohibited ground of discrimination?

[27] This Tribunal and the courts have canvassed thoroughly the proper interpretation of the words "likely", "expose", "hatred" and "contempt."

[28] S. 13(1) provides that to fall within the ambit of s. 13(1), material must be "likely" to expose a person to hatred or contempt. This means it is not necessary for a complainant to lead evidence that a person was actually moved to hatred or contempt by the communication of the material (*Schnell*, (supra) at para. 88, and see *Nealy v. Johnston* (supra), at para. 45657).

[29] The word "expose" has also been considered by this Tribunal. In *Nealy* the Tribunal contrasted this word with the words of "incite" and "promote," that are used in various sections of the *Criminal Code* (*Nealy*, supra, at para. 45657). "Expose," the Tribunal found, is a more passive word than is "incite" or "provoke" and means leaving one unprotected, or to lay one open to danger, ridicule, or censure. "Incite," on the other hand, has a more active connotation and means to stir up, while "promote" means to encourage or to support actively. It is clear that the legislature intended that s. 13(1) of the *CHRA* capture a wider range of expression than that contemplated in the *Criminal Code*. In another case, the Tribunal found 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 . . . one then falls within the compass of s. 13(1)." (*Canadian Human Rights Commission v. Western Guard Party and John Ross Taylor*, (July 20, 1979) (Can. Trib.; Leddy, Lederman and Volpini) [unreported], at page 29).

[30] This Tribunal and the courts have also considered the proper interpretation of the words "hatred" and "contempt." In a decision considering the constitutionality of s. 13(1), the Supreme Court of Canada observed a tension fundamental to the interpretation of the section. While human rights statutes, because of their nature as fundamental law, are to be accorded a generous and purposive interpretation, that purposive interpretation cannot extend so far as to permit the limitation of the freedom of expression guaranteed under s. 2(b), unless the limitation can be justified under s. 1 of the *Charter* (*Taylor (Canada Human Rights Commission) v. Taylor* [1990], 3 S.C.R. 892, at para. 59).

[31] In upholding the constitutionality of the section, Dickson J. found that the objective of s. 13(1) of the *CHRA* is to protect the equality and dignity of all persons by reducing the incidence of harm causing expression. He found that an interpretation of the words "hatred" and "contempt", if undertaken with a full understanding of this purpose, would be a reasonable limit on the freedom of expression. (Note: in *Taylor*, the Supreme Court of Canada was considering the constitutionality of s. 13(1) in the context of transmission of material by telephone. A more recent decision of this Tribunal found s. 13(1) to be a reasonable limit on the freedom of expression in respect of material communicated by means of the Internet. This decision relies heavily on *Taylor*, and repeats the definitions of "hatred" and "contempt". (*Citron v. Zundel*, [2002], T.D. 1/02.)

[32] Dickson J. describes the profound harm visited on targets of messages of hatred. Referencing numerous studies on the effects of hate messages, Justice Dickson explains that hate propaganda can "undermine the dignity and self-worth of target group members, and more generally contribute to disharmonious relations among various racial, cultural and religious groups, as a result eroding the tolerance and open-mindedness that must flourish in a multicultural society which is committed to the idea of equality." (*Taylor*, supra, at para. 41) The purpose of s. 13(1) is to prevent this harm.

[33] The Supreme Court in *Taylor* adopts the interpretation of the words "hatred" and "contempt" that was provided by this Tribunal in *Nealy v. Johnston* (1989), 10 C.H.R.R. D/6450. The core meaning of "hatred" is described by that Tribunal as a set of emotions and feelings which involve "extreme ill will toward another person or group of persons," an emotion that would admit no redeeming qualities for the individual or group. The core meaning of "contempt" is a set of emotions similarly extreme and which involve "feelings of superiority over the individual or group," or that of feelings of the group's inferiority (*Taylor*, supra, at para. 60, *Nealy*, supra, at p. 928)

[34] The terms "hatred" and "contempt" for the purpose of s. 13(1) refer to "unusually strong and deep-felt emotions of detestation, calumny and vilification." (*Taylor*, supra, at para. 61).

[35] Reviewing the impugned material, I find, for the following reasons, that each are likely to expose a person or group of persons, identifiable on a prohibited ground, to "hatred or contempt" as those words are interpreted in *Nealy*.

[36] The *International Jew* posits a theory that the Jews are the engineers of the woes of the (non-Jewish) world and have a covert plan of global domination. Jews as a group are described as unscrupulous, deceptive, dishonest and immoral. The book advocates that the Jews must be removed from society. The thesis of this book and the description of the personal characteristics of Jewish persons is likely to evoke extreme ill will against Jewish persons.

[37] The book *White Power* describes persons of African descent in the most contemptible of terms. Descriptors of "backward," "childish," "savage," "peanut-brained" deny to this group of persons any redeeming qualities and express emotions of extreme ill will and vilification. Indeed, the words deny the very humanity of these persons (i.e. "robot-like"). The book also expresses extreme ill will against Jewish people, who are described as intent on destroying the white race.

[38] The book, *The Turner Diaries*, describes in lurid fictional detail, the global genocide of Jews, other non-Whites, and those who would associate with them. This genocide is undertaken because of the "equality hoax" perpetrated by the Jews and designed, as described in the *International Jew* and *White Power*, to destroy the white race. While a fictional account, a reader cannot help but conclude that this book advocates for the genocide of these people on the basis of their membership in groups protected under the CHRA. The book constitutes a profound denial of the humanity of Jews and others. It expresses extreme ill will and denies any redeeming human quality to members of these groups.

[39] I find that these three books made available for download on the WCFU website meet the test in *Nealy*. Each of them is likely to expose a person or persons to hatred or contempt by reason of the fact of their membership in a group protected under s. 2 of the CHRA.

[40] The posting, "The Treaty Song" suggests that aboriginal, or First Nation Canadians, are given licence to be, and are, non-contributing citizens. It goes further to suggest that these people do not work, are alcoholics, are on welfare, gamble excessively, destroy their own property, are sexually promiscuous and irresponsible. I find this posting is a sweeping and gross caricature of aboriginal Canadians. It is an expression of "extreme ill will" and of utter contempt.

[41] The posting made by "SS-88" to the discussion thread titled "Homosexuals" advocates for the termination of the very lives of homosexuals and "retards." Advocating wholesale extermination of the members of these groups is a complete denial that members of these groups might have redeeming qualities and is an expression of "extreme ill will."

[42] The posting, "Application to be a Indian," suggests that First Nations or aboriginal Canadians live in and are born in cars, that their sources of income are restricted to welfare, unemployment insurance, the proceeds of theft and bottle picking and that these persons are promiscuous, lazy, illiterate and violent. The portrayal of aboriginal Canadians in this posting is odious, evocative of extreme ill will and profound contempt.

[43] The posting made by "WhiteEuroCanadian" to the discussion thread titled, "Homosexuals" denies that homosexuals are human beings. Such a denial, a rejection of the very humanity of persons belonging to this minority group, is an expression of "extreme ill will," and is hatred and contempt for the purpose of s. 13(1).

[44] The Respondent, Glenn Bahr, argued that the material identified in the complaint is a form of legitimate political expression and does not violate s. 13(1). I would paraphrase the observations of this Tribunal in *Nealy* and reply that the line between legitimate expression and illegitimate expression arises from the manner in which any political discourse is pursued. Whether or not material might be connected to a political or other opinion, and whether or not the material might arise from a deeply held belief of the communicator, the material will violate s. 13(1) where it exposes others to hatred or contempt on the basis of their membership in a group protected under the *CHRA*, and I find that the material considered in this decision does so.

E. Did the Respondent, Glenn Bahr, communicate, or cause to be communicated, the impugned messages from the above noted sources by means of the Internet?

[45] The complainant and the Commission allege that the respondent, Glenn Bahr, communicated some of the impugned material, or caused it to be communicated. The complainant and the Commission allege that this respondent communicated the literature contained in the Downloads part of the website and that he communicated the postings made by "SS-88". It is alleged that Glenn Bahr, used the pseudonyms of "SS-88" and "Glenn" on the WCFU website and further that he contributed the two postings made by "SS-88." It is further alleged that Glenn Bahr, either alone or with others, controlled the WCFU website and therefore, either alone, or acting with others, communicated or caused to be communicated the impugned material contained in the Downloads section of the website.

(i) Was the respondent, Glenn Bahr, the person posting messages on the WCFU website under the pseudonyms "SS-88" and "Glenn"?

[46] The complainant and the Commission allege that the person using the website user names or pseudonyms of "SS-88" and "Glenn" on the WCFU website was the respondent, Glenn Bahr. I find for the following reasons that the person communicating

the material under the pseudonyms "SS-88" and "Glenn" was the respondent, Glenn Bahr.

[47] Sergeant Steven Camp, of the Edmonton Police Service Hate Crimes Unit, testified at the hearing as a witness for the Commission. The Sergeant testified that he had conducted an investigation of the WCFU and Glenn Bahr during the time relevant to this complaint. It was the Sergeant who made the website snapshots discussed earlier and who downloaded the "Application" posting and the "Treaty Song" posting from the website. Sergeant Camp testified that as a result of his investigation of Mr. Bahr and the WCFU website, Glenn Bahr had been charged under section 319(2) of the *Criminal Code* of Canada, being the provision prohibiting the wilful promotion of hatred. At the time of the hearing of this complaint, there had not yet been a trial commenced in relation to the *Criminal Code* charge.

[48] Sergeant Camp testified that as part of his work in the Hate Crimes Unit, he monitored Internet websites. Among the websites monitored by the Sergeant, were sites that in his opinion contained neo-Nazi and white nationalist content. The Sergeant testified that he monitored these sites looking for evidence of activity in Edmonton that might be of interest to the Unit. One such site is an American based website called stormfront.org. The Sergeant testified that this website has discussion forums designated for different countries, including Canada.

[49] Sergeant Camp testified that he noticed, in the Canada forum, a series of discussions about the creation of a community in the Province of Alberta to be called "Whiteville." One contributor to these discussions used the pseudonym "SS-88." The Sergeant testified that in his experience, SS-88 is a common symbol in neo-Nazi culture. "SS" is a reference to the Schutzstaffel Police force in Europe during the Nazi occupation, and 88 is a numerical code for HH, meaning "Heil Hitler." The letter H is the 8th letter of the alphabet.

[50] In February of 2004, "SS-88" posted on stormfront.org, notice of a meeting of the WCFU that had been planned for Red Deer, Alberta. In that post, "SS-88" advised that he had asked the Red Deer RCMP detachment to attend at the event to help keep the peace as there was a concern that members of the Anti-Racist Action Group (ARA) might attend the meeting and cause a disturbance. Sergeant Camp later confirmed with the Red Deer detachment that its officers had a discussion about this WCFU meeting in February of 2004 with a person identifying himself as Glenn Bahr.

[51] Shortly after the meeting in Red Deer had been scheduled to take place, "SS-88" made another posting to Stormfront.org. The posting was titled, "Western Canada For Us (WCFU) / Posters of me in Red Deer." In the posting "SS-88" describes that a poster about him had been circulated in Red Deer by the ARA. "SS-88" described the poster in detail and noted that a photograph of him was attached to the poster. Sergeant Camp contacted the complainant, Richard Warman, and asked whether he could obtain a copy of this poster and the attached photograph. The Sergeant received copies from Mr. Warman, which copies were entered as evidence during the hearing. The poster had a very similar layout to that described in the posting made by "SS-88", and had almost identical content. The photograph attached to the poster was of the respondent, Glenn Bahr.

[52] On March 1, 2004, "SS-88" posted on stormfront.org a posting titled "Happy Birthday Paul Fromm." The posting reads: "Happy birthday Paul!! You sure don't look 56, I would have guessed 30! Glenn"

[53] In January of 2004, "SS-88" made a posting to a stormfront.org discussion forum titled "Tattoos:" "I have an SS on my right pec, Blizkrieg across the top of my back. I have an iron cross with skull on my right arm and an eagle with a Maple Leaf in its wing on my left arm."

[54] On May 7, 2004, Sergeant Camp executed a search warrant at the respondent, Mr. Bahr's home in relation to the *Criminal Code* charge laid against Mr. Bahr and described earlier. The Sergeant testified that while executing the search warrant, he asked Mr. Bahr to describe his tattoos. Mr. Bahr described that he had an SS symbol on his chest, the word "Blizkrieg" across his back, an eagle with a Canadian Flag and a skull with flames.

[55] The Sergeant testified that during the execution of this search warrant, Mr. Bahr admitted that he was in charge of the WCFU website and undertook to shut the website down. The next day, being May 8, 2004, "SS-88" posted to stormfront.org: "There will be no meet. WCFU is now disbanded." Later that same day "SS-88" posted to stormfront.org: "Due to certain circumstances WCFU as an organization and website are finished permanently." On May 8, 2004 the WCFU website was removed from the Internet.

[56] The complainant alleges that Glenn Bahr began to use the pseudonym "Glenn" on the WCFU in or about March of 2004. The evidence in support of this allegation follows.

[57] In March of 2004 "SS-88" posted to stormfront.org that he will shortly post pictures taken of a rally held in Edmonton, Alberta, in support of Ernst Zundel on the WCFU website. Shortly thereafter, "Glenn" posted the pictures of a rally in support of Ernst Zundel on the WCFU website. Pictures of another rally in support of Ernst Zundel held in Toronto were also posted on the WCFU website by "Glenn."

[58] In March of 2004, "Glenn" posted on the WCFU website: "Next Sunday I'll be doing a radio interview with Peter Warren at 12 noon Alberta time on CKNW Corus Radio Network." A recording of an interview conducted during that show was introduced into evidence. The recording indicated that the interview guest was an individual named Glenn Bahr. The interview included a "call-in segment." Listeners were invited to call in and ask questions or direct comments to Mr. Bahr. One caller suggested that Mr. Bahr was at the time using the pseudonym "SS-88" on the WCFU website. Glenn Bahr responded, "My name is Glenn on the WCFU website."

[59] Sergeant Camp testified that the Edmonton Police Service Technological Crimes Section was instructed to complete a forensic analysis of Mr. Bahr's two computers. The Sergeant testified that he was advised that the person accessing one of these computers as "Administrator" also accessed the web based e-mail accounts of "SS-88"@hotmail.com and glennbahr@yahoo.ca. The person who accessed the website as "Administrator" also accessed the administrative pages of the WCFU website forum as "Glenn," and accessed the stormfront.org and other websites as users "schadenfrog" and "SS-88." The Sergeant was further advised that the person accessing the second computer as "Administrator" also accessed the e-mail accounts of "SS-88"@hotmail.com and glennbahr@yahoo.ca, accessed the administrative pages of the WCFU website forum as "SS-88" and the stormfront.org website as "SS-88".

[60] On the basis of this evidence, I find that the complainant and the Commission have made out a *prima facie* case that the person accessing the WCFU website as "SS-88" and "Glenn" was the respondent, Glenn Bahr and that the person accessing the stormfront.org website as "SS-88", was also this respondent.

[61] The evidentiary burden lies with the complainant and the Commission to establish their case on a balance of probabilities. Where, however, a *prima facie* case has been made out in respect of an allegation, a respondent must provide a reasonable explanation, either that the conduct alleged did not occur or that the conduct did not constitute a discriminatory practice. (*Warman v. Kulbashian* (supra) at para. 114).

[62] Mr. Bahr did not lead any evidence that would suggest that he did not use these pseudonyms. I find that the person accessing the WCFU and stormfront.org websites as "SS-88" was the respondent, Glenn Bahr and further that Mr. Bahr was the person accessing the WCFU website as "Glenn."

(ii) Did Glenn Bahr have control over the WCFU website?

[63] The complainant and the Commission allege that the respondent, Glenn Bahr, either alone or with others, had control of the WCFU website. In particular, they allege Glenn Bahr had control over the administration of the website and was able to control the content of the site. The evidence led to support this allegation is as follows.

[64] Sergeant Camp testified that he reviewed a posting on stormfront.org dated December of 2003 made by "SS-88" which read as follows: "If you need a website done to promote your plan, I can offer you my services free of charge. Just e-mail me."

[65] The Sergeant testified there was much discussion in early March of 2004 on the stormfront.org Canada discussion forum about the WCFU, and a website that was being created. The discussion included comments and suggestions about content for the site, and also included suggested changes to proposed content. As will be seen, these postings demonstrate clearly that "SS-88", being the respondent, Glenn Bahr, took an active role in the creation of the website. A selection of the postings made to the stormfront.org website is as follows:

- On March 3, 2004, "SS-88" posted: "I made some suggested changes to the site," and later that day, "SS-88" posted: "Thanx man for the help with proofreading the site. I will try and get that copy up tonight after work. Appreciate it!"
- March 4, 2004, "SS-88" posted: ". . . I will program in the pics and add the content," and later that day, "SS-88" posted: "Thanx everyone but I have it under control. These things don't happen overnight. I'm working on the site and it will be up soon. Be patient theres a lot involved in a big site."
- On March 8, 2004, "SS-88" posted: "Our website is now active. I'm still adding content etc but please come stop by and take part." The posting has a link to "www.wcfu.com," the WCFU website.

[66] I find that the complainant and the Commission have made out a *prima facie* case that the respondent, Glenn Bahr, played a significant role in the creation of the WCFU website. The complainant and the Commission also allege that Mr. Bahr continued to have significant control over the website after its launch. The evidence led to support this allegation is as follows.

[67] On the WCFU website, first "SS-88", and later "Glenn" is identified as the "head administrator." Further, "SS-88", and then "Glenn" contributed material to the site on a regular basis. The material posted by "SS-88" and "Glenn" included photographs of

protest rallies, postings of newspaper articles on different subjects, and postings on the discussion forum.

[68] Sergeant Camp testified that the EPS forensic analysis on the first computer seized during the execution of the search warrant disclosed that the person accessing the WCFU website as "Glenn" had administrative rights on the website and so was able to add, delete and modify the content of the site and to control its layout. This person also had administrative powers over the discussion forum and could control the content of postings by banning the use of certain words and could delete postings from the forum. The person also controlled the manner by which members were authenticated and could ban members from posting to the forum. The forensic analysis of the second computer disclosed that the person accessing the website as "SS-88" had these same administrative rights.

[69] During the radio interview discussed earlier, Glenn Bahr, in response to a question from a caller, acknowledged that he had banned some members from the discussion forum where he considered their participation to be problematic. Mr. Bahr was able to ensure that these banned members could not gain access to the discussion forum.

[70] As mentioned earlier, Sergeant Camp testified that while he was executing the search warrant at Glenn Bahr's home in May of 2004, Mr. Bahr admitted that he controlled the website. He also undertook to shut the site down. The next day the WCFU website disappeared from the Internet.

[71] On the basis of this evidence, I find that the complainant and the Commission have made out a *prima facie* case that the respondent, Glenn Bahr, was instrumental in creating the WCFU website, and that he had control of the website from its inception until the time the website was taken from the Internet. As no evidence was tendered by the respondent that would tend to counter this evidence, I find that Mr. Bahr controlled, himself, or in concert with others, the WCFU website.

(iii) Did Glenn Bahr communicate, or cause to be communicated, the material available for download on the WCFU website?

[72] While Mr. Bahr did not author the material contained on the Downloads portion of the website, s. 13(1) does not require authorship, just communication of the offending material. (See *Warman v. Kyburz* [2003] CHRT 18). I have found that Mr. Bahr had administrative control over the WCFU website, and I find for that reason that he, either alone or in concert with others, installed the material contained in the Downloads section, and that he did accordingly communicate or cause to be communicated that material.

(iv) Did Glenn Bahr communicate the impugned postings as alleged?

[73] The Complainant alleges that the respondent, Glenn Bahr made two postings to the WCFU website discussion forum: "The Treaty Song," posted on March 18, 2004 and a posting contributed to a discussion thread titled "Homosexuals" made on March 10, 2004. Both of these postings were made by "SS-88". I have found that "SS-88" was Glenn Bahr's pseudonym on the WCFU website, and it is reasonable to conclude that, in the result, Mr. Bahr made the impugned postings. I find that a *prima facie* case has been made out that the respondent, Glenn Bahr made the impugned postings.

[74] As mentioned earlier, the respondent, Glenn Bahr did not give evidence at the hearing. Through his representative however, Mr. Bahr denied making the postings, alleging that a third party gained unauthorized access to his WCFU website pseudonym

and made the impugned postings. The evidence led by this respondent in support of this allegation is as follows.

[75] An affidavit sworn by Kent Dahl, a Constable with the RCMP detachment in Red Deer, was filed in evidence. This affidavit states that Mr. Bahr attended at the detachment and filed a complaint on March 19, 2004. The Constable describes that Mr. Bahr reported receiving threatening e-mails and telephone calls. Mr. Bahr also reported that a poster had been distributed in Red Deer alleging that he was a white supremacist, causing him to lose his job and his apartment. The Constable deposes that Glenn Bahr was unwilling to allow the RCMP access to his computer for their investigation, and that he did not deliver to the RCMP copies of the e-mails he complained about. Constable Dahl deposed that as a result, the RCMP was unable to pursue this complaint. It is further deposed by the Constable that Mr. Bahr advised him in April of 2004 that he had moved to Edmonton and no longer wished to pursue the matter.

[76] A transcript was prepared from an audio tape made of the interview Glenn Bahr gave to Constable Dahl at the time he made his complaint. The transcript confirms that the focus of Mr. Bahr's complaint was the distribution of the posters and the threatening phone calls and e-mails.

[77] The transcript also discloses that in addition to the matters deposed to by Constable Dahl, Glenn Bahr reported that he was receiving what he described as "fake e-mails." He described, for example, that he had received e-mails apparently written by a person known to him. He learned later that the e-mails were not written by the person known to him - they had been sent by a third party who had obtained unauthorized access to the e-mail account of his acquaintance. Mr. Bahr advised that he suspected a member or members of either or both of the ARA or the Communist party were involved. Mr. Bahr also reported that persons were breaking in to his MSN instant messaging account, and that of some of his acquaintances and were impersonating him and his friends during chat sessions.

[78] Mr. Bahr did not report to the Constable that anyone had impersonated him in relation to postings made to discussion forums in general or to the WCFU website in particular. The mischief he complains about is limited to his receipt of fake e-mails and interference with MSN instant messaging accounts. None of the impugned material consist of e-mail messages or instant messages.

[79] Mr. Bernard Klatt gave testimony on Mr. Bahr's behalf after being qualified as an expert on computer technology and the Internet. Mr. Klatt testified that it is possible for persons to take control of, or 'hack into' the computer of another and described various methods that could be employed by the unscrupulous to take such control. For the most part, these methods required a hacker to trick a person to disclose his or her computer password. Documents describing different hacking methods used over the internet were entered as evidence in the hearing.

[80] Mr. Klatt's evidence was that control of one's computer could be assumed by another. Mr. Klatt did not give evidence that would tend to demonstrate that Mr. Bahr's computer was in fact hacked, or that would tend to demonstrate that Mr. Bahr was the victim of any other unauthorized conduct. Mr. Klatt did not testify that an unauthorized user was impersonating Mr. Bahr on the WCFU discussion forum.

[81] Does this evidence serve as a reasonable explanation of the evidence of the complainant and the Commission? Member Hadjis describes in *Warman v. Kulbashian*

that where a *prima facie* case is made out, the Respondent must provide a reasonable explanation and further that the explanation must entail more than hints and innuendo.

[82] I find that the evidence tendered by the Respondent does not constitute a reasonable explanation and does not tend to demonstrate that the conduct did not occur. Mr. Bahr did not, in his complaint to the Red Deer RCMP, complain that some person was impersonating him on the WCFU website discussion forum, making postings that were not his composition. His complaint of mischief regarding his computer were limited to the receipt of fake e-mails and that his MSN instant messaging account was hacked into. Further, Mr. Klatt's evidence was only that it is possible for a person to gain unauthorized access to the computer of another. He did not testify that any person did in fact gain such access to Mr. Bahr's computer at any time relevant to this complaint. This evidence is insufficient to displace the *prima facie* case made out by the complainant and the Respondent. I find on all of the evidence that the respondent, Mr. Bahr, made the postings as alleged by the complainant and the Commission.

F. Did the Respondent, WCFU communicate, or cause to be communicated, the impugned material?

(i) Preliminary Issue: Is the Respondent, WCFU, a "group of persons" for the purpose of s. 13(1)?

[83] The respondent, WCFU, did not appear at the hearing. In earlier written submissions however, WCFU argued that it was not a "person or a group of persons" for the purpose of s. 13(1) and is accordingly not a proper party to this complaint. WCFU will be a "group of persons" for the purpose of s. 13(1) if there is, on the evidence, adequate indicia that it constitutes a group of people who have organized themselves under that name, regardless of whether the group has a formal legal status (see *Canadian Human Rights Commission v. Western Guard Party and John Ross Taylor*, (July 20, 1979) (Can. Trib.; Leddy, Lederman and Volpini) [unreported] at p. 41, see also *Nealy v. Johnston* (1989), 10 C.H.R.R. D/6450 at para. 45641.

[84] I find that WCFU was a "group of persons" within the meaning of s. 13 of the *CHRA*, capable of engaging in the discriminatory conduct alleged herein. In reaching this conclusion one need not go much further than the following posting made to the WCFU website in May of 2004, by "Glenn," who I have found to be the respondent, Glenn Bahr: "The Alberta Chapter of WCFU is the head chapter of Western Canada For Us. This is where all of the decisions are made. They have representatives in Edmonton, Three Hills and Calgary. WCFU distributes most of the material and organizes most of our protests. WCFU Alberta holds monthly meetings where we discuss provincial and national issues and see what we can do to help out our fellow Euro-Canadians." The posting ends: "Glenn Bahr, Alberta Chapter and WCFU President, Albertachapter@WCFU.com" and solicits donations by mail to Ste. 306, 10654 Whyte Ave., Edmonton, AB.

[85] From this posting to the WCFU website it is clear that this group has an organizational structure, it has Chapters, at least three representatives and a President. The group distributes material, holds regular meetings, organizes events, has a post office box, created a website and has articulated a mission of helping fellow Euro-Canadians.

[86] Further, Sergeant Camp testified that in March of 2004, the Old Strathcona Community Police Station in Edmonton, Alberta called the Hate Crimes Unit and reported that they had received complaints that business cards had been distributed in the community. The business card was obtained by the Sergeant and was introduced into

evidence. The card read: "Glenn Bahr, Alberta Chapter and WCFU President, Alberta, Canada and contained two Internet addresses: "www.wcfu.com" and "albertachapter@wcfu.com" This latter address also accessed the WCFU website.

[87] Sergeant Camp also testified that he was contacted by the Leduc, Alberta RCMP detachment in early May of 2004. Officers from that detachment had received complaints about persons distributing pamphlets in the area. The officers forwarded the pamphlet to Sergeant Camp who introduced it as evidence at the hearing. The pamphlet had photographs of two Caucasian children and was entitled "For their sakes." The bottom of the pamphlet had the name of and postal address for Western Canada For Us. The pamphlet also identified the website addresses of "www.wcfu.com" and "albertachapter@wcfu.com."

[88] The evidence also demonstrates that Glenn Bahr was the leader and founder of WCFU. In addition to the evidence described above, there is the radio interview described earlier. At the commencement of this interview, Glenn Bahr is introduced by the host as the president and founder of the Western Canada For Us group and as the head of the Alberta Chapter of the organization. Further, on April 27, 2004, "Glenn" posted a copy of a letter to the editor submitted to the Winnipeg Sun. The letter challenges an article published in that newspaper describing that a Manitoba chapter of the WCFU, described as a white supremacist group, was attempting to establish itself in Winnipeg. The letter is signed "Glenn Bahr, President and Founder, WCFU Alberta Chapter."

(ii) Did WCFU communicate the impugned material?

[89] The respondent, WCFU, created and controlled a website. WCFU, by installing the website and its content, communicated or caused to be communicated that content, including the impugned material (see *Warman v. Kulbashian* [2006] CHRT 11).

[90] In finding that WCFU communicated or caused to be communicated the impugned material, I am mindful of s. 13(3) of the *CHRA* which states that:

". . . no owner or operator of a telecommunication undertaking communicates or causes to be communicated any matter described in subsection (1) by reason only that the facilities of a telecommunication undertaking owned or operated by that person are used by other persons for the transmission of that matter."

[91] The purpose of this section is to absolve from liability persons who merely provide facilities for others to use. Such a person would not then be liable for the manner in which that facility was used. By installing the discussion forum on its website, the WCFU provided a facility designed to be used by whomever might wish to commence or contribute to a discussion. Some persons used this facility in a manner I have found to be likely to expose persons identifiable on the basis of a prohibited ground of discrimination to hatred or contempt. Should WCFU be found to be responsible for the comments posted to the discussion forum? Is s. 13(3) applicable to and does it afford a defence to WCFU in respect of that content? I find that the section does not apply on the facts of this case and does not afford a defence to WCFU.

[92] Member Hadjis of this Tribunal noted that this section affords a defence to persons whose involvement is limited to ownership or operation of facilities in relation to messages communicated "by reason only" that the facilities were used. On the facts of that case the Member found that a respondent could not avail itself of s. 13(3) where its participation in the facility was not benign in its character. The member found that the

respondent in that case provided web hosting services, but also that the respondent actively encouraged the communication of hate messages over its server. The member concluded that the respondent's participation with the facility was not benign in its nature and so could not avail itself of the defence provided in s. 13(1) (*Warman v. Kulbashian* [2006] CHRT 11 at para 119).

[93] I agree with Member Hadjis' analysis and find in this case that the WCFU website was similarly not benign in its character. When viewed in its entirety, the site is clearly designed to provoke discussion that is likely to be hateful in nature. There are links to neo-Nazi and white supremacist sites, Nazi memorabilia and literature including the three works discussed in this decision. The website was designed to attract visitors who share the views expressed in this and other content of the website or who might be convinced to adopt such views. Hateful messages are a likely, if not inevitable, result of the manner in which this website is designed. Thus WCFU' conduct as an owner or operator of telecommunication facilities used by others was not benign and accordingly the defence contained in s. 13(3) has no application. I find that the WCFU communicated or caused to be communicated the impugned postings made to the discussion forum.

IV. REMEDIES

[94] The Commission and the complainant request that the Tribunal issue several orders pursuant to s. 54(1) of the *CHRA*.

A. An order that the discriminatory practice cease (s. 54(1)(a))

[95] Section 54(1)(a) empowers the Tribunal to order a respondent to cease the discriminatory practice, and take measures, in consultation with the Commission on the general purposes of the measures, to redress the practice or prevent it from occurring in the future.

[96] Accordingly, I order the respondents, Glenn Bahr and Western Canada For Us, to cease and desist from communicating or causing to be communicated, by the means described in s. 13 of the *CHRA*, namely the Internet, any material of the type found in this decision to be likely to expose a person or persons to hatred or contempt by reason of the fact that the person or persons are identifiable on the basis of a prohibited ground of discrimination.

B. Penalty

[97] The Tribunal may order a respondent who engaged in a discriminatory practice as set out in s. 13, to pay a penalty of up to \$10,000.00 pursuant to s. 54(1)(c). The purpose of this section is not to compensate an individual complainant, but rather to reflect society's opprobrium for the respondent's conduct (Schnell, *supra.*, at para 163 and see *Warman v. Kyburz* [2003], CHRT 18 at para. 94). Section 54 (1.1) spells out several factors that the Tribunal must take into account when deciding whether to make such an order:

- the nature, circumstances, extent and gravity of the discriminatory practice;
- the wilfulness or intent of the respondent, any prior discriminatory practices, and the respondent's ability to pay the penalty.

[98] While Mr. Bahr did not author the material found on the Downloads section of the website, I have found that he caused this material to be communicated. I have also found that Mr. Bahr made the "Treaty Song" posting and the first of the two postings made to the discussion forum thread titled "Homosexuals". I find that the material was communicated wilfully by this Respondent.

[99] Insofar as the nature, circumstances, extent and gravity of the discriminatory practices are concerned, I have found that Mr. Bahr repeatedly communicated or caused to be communicated, messages regarding Jewish people, homosexuals, the mentally disabled, blacks and other non-whites that were vicious and extreme in their characterization. The materials communicated expressed hatred and contempt in respect of members of these various groups and invited others to hold these persons in hatred and contempt. Some of the material considered in these reasons advocates for the extermination of Jewish people, homosexuals and persons suffering mental disabilities. This weighs heavily in favour of the assessment of a significant penalty.

[100] No evidence was led to suggest that the respondent, Mr. Bahr, had engaged in any prior discriminatory practices. I understand that the charges laid against Mr. Bahr under s. 319(2) of the *Criminal Code* arose from the same or substantially the same material as was considered in this proceeding, and not to prior separate discriminatory conduct.

[101] That the website was shut down by Mr. Bahr almost immediately after Sergeant Camp executed a search warrant at his apartment is a mitigating factor.

[102] I heard no direct evidence of the details of Mr. Bahr's financial circumstances. I note however, that s. 50(3) of the *CHRA* authorizes the Tribunal to accept whatever evidence and other information that it sees fit, whether or not that evidence would be admissible in a court of law (see *Warman v. Kyburz* (supra) at para 98; *Warman v. Kulbashian* (supra) at para 149). Mr. Bahr, through his representative, made it clear that the costs of the hearing were onerous on this respondent. I find that Mr. Bahr is an individual of modest means and that his ability to pay is restricted.

[103] While the seriousness of the section 13 breach would otherwise call for a fine at or near the maximum permissible under the legislation, being \$10,000.00, these factors have persuaded the Tribunal that a somewhat reduced penalty is appropriate. I order Mr. Bahr to pay a penalty in the amount of \$5,000.00. Payment of the penalty shall be made by certified cheque or money order payable to the "Receiver General for Canada", and must be received by the Tribunal within 120 days of Mr. Bahr's being notified of this decision.

[104] With regard to the respondent, Western Canada For Us, I find, for reasons set out above, that the nature, circumstances, extent and gravity of the discriminatory practices as well as the wilfulness of WCFU's conduct, weigh heavily in favour of the assessment of a significant penalty. As did the respondent, Glenn Bahr, WCFU communicated repeatedly material that was vicious and extreme.

[105] I have no evidence of any prior discriminatory practices engaged in by WCFU. I note, however, that this group appears to have been established in or about March of 2004, shortly before the website was established. It is the content of the website that is the subject matter of this complaint. I find that this group did not engage in prior discriminatory practices.

[106] I heard no evidence of this respondent's ability to pay, though I note that the evidence suggests that WCFU has now been disbanded.

[107] In all of the circumstances, I order that WCFU pay a penalty in the amount of \$5,000.00. Payment of the penalty shall be made by certified cheque or money order payable to the "Receiver General for Canada."

[108] While this respondent did not appear at the hearing, I have found that Glenn Bahr was the founder and leader of the organization. I therefore order that the penalty must be received by the Tribunal within 120 days of the date when Mr. Bahr receives this decision.

Signed by
Julie C. Lloyd

OTTAWA, Ontario
December 1, 2006

PARTIES OF RECORD

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DATE AND PLACE OF HEARING:	May 23-26, 2006 May 29-June 1, 2006 Edmonton, Alberta
DECISION OF THE TRIBUNAL DATED:	December 1, 2006
APPEARANCES:	
Richard Warman	For himself
Giacomo Vigna/ Ikram Warsame	For the Canadian Human Rights Commission
Paul Fromm	For the Respondent, Glenn Bahr
No one appearing	For the Respondent, Western Canada For Us