

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

RICHARD WARMAN

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

**ALEXAN KULBASHIAN,
JAMES SCOTT RICHARDSON, TRI-CITY SKINS.COM,
CANADIAN ETHNIC CLEANSING TEAM,
AND AFFORDABLE SPACE.COM**

Respondents

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| MEMBER: Athanasios D. Hadjis | 2006 CHRT 11 2006/03/10 |

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I. THE COMPLAINT

[1] The complainant, Richard Warman, has filed a complaint alleging that in 2001 and 2002, the respondents, Alexan Kulbashian and James Scott Richardson, communicated messages over the Internet that exposed individuals who are non-Christian, non-Caucasian, or of "other" national ethnic origins, to hatred or contempt, contrary to s. 13 of the *Canadian Human Rights Act*. In his complaint form, Mr. Warman named three additional respondents, identified as "Tri-City Skins.com", "Canadian Ethnic Cleansing Team (CECT)", and "Affordable Space.com".

[2] The Canadian Human Rights Commission (Commission) fully participated at the hearing into the complaint and was represented by legal counsel. Neither Mr. Warman nor the respondents were represented by legal counsel, though it should be noted that Mr. Warman is a lawyer by profession. Mr. Kulbashian and Mr. Richardson were present at the hearing but neither of them opted to testify or call any witnesses after the close of the Commission's and Complainant's cases. Mr. Kulbashian and Mr. Richardson introduced some documents into evidence through their cross-examination of Commission witnesses.

[3] The other three named respondents did not formally appear at the hearing, although Mr. Warman and the Commission allege that Mr. Kulbashian and/or Mr. Richardson are closely linked to these respondents. I will be dealing with this issue in due course, later in the decision.

II. WHAT CIRCUMSTANCES GAVE RISE TO THIS COMPLAINT?

[4] Mr. Warman is a resident of Ottawa. He has developed an interest in human rights issues over the past 15 years, and is actively involved in anti-racism groups. For a time, he worked for the Commission. Most recently, he has focussed his attention on hate propaganda disseminated through the Internet, by monitoring the Internet activity of what he describes as extreme right-wing and neo-Nazi groups.

[5] In 2001, Mr. Warman started monitoring the websites of two groups, the Tri-City Skins and the Canadian Ethnic Cleansing Team, both of which were allegedly based in south-western Ontario. According to Mr. Warman, their websites were respectively Tri-

cityskins.com and wpcect.com (an abbreviation for "White Power - Canadian Ethnic Cleansing Team"). After conducting some research, Mr. Warman also determined that both of these websites were made available on the Internet through the "web hosting" services that were provided by the respondent firm, Affordable Space.com. He also believed that both Mr. Kulbashian and Mr. Richardson were involved in the operation of Tri-cityskins.com, wpcect.com, and Affordable Space.com. In Mr. Warman's view, the material found on the websites violated s. 13 of the *Act*, so he filed the present complaint on February 5, 2002.

[6] The websites in question were no longer available on the Internet at the time of the hearing into the complaint.

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

[7] I must address the following questions in this case:

- (1) Is material sent over the Internet a "communication" within the meaning of s. 13 of the *Act*?
- (2) What was the Internet material that Mr. Warman alleges violates s. 13 of the *Act*?
- (3) Was this material likely to expose a person or persons to hatred or contempt by reason of the fact that they are identifiable on the basis of a prohibited ground of discrimination?
- (4) Did Mr. Kulbashian or Mr. Richardson, alone or in concert with each other or others, communicate this material repeatedly, or cause it to be so communicated?
- (5) Has the complaint been substantiated against the other named respondents ("Tri-City Skins.com", "Canadian Ethnic Cleansing Team (CECT)" and "Affordable Space.com")?

[8] As I explain in this decision, I find that the material in question constitutes hate messages as contemplated by s. 13 of the *Act*, and that Mr. Richardson as well as Mr. Kulbashian and his firm, Affordable Space.com, were involved in various ways in the communication of these messages. I also find that the Canadian Ethnic Cleansing Team is a group of persons acting in concert that was responsible for conveying some of these messages, and is therefore in contravention of s. 13, as well. On the other hand, there is no evidence that tri-cityskins.com was anything more than the name of a website. It is not a "person or group of persons acting in concert" within the meaning of s. 13. As a result, I find that the complaint against the respondent identified as "Tri-City Skins.com" has not been substantiated.

A. Question 1 - Is material sent over the Internet a "communication" within the meaning of s. 13 of the *Act*?

[9] Section 13 was originally enacted well before the pervasive global growth of the Internet, and there was no mention of the Internet to be found in the provision itself. In 2001, however, s. 13(2) was amended by the *Anti-Terrorism Act*, S.C. 2001, c.41, s. 88, to provide that, "for greater certainty", the proscribed discriminatory practice extended to "matter that is communicated by means of a computer or a group of interconnected or related computers, including the Internet". This amendment came into force on December 23, 2001 (P.C. 2001-2425, SI/2002-16, Canada Gazette Part II, Vol. 136, No. 1).

[10] Mr. Warman viewed the material that is the object of his complaint, on the Internet, in 2001 and 2002, before and after the coming into force of the enactment amending s. 13. As the Tribunal in *Warman v. Kyburz* 2003 CHRT 18, 43 C.H.R.R. D/425 (C.H.R.T.) at para. 15 ("*Kyburz*") noted, however, whether or not any of the communications occurred before the amendment is ultimately of no consequence. The earlier version of s. 13 was found to encompass Internet communications in both *Citron v. Zündel* (2002), 41 C.H.R.R. D/274 (C.H.R.T.), and in *Schnell v. Machiavelli and Associates Meprizer Inc.*

et al. (2002), 43 C.H.R.R. D/453 (C.H.R.T.). In my view, the issue is now settled. Matter that was communicated over the Internet, whether before or after the amendments, is subject to s. 13 of the *Act*.

B. Question 2 - What is the Internet material that allegedly violates s. 13?

(i) Material on the tri-cityskins.com website

[11] The Commission produced copies of web pages from the tri-cityskins.com website that Mr. Warman testified having viewed between October 2001 and February 2002. The Internet address of the home page was "www.tri-cityskins.com". A copy of the home page, printed out on February 2, 2002, was entered into evidence.

[12] The page has a banner at the top stating, "Tri-City Skins Website is BACK", followed by a warning that "Contained in these pages are views that many will find offensive. WE DON'T GIVE A FUCK!!!". Mr. Warman testified that by clicking on the word "enter" at the bottom of the page, he was redirected to the "Main" page. A banner at the top of the Main page said "Tri-City Skins - Welcome to Our Official Website". Between two Canadian flags, the word "Skinheads" appears, near the top. On the left side of the page is a column of icons (or "links") that when clicked, send the visitor to other parts of the website. One of those links connected to a part of the website that itself provided links to "Good Sites", which included the sites for the Canadian Ethnic Cleansing Team, the Toronto Skinheads, the Heritage Front, and the White Aryan Resistance. There is also a link to a site called www.whitesonly.net. The icon that linked you to this site consisted of a rope with nooses at both ends along with the phrase "Bring Your Nigger...We Got the Rope".

[13] Another page on the tri-cityskins.com website that could be accessed by clicking a link button on the main page, is entitled "...Of the Month". This linked page sets out featured songs, quotes, sites, jokes, and pictures of the month. The December 2001 joke of the month was:

What do you call 6 nigger's [*sic*] hanging from a tree??

An Alabama wind chime.

[14] The picture of the month contained two photos; one of a man wearing a type of turban, accompanied by the description "This is a Sikh", and another photo, this time of a bearded man carrying a farm animal, also wearing a similar form of headdress, with the description "This is a Muslim". Both photos were followed by the following caption:

Please beat accordingly.

Brought to you by the Don't Beat a Sikh foundation.

[15] The tri-cityskins.com website contained several pages devoted to "jokes", which are entitled "Nigger Jokes", "Jew Jokes", and "Other Ethnic Jokes". All could be accessed by clicking the "Joke Page" link from the Main page. The Commission filed copies that were viewed and printed out by Mr. Warman on October 13, 2001. There are numerous entries found on these pages. These are only a few examples of the "jokes" found on the "Nigger Jokes" page:

Q: What has four fuzzy legs and one black arm?

A: A happy pitbull.

Q: Why are a nigger's eyes red after sex?

A: Mace.

Q: What's missing from the unemployment line in Harlem?

A: 100 ft of chain, and an auctioneer.

The "Jew Jokes" web page contains about 25 entries, beginning with the following:

Q: What was the best thing to ever come out of Auschwitz?

A: An empty train.

Q: What did the German kid get for Christmas?

A: G.I. Jew and an easy bake oven.

Q: How do you fit 100 Jews into a Volkswagen?

A: Two in the front, three in the back, and 95 in the ashtray.

Q: What's the difference between a Jew and apple pie?

A: Apple pie doesn't scream when you put it in the oven.

The "Other Ethnic Jokes" page relates to persons of various ethnic backgrounds. The following is a sample:

Q: What's the most confusing day on the Indian reserve?

A: Fathers' Day.

Q: Why doesn't Mexico have a good Olympic team?

A: Anyone who can run, jump or swim is already in the U.S.

Q: Why do Pakis stink?

A: So the blind can hate them too.

[16] Another page on the tri-cityskins.com website was used to market "White Power, Racist, and Skinhead Shirts". Instructions were provided on how to place orders for these shirts and listing the available sizes. The shirts displayed for sale bore inscriptions on the front including "Aryan", "ACAB - ALL COPS ARE BASTARDS", "SKINHEADS", and "Aryan Women Unite".

[17] One also found on the tri-cityskins.com website a page entitled "HEROES AND WARRIORS OF OUR MOVEMENT". A printout from December 8, 2001, contains photos of Adolf Hitler, Rudolf Hess, and Ernst Zündel, amongst others. In the side margins, the Nazi SS symbol and an Iron Cross with a swastika in the centre are displayed.

[18] There is a link on the main page of the tri-cityskins.com website entitled "Weekly A.D.V. Broadcast - updated". Mr. Warman testified that clicking on this icon brought up a page on the tri-cityskins.com website containing the text of the Weekly American Dissident Voices Broadcast. He produced printouts of five issues of this "Broadcast" that were posted on the webpage, from August 2001 until February 2002. Each Broadcast consisted of a fairly long article (8 to 13 pages) ostensibly drafted by William Pierce, who, according to Mr. Warman, was the head of the National Alliance, the largest neo-Nazi group in the United States at the time.

[19] In one Broadcast, Mr. Pierce advises the white citizens of South Africa that the "only viable long-range solution for [them] is to get rid of all the Blacks and other non-Whites". They should "force them out, sterilize them, kill them - otherwise [they] will lose [their] country". He goes on to state elsewhere in this article:

If we want our kind to survive on this planet longer than another generation or two, then we must clear the cobwebs of Christian superstition and Jewish propaganda from our minds and face the facts without being squeamish. One fact is that we must have exclusive possession of those portions of this planet which constitute suitable habitat for us. *Another fact is that in order to obtain and maintain that exclusive possession, we must be prepared to kill, to annihilate, any and all competitors. A third fact is that racism is God's gift to any race that wants to survive. Racism is healthy and natural and essential, and we had damned well better clear of [sic] minds of the Judeo-Christian lie that it is evil and wicked and nasty and low-brow.*

(emphasis added)

[20] In another Broadcast, viewed and printed out by Mr. Warman on October 13, 2001, Mr. Pierce describes the Clinton administration as "the most Jewish government America ever had", which he then contrasts to the administration of George W. Bush:

The people out front, in the public's eye, are Gentiles - of a sort: a mulatto secretary of state, a White gentile secretary of defence, a Negress as a national security adviser, a White Gentile Treasury secretary - and, except for Federal Reserve Chairman Alan Greenspan, no really prominent Jews. That is, there are few Jews out front, where they can be seen. But the Jews are there, just as in the Clinton government, but working behind the scenes.

[21] In a subsequent Broadcast, viewed by Mr. Warman on January 22, 2002, entitled *The Culture of Lies*, Mr. Pierce dismisses what he refers to as "the so-called Holocaust" and the "central myth of `six million' innocent, blameless Jews killed in `gas ovens' by the wicked Nazis". He ends the article by writing about Jewish "media control" in America that has allowed the "culture of lies" to prevail.

[22] Another Broadcast, which Mr. Warman viewed on February 2, 2002, referred to Harvard University law professor Alan Dershowitz. Mr. Pierce wrote:

Fundamentally, he's not a lawyer or a civil libertarian; he's not an American; he's not even a fellow human being. Alan Dershowitz is a Jew, and that says it all.

[23] The article goes on to criticize Mr. Dershowitz's position allegedly in favour of the use of torture by the U.S. Government to obtain confessions following the 9/11 attacks, by stating:

But I'll guarantee you that ultimately it's not just Muslims that Dershowitz and his tribe have in mind when they advocate torture; it's you and I; it's everyone who stands in the way of the total supremacy of their tribe.

(ii) Material on the wppect.com website

a) The "Links" page

[24] The Commission filed with the Tribunal some excerpts from the wppect.com website, including a copy of the "Links" page, which was printed out on January 18, 2002. The banner across the "Links" page reads "C.E.C.T.", an acronym for "Canadian Ethnic Cleansing Team". To the left of it is a logo comprised of a half-maple leaf and a half-Celtic cross. On the right side is another logo, which is only partially visible on the printout, but appears to resemble a maple leaf superimposed over a swastika.

[25] On the left side of the page is a column containing the following words: "Start", "News", "Articles", "Thoughts", "Info", "Flyers", "Webhosting", "Chapters", "Newsletter", "Contact", and "Links". Mr. Warman testified that this column was found on all of wppect.com's pages. Clicking on the words would open a corresponding page.

For instance, clicking on "Links" from any page on the website would bring you to the "Links" page that was filed in evidence.

[26] Down the centre of this "Links" page is a series of icons that when clicked, connect you to their corresponding websites. These linked sites include tri-cityskins.com, White Aryan Resistance, the American Nazi Party, National Skinhead Front (whitevictory.com), and hatecore88.com. Mr. Warman testified that the number "88" is often used by neo-Nazi groups. The letter "H" is the 8th letter in the alphabet and "88" (denoting "HH") refers to the first letters in the words of the phrase "Heil Hitler". There is a heading found above all of these icons, which explains that these linked websites are "Domains we are hosting for free".

b) The "Thoughts" page

[27] Mr. Warman produced a printout of an article entitled *Intro to Racial Woes*. He had previously viewed it by clicking on the caption identified as "Thoughts" that was found on the left-side column of the wpcect.com website. On the printout that was filed at the hearing, half the date had been cut off, but Mr. Warman testified that he had viewed and printed out the text on October 13, 2001. It contains the following passage, which relates to immigration policies in Canada:

Over 35% of illegal aliens are convicted and/or wanted criminals. You see, now in Canada we don't do background checks on our Future potential citizens. For some strange reason we just let them into the country on the honor system. They are given every opportunity in the world and they just sit back and hope that none of the Third world rejects commit violent crimes such as rape, murder, and even terrorism. *Not only are the blacks and Asians polluting our cities with gangs and drugs, they are sleeping with our women and doing everything possible to ensure that the white race does not exist through interracial breeding.* They are being followed by young white teens that through the media think it's cool to be black. These "wiggers", who I refer to as race traitors, have no idea that they are just a part of the plan that's only purpose is to exterminate the white race.

The Jewish media, who control everything that we see and hear through T.V. and radio, heads up this war against us. When, as a united race, will we learn our lesson? Because of recent events over the Millenium's Terrorist's problems, I don't think I need to mention anything about the east Indians. They are filthy and are nothing but bad for a young country like ours. If we keep letting all these "alien" come into Canada. Don't be surprised if one day Canada isn't known for our great living and beautiful country side, but as a country that aids and abets criminals, and a place where rapists and murders can hide out from the laws of their own country. Wait a minute. That has already happened.

(emphasis added)

The article concludes with the following statement:

[...] What are you willing to do for your country and the Proud White Race? I for one am willing to go all the way and do whatever it be that is needed of me to do to insure that the white race prevails as I am sure we will.

The text is signed:

White Pride Worldwide 14/88

-WHITE POWER CANADA: THE REICH WAY!

c) The newsletter - Vinland Voice

[28] Another of the words found on the left-side column of the wpcect.com website is "Newsletter". Mr. Warman testified that by clicking on it, he was redirected to a website called vinlandvoice.com. The opening page of that website welcomes the visitor to the homepage of the Vinland Voice, which is described as a newsletter that is meant to "reach out to White Canadians and keep them up with issues in their communities". The text goes on to thank the supporters of the Vinland Voice and closes with the expression "RAHOWA". Mr. Warman stated in his evidence that this term is used by white supremacist group members to greet each other. It is an acronym for Racial Holy War.

[29] Mr. Warman testified that when he proceeded further into the vinlandvoice.com website, he came across multi-page newsletters that were apparently published on a weekly basis. The earliest copy of the Vinland Voice newsletter filed in evidence is dated August 30, 2001.

[30] Mr. Warman explained that when he discovered the Vinland Voice site, he registered himself as a subscriber under a pseudonym, and began receiving the newsletters on a weekly basis, by electronic mail (e-mail). He adopted two methods of compiling the material from the newsletters that he believed offended s. 13 of the *Act*. In some cases, he cut and pasted the content of the newsletters from their location on the vinlandvoice.com website into a word processing file. In other cases, he simply printed out the e-mail messages containing the newsletters. The copies of the Vinland Voice newsletter that were filed at the hearing were in one or the other of these formats.

[31] I have no evidence before me to suggest that these copies were inaccurate representations of the actual newsletters communicated through the Internet. As I discuss later in this decision, Terry Wilson, a detective with the police service of London, Ontario, also testified about having viewed these newsletters on the Internet and having received them by e-mail as well. I am satisfied that these exhibits are true depictions of the actual newsletters that were posted on the vinlandvoice.com website.

[32] Every edition of the Vinland Voice in evidence contained an invitation on the first page to "Check out our CECT flyers". The newsletters all ended with a link to www.wpcect.com, ie. the Canadian Ethnic Cleansing Team's website. In some issues, the link was accompanied by the Canadian Ethnic Cleansing Team's combined maple leaf-Celtic cross logo.

[33] The newsletters often reprinted articles from other news sources, to which some editorial comment was added. For instance, Newsletter no. 3, dated August 30, 2001, reproduced what appears to be a wire service article regarding the arrest in Toronto of an individual who was believed to be a member of an "Islamic terrorist group" involved in the bombings of U.S. embassies. The excerpt was prefaced by the headline, "surprise, surprise, this is why immigration MUST stop!".

[34] The newsletters also often contained letters and commentary expressing disdain towards members of "Anti-Racist Action" (ARA). Mr. Warman testified that this is an anti-racist group with chapters throughout North America, whose objective is to combat "neo-Nazi" and racist groups.

[35] The writers of the Vinland Voice occasionally wrote pieces regarding some of their personal experiences. For instance, in Newsletter No. 3, there is an unsigned article describing what took place at a birthday party for "one of the TCS [Tri-City Skins] boys", held it seems at a bar in Kitchener, Ontario. Several paragraphs into the article, the author writes the following:

[...] my buddy and I were outside with a few skinbyrds talking and having a smoke when a dumb monkey ass looking nigger came to the bar with a bat. LOL, 1 nigger 1 bat against 15 skins, that's why, and for no other reason, was this nigger particularly stupid. <All the rest of the cities sewage chose to stay across the street.> Just as we were about to approach the nigger to show him what he can do with the bat the owner of this fine establishment jumped in and disarmed him, warning us that cops were coming back up the stairs. They were everywhere.

[sic throughout]

[36] Mr. Warman opted to highlight Newsletter No. 5 in his testimony. This issue, dated September 14, 2001, dealt extensively with the terrorist attacks in the U.S. that had taken place three days earlier. The opening column's headline was "Editor's Voice". The name of the author, at the bottom of the text, was "WPCanada". As will be discussed later in this decision, Mr. Warman contends that WPCanada stands for "White Power Canada", and that it is in fact a pseudonym used by Mr. Richardson. The article reads as follows:

Hmmmm, Where to start? I have so much to say and the newsletter is already so huge. So I will try to keep it short. As I mentioned above, you will see opinions from many different people and I am defiantly not saying mine is the correct One but it is mine and now you are stuck reading it.

If there was ever a time to stand up and have your voice heard, it is now. War is on, and the gloves are off. I have held various opinions since the tragedy in The United States. But even though my anger and views have differed from one extreme to another I still stay focused on one thing. *A lot of white folk died tragically, and as always the Jews are mixed up in it. I do not take kindly to innocent whites dying for nothing and especially because of those dirty Jews.*

And yes *I hold "ALL" Muslims personally responsible as well.* Even the American government, for bringing this war onto American soil by supplying Jews with weapons to destroy the Muslims. It is now time to take back our streets. *I am proclaiming my own act of war. I encourage all racialists and esp. all C.E.C.T. members to do the same. There are many targets on Canadian soil such as B'nai Brith offices, Mossad temples and as far as I am concerned any Jew/Arab temple, building, house and even cars. There are no innocent Jews especially in a time of war.* I ask that you mourn the loss of many of our kin that perished in NY and Washington and I want you to channel that anger and use it to fight our enemies.

The world as we know it has changed, from this day on everything as we know it will be different. Many more whites will die fighting the Muslims and Jews. Perhaps this will be the final war? I don't know. What I do know is we must never let this happen to us again. *We need to call upon our governments and stop all immigration into North America. We need to deport all Jews, Muslims, Arabs or any other known terrorist group or religion.* By allowing them to live in our country and seek refuge we are allowing them to use our own resources i.e. (welfare or public records etc.) against us. These are our streets, this is our land and the time to Fight is NOW. This is in fact our RAHOWA! United we will win.

WPCanada

Onward to victory!

(emphasis added) [sic throughout]

[37] Several pages later in this issue of the newsletter, a press release from B'nai Brith Canada dated September 11, 2001, was reproduced. The press release condemned the 9/11 attacks, as well as the subsequent dancing in the streets of the West Bank by Palestinians that had reportedly taken place. The following editorial comment was added underneath the reproduction of the press release:

Obviously the Jews are trying to pass the buck and direct attention elsewhere. Well Fuck them all. We know who is responsible and they WILL pay on behalf of our American Brothers. I urge all Canadians who care at all to take action against B'nai Brith and all other Jew organizations. Certain cocktails are very cheap. > DEATH TO ZOG!

Mr. Warman testified that "ZOG" stands for Zionist Occupational Government. A few paragraphs down, the newsletter states, "SURGEON GENERAL'S WARNING: Jews are hazardous to other Species."

[38] Newsletter no. 6, dated September 21, 2001, continued on the same theme of the 9/11 attacks. On the first page is an article that is presented under the heading "Editor's Voice". The author is apparently "WPCanada", whose name is printed at the end of the article. The author puts forth how he would have written President George W. Bush's speech to the U.S. Congress following the attacks:

[...] To the people responsible for the US tragedy, I say this: Are you fucking kidding me? *Are the turbans on your heads wrapped too tight?* Have you gone too long without a bath? Do you not know whom you are fucking with? [...]

Have you forgotten history? What happened to the last people that started fucking around with us? *Remember the little yellow bastards over in Japan?* We slapped them all over the Pacific and roasted 2 million of them in their own back yard. That's what we in America call a big ass barbecue. Ever seen Texas on a map? Ever wonder why it is so big? Because we wanted it that way. *Mexico started jacking around with the Alamo and now they cut our lawns.*

(emphasis added)

[39] Issue no. 7 of the Vinland Voice is dated September 28, 2001. The newsletter begins with four short sentences:

- (1) Jews are responsible for the immigration policies that let Arab bombers into the country.
- (2) Jews are responsible for the foreign policies that made Arabs want to attack us.
- (3) Jews are responsible for obscuring these facts in their media.
- (4) End ZOG, end terrorism.

This passage is followed by a sentence modelled on the American pledge of allegiance:

I pledge allegiance to the race-mixing rag, of the Jew-nited States of America, and to the New World Order for which it stands; one conglomerate, under Zionism, with Tyranny and Oppression for all.

[40] Newsletter no. 12, dated December 10, 2001, contains an "Editor's Voice" column criticizing Israel's policies in the Middle East. But in addressing the question, the "editor" refers to Jews as "Conspirators of Rome" and "Betrayers of Christ". He goes on to write that he supports the suicide attacks against the Israeli people, and suggests that "maybe England would like to allocate a piece of its own land to house the Zionist plague". He adds that he, for one, would "put them in warm waters, somewhere in the tropical Pacific".

[41] In the same issue of the newsletter, the editor writes that he is sending a "big hello" to Mr. Warman for having filed a human rights complaint against the Canadian Ethnic

Cleansing Team. The editor identifies himself at the end of these comments as "Totenkopf". The reference is apparently to an initial complaint that Mr. Warman filed with the Commission in 2001, in advance of the present complaint, which came in February 2002. The article in the newsletter contains Mr. Warman's home address. It further states that "we extend our thanks to that Jewish lawyer" and "we give [Mr. Warman] 300,000 real reasons - and 5.7 million made-up ones - to support the [Canadian Ethnic Cleansing Team]! It will be a gas!". The message ends with a final note addressed directly to Mr. Warman:

Richard, we added you to our Christmas Card list this year. Who knows, we might even send you compensation in the amount of vacation pay your family didn't get while working at Auschwitz.

C. Question 3 - Is the material likely to expose a person or persons to hatred or contempt by reason of the fact that they are identifiable on the basis of a prohibited ground of discrimination?

[42] In order to address this question, the meanings of the words "expose", "hatred" and "contempt" must be considered. The Canadian Human Rights Tribunal, as well as the Federal and Supreme Courts of Canada, have had occasion to consider the sense of these terms in previous decisions. The Tribunal in *Schnell, supra* at paras. 85-89, provided the following synopsis of their findings:

In the first case dealing with s. 13(1) of the *Act*, *Taylor and the Western Guard Party v. Canadian Human Rights Commission and Attorney General of Canada* (1979), T.D. 1/79, the Human Rights Tribunal referred to the Oxford Dictionary as a source, defining "hatred" as:

active dislike, detestation, enmity, ill will, malevolence.

and "contempt" as:

the condition of being condemned or despised; dishonour or disgrace.

"Expose" is a more passive word as opposed to "incite" and indicates that an active effort or intent on the part of the communicator or a violent reaction by the recipient is not envisaged. Rather, expose means to leave a person unprotected; to lay open to ridicule, censure or danger; creating the right conditions for hatred or contempt to flourish leaving the identifiable group open or vulnerable to ill feelings or hostility or putting them at risk to be hated.

The Human Rights Tribunal in *Nealy v. Johnston* (1989), 10 C.H.R.R. D/6450, when dealing with a complaint under s. 13(1) of the Act accepted these definitions and elaborated somewhat on "hatred and contempt". In the Tribunal's view, hatred involves feelings of extreme ill will towards another person or group of persons. To say that one hates another means that one finds no redeeming qualities in the latter. "Contempt" suggests looking down upon or treating as inferior the object of one's feelings. This reflects the dictionary definition of despise, dishonour or disgrace. But, "hatred" is not co-extensive with "contempt". Hatred in some instances may be the result of envy of superior qualities such as intelligence, wealth and power, which contempt, by definition, cannot be.

The *Nealy* Tribunal also went on to say that the use of the word 'likely' in s. 13(1) means that it is not necessary to prove that the effect will be that those who hear the

messages will direct hatred or contempt against others. Nor is it necessary to show that, in fact, anyone was so victimized.

Taylor was appealed to the Supreme Court of Canada [1990] 3 S.C.R. 892, the main issue being the constitutionality of s. 13(1) of the Act relative to the s. 2(b) of the Charter. The Supreme Court, in concluding that s. 13(1) did not contravene the Charter, endorsed the *Taylor* and *Nealy* definitions of hatred and contempt. The Court concluded that s. 13(1) refers to unusually strong and deep-felt emotions of detestation, calumny and vilification.

(i) The tri-cityskins.com material

[43] I find that the material found on the tri-cityskins.com website is likely to expose persons who are non-Christian or non-Caucasian, to hatred or contempt. Black persons and people of the Jewish faith are particularly laid open to ridicule, ill feelings, or hostility, creating the right conditions for hatred or contempt against them to flourish.

[44] The supposed humour found in the "Jokes" and the "...Of the Month" pages unquestionably exposes these groups to hatred and contempt. The use of the term "nigger" in these "jokes", with its inherent connotation of slavery, segregation, and racism, in and of itself displays hatred and contempt in regard to black people. Remarks portraying Blacks as rapists, slaves, and food for vicious dogs denote feelings of extreme ill will against them. These "jokes" blatantly treat black persons with disdain and as being inferior. The "humour" demeans the suffering of Blacks and suggests that they have no redeeming qualities.

[45] The "riddles" that make cruel light of the genocide of Jews in Nazi concentration camps are similarly demeaning and disdainful. Other racial, religious, or ethnic groups (Aboriginal people, Latin Americans, South Asians, Muslims) are not spared the disparagement either. These statements all serve to dehumanize persons belonging to these various groups.

[46] I should note that I have only excerpted but a handful of the "jokes" found on this website. The remainder all follow the same themes, replete with hatred and contempt directed at the groups identified.

[47] The extreme ill will and malevolence towards black persons pervades other parts of the tri-cityskins.com website as well. The Pierce articles encourage white South Africans to "get rid of all Blacks and other non-Whites", and to "force them out", "sterilize them" or "kill them". His articles urge those whom he is addressing to be "prepared to kill, annihilate, any and all competitors". Such statements (exhorting the death, sterilization, or expulsion of non-Caucasians) denote extreme ill will and hatred against non-Caucasians, and suggest that the victims of this violence lack any redeeming qualities, thereby dehumanizing them.

[48] Mr. Pierce's attempts at portraying Jewish persons as enemies of the state, "working behind the scenes", and controlling media, serve to develop and encourage envy, mistrust or resentment of them, which in turn breeds hatred against them. These hateful messages are combined with signs of contempt: "[Dershowitz]'s not even a fellow human being. [He] is a Jew and that says it all". Mr. Pierce reinforces his contempt directed towards Jewish persons and further exhorts hatred against them, by asserting that Dershowitz and "his tribe" advocate widespread torture of all non-Jews who resist Jewish supremacy.

[49] The website manages to encourage the visitor to feel contempt against these groups even through its links to other websites. It invites visitors to travel, with one click of a

mouse button, to the site of the Canadian Ethnic Cleansing Team. Taking into account the opinions expressed in the Pierce articles, it is quite easy to draw the connection between this group's name and a call for the forceful exclusion from Canadian society of non-Caucasians. Another of the linked websites is named whitesonly.net, which has a logo that unabashedly harks back to the lynching of black persons.

[50] I find, therefore, that the tri-cityskins.com website contains messages that are likely to expose persons who are non-Christian (namely of the Jewish and Muslim faiths) or non-Caucasian, to hatred and contempt on the basis of their race, colour, religion, or national/ethnic origin.

(ii) The wpcect.com material

[51] I have reached the same conclusion with respect to the messages found on the Canadian Ethnic Cleansing Team's website, wpcect.com, including the Vinland Voice newsletters.

[52] Mr. Kulbashian contends that the Vinland Voice material should not be considered to form part of the Canadian Ethnic Cleansing Team's website since it was found on a separate website, vinlandvoice.com. I do not agree. It is of no consequence that the material happens to be on a website the name of which does not incorporate the CECT abbreviation. The fact is that when clicking on the "newsletter" icon on the web pages of wpcect.com, visitors are brought directly to the Vinland Voice page. Once there, they are plainly told that they have arrived at a site that is run by the CECT. The second paragraph on many of the newsletters invites visitors to "check out *our* CECT flyers", and to "visit the CECT store". On the final page of every issue, the link to wpcect.com is prominently displayed. I am satisfied that the material found on vinlandvoice.com is an integral part of wpcect.com's Internet material.

[53] The *Intro to Racial Woes* article on wpcect.com's "Thoughts" page is littered with statements of extreme ill will to various ethnic, racial, and religious groups. Blacks and Asians are accused of "polluting our cities with gangs and drugs" and "sleeping with our women". East Indians are treated as "filthy" and undesirables. Jews are again portrayed as enemies of society who "control everything that we see and hear" and who head up the war against "us", meaning the "white race". In this manner, the article has the effect of inspiring fear and extreme resentment against these groups, which is likely to expose them to hatred and contempt.

[54] The same themes wind their way through the newsletters. The account, in Issue No. 3, by an unnamed individual, of his exploits involving a black person who confronted him at a bar, is laden with epithets, such as "dumb monkey ass looking nigger", "stupid", and "sewage", that are indicative of extreme contempt for black persons.

[55] The Editor's Voice column of September 14, 2001, however, did not limit the target of its hate-ridden attacks to Blacks. Just about every non-Caucasian, and non-Christian group fell victim. "Dirty Jews" and Muslims are blamed for the death, on September 11, 2001, of thousands of "white folk", which is likely to inspire hatred against these groups. The article then goes on to irresponsibly call on "racialists" and Canadian Ethnic Cleansing Team members to engage in violent acts against not only buildings and institutions of the Jewish and Arab communities in Canada, but individuals as well, since there are "no innocent Jews". These comments unquestionably expose the members of these groups to hatred, contempt and real physical danger, by suggesting that all manifestations of the Jewish and Arab communities are legitimate targets of

indiscriminate retributory violence. The comments also convey a message that these groups lack any redeeming qualities. The author further exposes Jews, Muslims and Arabs to contempt by equating them with the terrorists responsible for the 9/11 attacks. His call for the deportation of these groups implies that they lack redeeming qualities and are unfit to live in "our" country.

[56] The incitation to violence was not restricted to the Editor's Voice column. Later in the same issue, an editorial comment is included that obviously encourages attacks by Molotov cocktail against Jewish organizations. The Jewish community in Canada is again laid open to danger by these hateful comments, which are compounded later in the same newsletter by the snide remark that "Jews are hazardous to other Species", a dehumanizing and contemptuous statement that inspires hatred against them.

[57] The September 21, 2001, issue opted to mock the religious headdress of Muslims, to trivialize the death of millions of Japanese during the Second World War, and to exacerbate this insult by adding a malevolent racial epithet ("yellow bastards"). These disrespectful remarks serve to dehumanize these groups and thereby expose them to contempt.

[58] The next issue of the newsletter (September 28, 2001) continued to pursue the theme of blaming the recent terrorist acts on the alleged Jewish control over the U.S., which the newsletter described as the "Jew-nited States of America". These comments again serve to expose persons of the Jewish faith to contempt and hatred by seeking to channel against them the horror and fear felt by many in the wake of 9/11.

[59] Mr. Kulbashian argued that these and other similar remarks made in the Vinland Voice, constituted political discourse and were not intended to expose any designated groups to hatred or contempt. Intent to discriminate, however, is not a pre-condition to a finding of discrimination (*Ontario Human Rights Commission and O'Malley v. Simpson-Sears Ltd.*, [1985] 2 S.C.R. 536 at 549-50; *Canada (Human Rights Commission) v. Taylor*, [1990] 3 S.C.R. 892 at 931-34). Moreover, the language of s. 13 is clear, in that it is the effect of messages that has attracted the attention of Parliament. The question to be asked is not whether the conveyor of the message intended to communicate hate or contempt, but whether the message itself is likely to expose persons belonging to the identifiable groups to hatred or contempt. If indeed the newsletter's content was intended to express a supposed political opinion, the message could have been communicated without resort to the extremist and denigrating language that pervades the various editions of the newsletter that were entered into evidence (see *Canada (Human Rights Commission) v. Canadian Liberty Net*, [1992] 3 F.C. 155 at para. 57 (F.C.T.D.)).

[60] The same can be said of the Vinland Voice editor's criticism of Israel's policies set out in Newsletter no. 12. The writer resorts to denigrating language against Jewish people, describing them as a "Zionist plague". This characterization, along with their depiction as "Betrayers of Christ", could likely incite Christians and others to feel hatred and contempt against Jews. This inference can easily be drawn when considering the context of this article. It was preceded in the same newsletter by a rant against Mr. Warman in which victims of the Holocaust were cruelly mocked:

- "Vacation pay... for working at Auschwitz";
- "It will be a gas" - which I take as a reference to the gas chambers used in Nazi death camps;

- "300,000 real reasons and 5.7 million made-up ones" - which is meant to suggest that the Holocaust did not take place, or that the death toll was grossly exaggerated.

In my view, these remarks have the effect of exposing Jewish persons to sentiments of disdain and contempt.

[61] For all of the foregoing reasons, I find that the messages found on the Canadian Ethnic Cleansing Team's websites, wpcect.com and vinlandvoice.com, are likely to expose non-Christians and non-Caucasians, to hatred and contempt on the basis of their colour, religion, or national/ethnic origin. From now on, in this decision, I will use the term "Hate Messages" to refer to this material, as well as those messages found on the tri-cityskins.com website that I addressed earlier.

[62] According to s. 13(1) of the *Act*, the communication of hate messages must occur "repeatedly" to constitute a discriminatory practice. I note that in the present case, Mr. Warman and Mr. Wilson had no difficulty "surfing" their way to the websites in question, and receiving successive instalments of the Hate Messages on their computers on an ongoing basis over a period of several months. In my view, since the Hate Messages could be viewed at any time by anyone using the Internet, they were indeed being communicated "repeatedly".

(iii) The evidence of Dr. Frances Henry

[63] The Commission had Dr. Frances Henry testify at the hearing as an expert in racism and hate propaganda. In my view, her report and testimony consisted essentially of her opinion about the ultimate question before the Tribunal. She did not provide the Tribunal with any significant insight into the stereotypical or racial aspects of the Hate Messages and how these aspects could expose persons to hatred or contempt, certainly no more so than the Tribunal can assess for itself or can garner from the body of jurisprudence relating to s. 13 of the *Act*. Moreover, in the course of her cross-examination, she acknowledged that her studies were in the areas of racism and how it manifests itself, not specifically in the realm of hate propaganda at issue in the present case.

[64] Dr. Henry's evidence has therefore had no bearing on my final disposition of this case.

D. Question 4 - Did Mr. Kulbashian or Mr. Richardson, alone or in concert with each other or others, repeatedly communicate the Hate Messages, or cause them to be so communicated?

(i) Evidence gathered by Mr. Warman

[65] Mr. Warman and the Commission claim that Mr. Kulbashian and Mr. Richardson were involved in various ways in the communication of the Hate Messages via the Internet. This allegation is based on evidence gathered by Mr. Warman, as well as the London Police Service. He submits that in order to avoid being identified, Mr. Kulbashian used the pseudonyms "Alex Krause" and "Totenkopf" in his activities, and that Mr. Richardson went by the names "James Scott" and "WPCanada" (an abbreviation for "White Power Canada").

[66] In the course of his monitoring of the websites on which the Hate Messages had been found, Mr. Warman sought to learn the identity of the person or persons who operated them. The websites were identified by "domain names" (ie. tri-cityskins.com, wpcect.com, vinlandvoice.com). Domain names must be registered with a domain name registration service. According to Mr. Warman, one of the largest such operations is run by an organization known as "register.com". This firm also offers an on-line service,

called a "Who-is" search, that enables someone to submit the domain name of a website and generate the names of its contact persons. Mr. Warman conducted such a search in October 2001, which yielded the following results:

Tri-cityskins.com:

The record regarding its domain name was created on March 6, 2001. The Registrant was listed as "Tri-City Skinheads", with the declared address being "14 Eighty-Eighth Avenue, Kitchener, Ontario 5M4RTIES". The name given for the website's Technical Contact person was "Skinheads, Tri-City". Mr. Warman believes that this information is clearly fictional. The street name is a reference to the number 88, which, as mentioned earlier, allegedly signifies Heil Hitler. The postal code mimics the word "smarties". The name provided as the website's Administrative Contact is "Public/Press Relations - CECT, Totenkopf". Mr. Warman testified that Totenkopf means "death head" in German, and is symbolized by a skull and cross-bones. This was the logo used by the Nazi SS-Panzer divisions in World War II. The Administrative Contact's address is listed as P.O. Box 1061, 31 Adelaide Street East, Toronto, Ontario. The website's "domain server" is identified as "Affordable-Space.com".

Wpcect.com:

The record regarding this website's domain name was created on February 7, 2001, and had just been updated on October 3, 2001, when Mr. Warman conducted his Who-is search. The Registrant is shown as C.E.C.T., and its declared address is P.O. Box 1061, 31 Adelaide Street East, Toronto, which is identical to the above noted address of tri-cityskins.com's administrative contact, "Totenkopf". The Administrative, Technical, and Billing Contacts for Wpcect.com are listed as being the same person: "WPCANADA, Totenkopf", with the same P.O. Box address mentioned above. The website's domain server is also identified as "Affordable-Space.com".

[67] Mr. Warman filed in evidence a printout of a page from the wpcect.com website, which declares that the "C.E.C.T. finally has a P.O. Box". This statement is signed "Totenkopf", and the postal box address is identical to that found on the Who-is searches referred to above. In the "Contact Information" section of the wpcect.com website, there is a table indicating that for "public/press relations, organization information, or to submit tips that could help us out in our mission", one should send an e-mail message to Totenkopf@wpcect.com. For "internal affairs and joining if you are not already a member of a Pro-White organization", e-mails should be addressed to WPCanada@wpcect.com. The Canadian Ethnic Cleansing Team's post office box information is also reprinted on this page.

[68] Mr. Warman testified that he conducted a Who-is search with respect to Affordable Space.com's website as well. The administrative contact's address was the same as for tri-cityskins.com and wpcect.com: P.O. Box 1061, 31 Adelaide Street East, Toronto.

[69] Mr. Warman's research also led him to a website of a student-run film festival that had taken place in May 2001. The organizers of the festival gave "special thanks" on their website to the "server hosting" the site, Alexan Kulbashian. Mr. Warman then conducted a Who-is search of the festival's website, which revealed that the site's domain server was "affordable-space.com".

[70] Mr. Warman testified that to his knowledge, domain servers are used at an intermediary level. They enable the websites of domain name registrants to be accessible to the public via the Internet. Mr. Warman did not seem entirely confident in this

explanation, and aside from his basic familiarity with the Internet as a frequent user, he did not profess to be an expert in the area, nor did he testify as such. However, the Respondents did not lead any evidence to contradict Mr. Warman. Moreover, it is obvious from Mr. Warman's documents that a domain server has a significant role to play in the operation of a website, so much so that the identification of the domain server warrants mention on the Who-is registry. It is noteworthy that in the case of both tri-cityskins.com and wpcect.com, Affordable Space.com was their domain server.

[71] Mr. Warman's research also led him to enter the name "Alexan Kulbashian" into the Google Internet search engine, which scanned the Internet for any site containing these key words. The search results included a site where a résumé of a person named Alexan Kulbashian had been posted. The details appearing on this résumé are consistent with other personal details about the respondent, Mr. Kulbashian, that are in evidence. I am satisfied that this is his résumé.

[72] Mr. Warman's search was conducted in December 2002, but the résumé itself bears no date. It details, under the heading "experience", Mr. Kulbashian's involvement, from 1999 onwards, with Affordable Space.com, which is described as a website hosting, design, and technical support firm. The résumé explains that Affordable Space.com started off as a private project and then turned into a business, hosting over a thousand accounts, and that "at the moment I am working on a 24/7 technical support availability for the company".

[73] On the basis of all the information he has collected and put together, Mr. Warman is of the belief that Mr. Kulbashian was involved in the provision of web server hosting services, through an enterprise known as Affordable Space.com, and that wpcect.com as well as tri-cityskins.com were among the websites hosted by Mr. Kulbashian. Mr. Warman submits that these elements are sufficient to establish the connection between Mr. Kulbashian and the Hate Messages.

(ii) Evidence gathered by the London Police Service

[74] The Commission relies on evidence collected during a criminal investigation to further establish the link between Mr. Kulbashian and the Hate Messages. This evidence, it is argued, also establishes the connection to Mr. Richardson. The Commission called Terry Wilson, who worked as a police detective with the police service of London, Ontario, during the same period that Mr. Warman had viewed the Hate Messages on the Internet. Mr. Wilson worked within the hate crime unit, and his investigations included monitoring Internet websites and Internet relay chat lines (also known as instant messaging), where people communicate directly on-line to each other via the Internet. He was aware that some of the websites he was monitoring belonged to organizations that were based in the London-Kitchener-Waterloo area.

[75] Mr. Wilson adopted a pseudonym and began participating in some of the chat lines he was monitoring. One of the participants on the chat line being run through the tri-cityskins.com website used the name "coxswain24wpcanada". Mr. Wilson initiated a conversation by e-mail with this person, who informed him that he was located in London, Ontario, and that he belonged to an organization, the Canadian Ethnic Cleansing Team, that had several members in London. Mr. Wilson wrote that he wanted to join too. On August 22, 2001, Mr. Wilson received an e-mail in response, informing him that there would be a meeting that evening. The sender of the e-mail gave him his telephone number in London and signed the message "James".

[76] In verifying the location for the telephone number, Mr. Wilson noticed that the address corresponded to that of an apartment complex where a building superintendent had previously filed a complaint with the police, alleging that someone had defaced the building's hallways and elevators with stickers bearing racist messages. Mr. Wilson met with the building superintendent who produced the lease for the premises where the telephone number had been assigned. There were two co-tenants indicated: "James S. Richardson" and a woman, whose identity need not be revealed in this decision. The building superintendent said they had been residing there since November 2000.

[77] Sometime after initiating his e-mail communications with the person named "James", Mr. Wilson's e-mail address somehow got on the Canadian Ethnic Cleansing Team's mailing list, which began sending him the Vinland Voice newsletter by e-mail. When Mr. Wilson viewed the September 14, 2001, issue of the newsletter, (which I have already determined contains some of the Hate Messages in this case), he opened a separate criminal investigation on what he perceived as death threats found therein.

[78] Mr. Wilson obtained a search warrant for the apartment in question, and executed it on September 28, 2001. Mr. Richardson was found in the apartment when the police entered and was arrested. He was charged with uttering threats against property and persons, and counselling the indictable offences of murder and of property damage.

[79] Mr. Wilson testified about having found a large flag with a Nazi swastika insignia in the premises. There was also a bomber jacket with a patch labelled "Tri-City Skins" on one side. On the other side of the jacket, there was a patch with the half-Celtic cross/half maple leaf logo that was associated with the Canadian Ethnic Cleansing Team, as had been displayed on wpcect.com. Mr. Wilson also found perforated sheets that are used to print business cards with a computer's printer. The cards had already been printed. "Canadian Ethnic Cleansing Team! In partnership with the National Skinhead Front" was inscribed in the centre of each card. In the lower corner appeared the name "WPCanada", followed by "Recruiting Director". The cards had yet to be separated along their perforations, suggesting perhaps that they had been printed on the premises.

[80] A police crime analyst specializing in electronic evidence was involved in the search operation. He seized a computer found in the apartment, and once back at the police station, made a mirror image of its hard drive and examined its content. Amongst the directories on the drive was one that contained the logs of Internet relay chats in which the user of the computer had participated. These logs were organized into folders that were identified by the name of the participant who had initiated a particular chat session. The logs are set out in a manner similar to the script of a play. When participants "chat", their name appears first, followed by the statement that they have typed in. Every participant's comments can be viewed by all the persons taking part in the chat discussion.

[81] One of the logs found on the seized computer was called "#wpcanada". Amongst the participants in the discussion on this log is someone going by the name of WPCanada. During one session that took place at 2:00 AM on September 4, 2001, WPCanada says that he is signing out and going to sleep. One of the other participants, called DeadGrl, replies by stating that she "waves at James and says buh bye". In another session, the name of Sheila Copps, who is a former Member of Parliament from Hamilton, comes up. WPCanada then adds that "she is from my town". Mr. Wilson testified having viewed Mr. Richardson's driver's licence at the time of the arrest. The address shown on the

licence was in Hamilton. The documents regarding Mr. Richardson's release following the arrest show that he was required to reside at the same Hamilton address as indicated on his driver's licence.

[82] During another chat session, the log shows WPCanada typing in the word "away", which is used on chat discussions to indicate that a person has stepped out of a session. About one hour later, someone using the name Totenkopf joins the session and writes, "Hey James, wake up." No one responds, so Totenkopf then types in "Okay... then go to sleep". In a subsequent exchange, a participant called TankTCS informs WPCanada that he has "a Nazi shirt for you James". WPCanada responds, "Ok". The same conversation continues at a later point. TankTCS asks, "James, what ones [shirts] do you want?" WPCanada responds, "I want both black."

[83] On September 13, 2001, TankTCS enters the session by writing, "James...how are you?" WPCanada responds by typing that he is fighting with his "woman", and refers to the same first name as that of the woman who was the co-tenant of the London apartment where Mr. Richardson was arrested. WPCanada then goes on to write that he was "just finishing off the Voice", adding that it's a "biggie". The Commission points out that the Vinland Voice article that led to Mr. Richardson's arrest appeared on the Internet the following day, September 14, 2001. That "Editor's Voice" article was signed WPCanada.

[84] There are several other entries on the chat logs where WPCanada is referred to by the other participants as "James".

[85] In another session, WPCanada converses with someone who is using the name "Bones2001", regarding the wpcect.com newsletter. WPCanada tells him that he should "write an article for us", and suggests that if he wants to receive the newsletter by e-mail, he should send a message to cect@wpcect.com, and "I will hook you up".

[86] One of the other chat logs is labelled "Ihatejews". The Commission filed an excerpt from a session that took place around 1:30 AM, on September 14, 2001. A participant in this session explains that he had just read the CECT newsletter that "you" had put out a couple of days earlier and had really appreciated it. WPCanada responds to this comment by saying, "Wait until you see tomorrows [*sic*] [...] a CECT declaration of war against the B'nai Brith, Jews, Muslims". Mr. Warman points out that this reflects the actual content of the Vinland Voice article that was posted on September 14, 2001. As this relay chat was effectively being conducted the night before the publication of the newsletter, Mr. Warman believes that WPCanada's advance knowledge of its content demonstrates that he must have been its author.

[87] Interestingly, amongst the various files found on the computer that was seized in the London apartment was a word processing file entitled "vv5". A copy of the file was produced at the hearing. It consists of the entire text of the September 14, 2001, issue of the Vinland Voice (Newsletter #5) that Mr. Warman and Mr. Wilson had received by e-mail and had viewed on the Vinland Voice website. The computer's records showed that this file had been last modified on September 14, 2001, at 3:45 AM. This supports the inference that Mr. Richardson had been in possession of this edition of the newsletter prior to its distribution, and that he was directly involved in its subsequent communication via the Internet.

[88] The various chat logs record numerous entries by WPCanada that clearly indicate his active involvement with the production of the Vinland Voice newsletter:

- "We have a weekly newsletter called the Vinland Voice";

- "I was finishing the Vinland Voice off";
- "[...]finishing the webpage for the Vinland Voice, a weekly white newspaper that I do";
- "I was just finishing off the homepage for the Vinland Voice".

[89] In reviewing the logs, Mr. Wilson noticed that when persons would join an Internet relay chat, a code was recorded on the log, which contained the name of their Internet service provider (ISP) through which these persons were able to access the Internet. WPCanada's ISP was a firm named Execulink. Mr. Wilson obtained a warrant and seized Execulink's records as they pertained to these relay chat exchanges. When WPCanada joined a chat session on the evening of September 13, 2001, a code from Execulink was recorded on the #wpcanada chat log. Execulink confirmed to Mr. Wilson that this code related to an Internet Protocol address that had been assigned to one of its clients whose user name was Cox88. Their records further showed that the actual name of this client was James Richardson. The contact information that he had provided to Execulink showed his street address as being that of the apartment in London where Mr. Wilson had found and arrested the respondent, Mr. Richardson, on September 28, 2001.

[90] Taking all of these circumstances into account, on the balance of probabilities, I am persuaded that the person using the pseudonym "WPCanada" was in fact the respondent, James Richardson, and that Mr. Richardson was actively involved in the editing and production of the Vinland Voice newsletter. I am also satisfied that, prior to his arrest, Mr. Richardson was the individual behind the articles, editorial comments, and other messages that were placed on the Vinland Voice's website under his pseudonym, WPCanada, or generally as the newsletter's editor. In particular, I am convinced that Mr. Richardson, as editor of the Vinland Voice, posted on the website the account of the Tri-City Skins party that took place in Kitchener. I am also convinced that he wrote the September 14, 2001 article relating to U.S. terrorist attacks, the call for the use of "certain cocktails" against Jewish organizations, and the Surgeon-General's "warning" about Jews.

[91] Interestingly, in the first issue of the Vinland Voice following Mr. Richardson's arrest (dated October 6, 2001), WPCanada no longer appears as the editor of the Vinland Voice. In this edition and the several other editions from December 2001 to January 2002 that were introduced in evidence, the editor's articles are signed "Totenkopf", or on occasion "Alex Krause". As I explain below, I am convinced that these were in fact pseudonyms used by Mr. Kulbashian. In my view, the change in putative authorship that occurred after Mr. Richardson's arrest on September 28, 2001, further establishes that he was involved in the production of the newsletter until that point.

(iii) Link between Mr. Richardson and Mr. Kulbashian

[92] During the course of Mr. Richardson's arrest in the London apartment, he asked to speak to his lawyer by telephone. His hands were already handcuffed but he told Mr. Wilson that the lawyer's number was stored on the speed-dial memory of the phone. Mr. Wilson pressed the indicated button on the phone and put the handset up to Mr. Richardson's ear. As soon as the party at the other end answered, Mr. Richardson shouted into the handset, "Get rid of all the shit!" Mr. Wilson, realizing that Mr. Richardson had misled him into calling someone other than his lawyer, immediately hung up the phone. Some time later, the phone rang. Mr. Wilson answered. The caller asked Mr. Wilson who he was, and then, after using some foul language, the caller hung up.

[93] Mr. Wilson testified that when he returned to his office later that day, he received a call from someone who identified himself as Alex Krause. The caller said that it was he who had telephoned to the London apartment earlier. He stated that he was a member of the Canadian Ethnic Cleansing Team and the Tri-City Skins, and insisted that the criminal case against Mr. Richardson was groundless.

[94] Mr. Richardson's arrest became a principal topic in the October 6, 2001, issue of the Vinland Voice newsletter. In the "Editor's Voice" column, the indicated author of which is "Totenkopf", Mr. Wilson's telephone number was printed and "every supporter" was urged to call him and express disgust at Mr. Richardson's arrest. An additional remark in the column was addressed personally to Mr. Wilson and made reference to his family.

[95] In the apparent belief that the person whom Mr. Richardson had telephoned during his arrest had something to do with the column in question, a colleague of Mr. Wilson's from the London Police Service called the same phone number to complain about the column. Someone named Alex answered, and undertook, after some discussions with the police officer, to remove the article from the newsletter. Mr. Wilson testified that later the same day, the portion of the column relating to him was indeed deleted from the newsletter.

[96] Upon further investigation, Mr. Wilson learned that the phone number Mr. Richardson had called during the arrest was listed in Mr. Kulbashian's name, with an address in the North York area of Toronto. Research into Mr. Kulbashian's past led to information that he had once been arrested on a racially-motivated assault charge. Mr. Wilson contacted Toronto police and acquired his identification photo from the arrest. It showed that at that time, Mr. Kulbashian wore on his arm a tattoo of a swastika encircled with the words "White Power", as well as a tattoo of a skull and crossbones, which Mr. Wilson recognized as a Nazi-era totenkopf or death head.

[97] Mr. Wilson's investigation eventually led him to conclude that "Totenkopf" and "Alex Krause" were pseudonyms for Mr. Kulbashian, and that he had also been involved in the publication of the September 14, 2001, Vinland Voice articles. Mr. Wilson therefore sought and obtained warrants for the arrest of Mr. Kulbashian (on charges similar to those filed against Mr. Richardson) and for the search of his residence at his parents' home in North York. The warrants were executed on January 30, 2002. During the search, t-shirts with logos referring to the Skinhead movement were found in his room, along with several individual business cards. One of the cards was marked "CECT, Totenkopf, Public/Press Relations". A notepad was also seized bearing numerous doodles of swastikas, nooses with the words "hang them high", as well as "Heil Hitler", "niggers", and "Aryan Power". Mr. Kulbashian's first name "Alexan" had also been written, but with the "X" stylized in a form that looked like a slightly misshapen swastika.

[98] Mr. Kulbashian was transported to London Police Service headquarters, where he was interviewed by Mr. Wilson. The interview was recorded on videotape, and a transcript of the interview was later prepared by the secretarial staff of the London Police Service's Crime Division. Excerpts of the transcript were entered into evidence at the hearing. Mr. Wilson testified that it accurately reflects the statements recorded on the videotape. There was no evidence introduced to call into question the accuracy of the transcript. As I have already noted, after the Complainant and the Commission closed their cases, the respondents opted not to lead any evidence.

[99] During the police interview, Mr. Kulbashian explained that Affordable Space.com was his "server", and that he had been operating it for two years prior to the arrest. He described how he had provided space on his server to the Tri-City Skins group and others, including the National Skinhead Front, and the Canadian National Skinhead Front. These groups used the space to operate their web domains, for a fee of \$10 per month. He added that since he was a member of the Canadian Ethnic Cleansing Team, he opted to donate the space for its web domain without charging a fee. The Vinland Voice web site was also hosted on his server.

[100] Mr. Kulbashian told Mr. Wilson that of the 80 web sites that were hosted on his server, about 20 were "racialist" sites. Mr. Kulbashian pointed out that he did not visit or view all of the sites that had opted to use his server, and that Affordable Space.com was not set up to only serve racist sites. It was meant to offer web space at an affordable price. However, he also acknowledged that he would never sell space to groups affiliated with the Anti-Racist Action group. Were he to ever have learned that such an organization had registered space on his server, he would have exercised his power to remove it from the server and refunded the fee.

[101] Interestingly, in a relay chat conversation that took place on September 6, 2001, which was recorded on the "fdajews" log found on the computer seized in the London apartment, a participant named "fdajews" asked "wpcanada" (Mr. Richardson) how it was that "Alex" was giving "all these people" web space, post office boxes, and so on. Mr. Richardson replied that he "spends a lot of his personal dough on donating web space", adding that "we are the best web hoster in our movement" and that it is through donations and dedication that the service is provided.

[102] Mr. Kulbashian told Mr. Wilson, during the police interview, that he ran his web hosting services through a server computer that was physically located in the United States. He did so in part because it was cheaper and more advantageous from a technical perspective, but also as a means to avoid the reach of the *Canadian Human Rights Act*. He explained that he was familiar with a decision of the Tribunal that had resulted in the closure of a Canadian server. He therefore "figured" that by "plugging the server in the States", he would not have to "follow the Canadian law on what I do with my server".

[103] Mr. Kulbashian also explained during his police interview that he had designed the template for the Canadian Ethnic Cleansing Team website (wpcect.com). For this reason, his logo, which consisted of a "death head" skull and crossbones together with the word "Totenkopf" underneath, could be seen on the left side of the website's pages. As for the written material that was posted on the site and the Vinland Voice newsletter, he acknowledged that he was the author of any material signed "Alex Krause", and at least a portion of what had been signed "Totenkopf". All email messages sent to the address totenkopf @wpcect.com were redirected to him.

[104] It is worth noting that on the home page of vinlandvoice.com, the website where the newsletters can be viewed, there is a message thanking "Totenkopf our webmaster" amongst others, for "helping us out" and for his "continuing support".

[105] In the end, the Crown prosecutor apparently decided to withdraw the criminal charges against Mr. Richardson and Mr. Kulbashian before going to trial. According to Mr. Wilson, the Crown concluded that there was no reasonable expectation of conviction on the charges laid against them.

(iv) Print media articles about Mr. Richardson and Mr. Kulbashian

[106] Articles from several south-western Ontario newspapers and magazines were entered into evidence. One of them was published in the September 20, 2001, edition of *The Kitchener-Waterloo Record*, and was written by journalist Brian Caldwell. He reported on his interview of two "white supremacists" named James Scott, 27, and Alex Krause, 20. By comparison, at the time of the article's publication, Mr. Richardson was 27 years old and Mr. Kulbashian was two months shy of his 20th birthday, based on their dates of birth as they appear on the exhibits relating to their arrests.

[107] On October 3, 2001, the same journalist wrote an article in the *The Record* outlining the details surrounding Mr. Richardson's arrest. The reporter also gave an account of his interview with Alex Krause, of Toronto, who claimed that he and Mr. Richardson were the only "formal" members of the Canadian Ethnic Cleansing Team, which they created as an "information network for white supremacists around the country".

[108] The September 20, 2001, interview with Brian Caldwell became a topic of discussion on the chat logs that were found on the computer seized in the London apartment. On the #wpcanada log, Mr. Richardson (a.k.a. WPCanada) can be seen telling another participant that Brian Caldwell had called his mother's house looking to interview him. He later writes that "Alex" and he did a 45 minute interview with the reporter.

[109] In another article, published in the November 29, 2001, issue of *Now Magazine*, based in Toronto, someone using the name Alex Krause was interviewed. The article's headline was "Skinheads on the March - Attacks in Kitchener have Anti-racists Worried". Krause was described in the story as a member who "runs the server" that the "Tri-City Skins et al. use to run their web sites".

[110] While I am mindful that reports by journalists of others' statements should be treated with a fair degree of circumspection, I am also aware of the Tribunal's authority under s. 50(3) to accept evidence, irrespective of whether it would be admissible in a court of law. This is a principle that would also apply, incidentally, to the admissions and declarations against interest made by Mr. Kulbashian in the police interview transcript. The connection between the information found in the media stories on the one hand, and the chat relay logs on the other, lends further support to the contention that Mr. Richardson and Mr. Kulbashian were closely involved with the websites through which the Hate Messages were communicated.

(v) The Tribunal's findings regarding Mr. Richardson and Mr. Kulbashian

[111] Taking all of the evidence into account, I have made the following findings with respect to Mr. Richardson and Mr. Kulbashian and their level of involvement with the Hate Messages:

- Mr. Richardson and Mr. Kulbashian were members of the Canadian Ethnic Cleansing Team;
- Mr. Kulbashian operated a firm, under the name Affordable Space.com, which provided web hosting services for websites that included tri-cityskins.com, wpcect.com, and vinlandvoice.com;
- Mr. Richardson and Mr. Kulbashian contributed to the content posted on the Canadian Ethnic Cleansing Team's website, namely its Vinland Voice newsletter, under the pseudonyms WPCanada and James Scott (Mr. Richardson), as well as Totenkopf and Alex Krause (Mr. Kulbashian);

- Mr. Richardson was the author of the September 14, 2001, article relating to the September 11, 2001, terrorist attacks, which is one of the communications that I have found to comprise the Hate Messages. It is evident from the chat relay logs that he drafted the text of the article and posted it on the website;
- Mr. Richardson, in his capacity as editor of the Vinland Voice up until his arrest on September 28, 2001, posted the editorial comments found in the newsletter that I have determined to form part of the Hate Messages in this case;
- Mr. Kulbashian (under the pseudonyms "Totenkopf" and "Alex Krause") assumed the functions of editor and contributor to the Editor's Voice and other editorial comments in the Vinland Voice, following Mr. Richardson's arrest. Mr. Kulbashian, in this capacity, authored the material communicated in Newsletter #12 (December 12, 2001) that I have determined to form part of the Hate Messages in this case.
- There is insufficient evidence to indicate that either Mr. Richardson or Mr. Kulbashian were involved in drafting or otherwise contributing to any of the material posted on the tri-cityskins.com website.
- However, Mr. Kulbashian was aware that persons or groups of persons acting in concert were using his web services to communicate messages that contravened s. 13 of the *Act*, which included the material posted on the tri-cityskins.com website. One quarter of the websites that Mr. Kulbashian hosted on his server were, as he acknowledged, "racialist" in nature. Mr. Kulbashian admitted during the taped police interview that he intentionally used a server that was physically situated in the United States in a deliberate effort to avoid being subject to the *Canadian Human Rights Act*.
- According to s. 13(3) of the *Act*, an owner or operator of a telecommunication undertaking through which hate messages are communicated, is not in breach of the *Act* by reason only that its facilities were used by other persons for the transmission of the material. Mr. Kulbashian cannot benefit from this exemption. Aside from the fact that I find he was actively involved in the preparation of the content placed on the Canadian Ethnic Cleansing Team's Internet newsletter, the evidence is that he encouraged other groups, which he himself described as "racialist", to use his services. I am convinced that he knew exactly the kind of material that these organizations would have been posting on the Internet, including the portions of the Hate Messages that were found on the tri-cityskins.com website hosted by his firm, Affordable Space.com. It appears that he even allowed these websites to share Affordable Space.com's post office box. Mr. Kulbashian cannot therefore claim that the Hate Messages were communicated over his server "by reason only" that he happened to be its owner. On the contrary, he fostered and encouraged the use of his computer server for the communication of the Hate Messages by these groups.

[112] I therefore find that Mr. Kulbashian and Mr. Richardson, individually and in concert, communicated or caused to be communicated repeatedly through the Internet, matter that is likely to expose persons to hatred or contempt based on their religion, race, or ethnic/national origin. Mr. Warman's s. 13 complaint against Mr. Kulbashian and Mr. Richardson has been substantiated.

[113] In their cross-examinations of Commission witnesses, Mr. Kulbashian and Mr. Richardson occasionally suggested that they had been wrongly accused and that in fact, other individuals had been involved in building and maintaining these websites. Neither of them, however, opted to lead any evidence to support these suggestions.

[114] The ultimate burden obviously rests on the complainant and the Commission to establish their case, on a balance of probabilities. But where the *prima facie* case has been made out, it is incumbent upon a respondent to provide a reasonable explanation demonstrating that the alleged discrimination did not occur as alleged or that the conduct was somehow non-discriminatory.

[115] From my earlier discussion on the evidence, it is clear that a *prima facie* case has been established against Mr. Kulbashian and Mr. Richardson. Did they put forth a reasonable explanation? Both gentlemen indicated at the outset of the hearing that they looked forward to presenting their versions of the facts when their turn would come up. But when this opportunity finally arrived, they chose not to adduce any evidence. The Tribunal cannot take stock of mere hints or innuendos that may have been tossed in with their leading questions during their cross-examination of Commission witnesses, if there is ultimately no evidence introduced to sustain these assertions. This is not a reasonable explanation.

E. Question 5 - Has the complaint been substantiated against the other named respondents ("Affordable Space.com", "Canadian Ethnic Cleansing Team (CECT)" and "Tri-City Skins.com")?

(i) Affordable Space.com

[116] I have already determined that Mr. Kulbashian operated a firm under the name "Affordable Space.com", which provided web hosting services for websites that included tri-cityskins.com, wpcect.com, and vinlandvoice.com. It is not clear from the evidence whether Mr. Kulbashian operated this business as a sole proprietorship, a corporation, or in some other manner, but there was some indication that after his arrest, Mr. Kulbashian transferred Affordable Space.com's operations to a third party. Irrespective of the precise legal form of the business, however, I am prepared to find that it was a "person" within the meaning of s. 13 of the *Act*, capable of engaging in the discriminatory conduct contemplated therein.

[117] Affordable Space.com did not formally appear at the hearing, but did it have sufficient notice of these proceedings? The evidence, which ranges from Mr. Kulbashian's résumé and his declaration during the police interview, to his involvement on the film festival website, makes it obvious that he was the principal - if not the sole - operator of Affordable Space.com. Mr. Kulbashian did not present any evidence to demonstrate that his role within the business was somehow different from the picture drawn by the Commission and the Complainant. Mr. Kulbashian was aware of the complaint filed against Affordable Space.com, and considering his key role in this firm, I am satisfied that Affordable Space.com had sufficient notice of these proceedings.

[118] Given that Affordable Space.com provided the web services that enabled the Hate Messages to be disseminated over the Internet, it is my finding that Affordable Space.com caused the Hate Messages to be communicated, within the meaning of s. 13 of the *Act*.

[119] Furthermore, I do not believe that Affordable Space.com operated a communication undertaking that could benefit from the exception of s. 13(3). Considering Mr. Kulbashian's major role in Affordable Space.com's operations, and how he actively involved himself in and encouraged the communication of the Hate Messages over its server, Affordable Space.com cannot claim that the messages were

communicated "by reason only" that its facilities were used by others. The complaint against Affordable Space.com has been substantiated.

(ii) The Canadian Ethnic Cleansing Team

[120] I am satisfied on the evidence presented that an organization existed at the time of Mr. Warman's complaint called the Canadian Ethnic Cleansing Team. The wpcect.com and vinlandvoice.com web pages alluded to the existence of the group. Mr. Kulbashian acknowledged during his police interview that he was involved with the group, as did Mr. Richardson in the chat relay logs.

[121] Just as in the case of Affordable Space.com, there is no evidence before me that this group of persons has any formal legal existence. But, as the Tribunal pointed out in *Nealy, supra*, this changes little. A group of people accepting a common political and social agenda who see themselves as part of an institution or movement may constitute a "group of persons working in concert", for the purposes of s. 13. I find this definition applicable to the Canadian Ethnic Cleansing Team.

[122] Although the Canadian Ethnic Cleansing Team did not formally appear at the hearing, did it have sufficient notice of these proceedings? Mr. Kulbashian and Mr. Richardson were primary members of the Canadian Ethnic Cleansing Team, as the police interview, the chat log discussions, and the business cards seized during their arrests would bear out.

[123] As co-respondents to the complaint, Mr. Kulbashian and Mr. Richardson were of course personally aware of the complaint against the Canadian Ethnic Cleansing Team. I am therefore satisfied that the Canadian Ethnic Cleansing Team was given sufficient notice of these proceedings.

[124] A substantial portion of the Hate Messages was posted on the Canadian Ethnic Cleansing Team's websites (wpcect.com and vinlandvoice.com). Consequently, I find that the Canadian Ethnic Cleansing Team engaged in a discriminatory practice by communicating or causing these messages to be communicated repeatedly over the Internet. The complaint against the Canadian Ethnic Cleansing Team has been substantiated.

(iii) Tri-city Skins.com

[125] I have no evidence before me to indicate that "Tri-city Skins.com" - or more accurately "tri-cityskins.com" - was anything more than a domain name of a website. It was allegedly used by the Tri-City Skins, which according to Mr. Warman and Mr. Wilson, was a group of persons based in southern Ontario. However, the Tri-City Skins group was not named as a respondent, and I have no evidence regarding its structure.

[126] The situation with respect to tri-cityskins.com differs from that of Affordable Space.com. Despite the presence of ".com" in its name, the evidence is that Affordable Space.com is the name of a business operated by Mr. Kulbashian. In contrast, based on the evidence before me, tri-cityskins.com is just the name of a website.

[127] The Commission appeared to argue in its final submissions that since the website's name is similar enough to the group's, the Tribunal should make a finding against the Tri-City Skins. I do not agree. It would be unfair and inappropriate for a Tribunal to issue decisions against groups or persons who have not been named as respondents in a complaint. A web domain was named as the respondent. Only a "person" or "group of persons acting in concert" can be found to have discriminated under s. 13. In my view, a

web domain is not a person or group of persons acting in concert, within the meaning of this provision.

[128] Even if I were to accept the Commission's proposition that the designation in the complaint of "Tri-CitySkins.com" enables me to make findings against the Tri-City Skins, my decision would still not change. There is no indication that the Tri-City Skins group was ever given notice of these proceedings even in the guise of Tri-City Skins.com. Pursuant to the information provided by the Commission, the Tribunal sent correspondence intended for Tri-City Skins.com, including the notices of hearing, to Mr. Richardson and Mr. Kulbashian. The notices were returned by the post office. In Mr. Richardson's case, the envelope was simply marked "unclaimed". Mr. Kulbashian's envelope came back with the notation "refused - return to sender". Neither one accepted service on behalf of the group or acknowledged that he was in a position to do so.

[129] Mr. Richardson admitted to being a member of the Tri-City Skins during his final arguments at the hearing, but I have no evidence of any further involvement, particularly regarding the tri-cityskins.com website. The only evidence linking Mr. Kulbashian to the group is a newspaper report and Mr. Wilson's recollection in his testimony of a comment made by Mr. Kulbashian during an initial telephone conversation, prior to his arrest. While it is true that Tri-Cityskins.com's postal address was the same as that of Mr. Kulbashian's firm, Affordable Space.com, the evidence from the chat log discussions and the police interview indicate that Mr. Kulbashian was allowing his other "racialist" clients to use his post office box as well.

[130] I do not find this evidence sufficient to establish a link between Mr. Kulbashian and the Tri-City Skins group, other than as a simple member like Mr. Richardson, at most. In these circumstances, I do not think that notification of mere members of a group can be construed as official notice to the group. Thus, while Mr. Richardson's and Mr. Kulbashian's presence at the pre-hearing case management conferences and at the hearings themselves makes it clear that they acquired sufficient notice of the proceedings against them personally, I cannot subsume this knowledge with that of the Tri-City Skins.

[131] For me to accept the Commission's proposition, it would mean that the Tri-City Skins would be designated as a party to the complaint at the final stages of the inquiry, after all of the evidence has been adduced. This would be unfair and a breach of natural justice.

[132] For all these reasons, the complaint against the respondent, "Tri-city Skins.com" is not substantiated.

IV. REMEDIES

[133] The Commission and Mr. Warman request that the Tribunal issue several orders pursuant to s. 54 (1) of the *Act*.

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

[134] 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.

[135] Accordingly, I order Mr. Kulbashian and Mr. Richardson, as well as Affordable Space.com and the Canadian Ethnic Cleansing Team, to cease and desist from communicating or causing to be communicated, by the means described in s. 13 of the *Act*, namely the Internet, any matter of the type contained in the Hate Messages that is

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. An order for special compensation (s. 54(1)(b))

[136] Section 54(1)(b) provides that where a victim is specifically identified in the communication that constituted the discriminatory practice, the Tribunal may order the payment of special compensation to the victim, of a sum that is not to exceed \$20,000, if the Tribunal determines that the respondent engaged in the discriminatory practice wilfully or recklessly. The Complainant is seeking this special compensation in the amount of \$10,000, from Mr. Kulbashian and the Canadian Ethnic Cleansing Team.

[137] The Complainant was specifically named in the Vinland Voice newsletter no. 12, of December 10, 2001. I have already determined that the author of the article in question was Mr. Kulbashian. The article posted Mr. Warman's home address and gave thanks to "that Jewish lawyer". Mr. Warman is apparently not Jewish but the author obviously perceived him as such. The article went on to make cruel remarks about Holocaust victims, including those that the author assumed were Mr. Warman's relatives.

[138] The attack was very personal and Mr. Warman testified that he felt some concern, considering the reference to the murder of Holocaust victims and the posting of his home address in the newsletter. He interpreted the allusion to the death of Jews in the past, as a direct threat to his own personal safety. In my view, and in keeping with my earlier findings regarding the Vinland Voice Newsletter no. 12, this attack was likely to expose him to hatred or contempt on the basis of being identifiable on a prohibited ground of discrimination. It does not matter whether Mr. Warman was in fact Jewish or not. A person who is perceived to have the characteristics of someone who falls within one of the prohibited grounds of discrimination, may be the object of discrimination even though he does not actually have those characteristics (*School District No. 44 (North Vancouver) v. Jubran*, 2005 BCCA 201 at para. 41, leave to appeal to S.C.C. refused; see also *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Montreal (City)*, [2000] 1 S.C.R. 665). Taken in this context, Mr. Warman is in my view, a victim of the Hate Messages that constituted of the discriminatory practice.

[139] These statements were unquestionably wilful attacks against Mr. Warman, but I note that this was the only instance where he was specifically identified in any of the Hate Messages. Having regard to all of the circumstances, I order Mr. Kulbashian to pay Mr. Warman the sum of \$5,000 as special compensation pursuant to s. 54(1)(b) of the *Act*.

[140] As for the relief sought against the Canadian Ethnic Cleansing Team, I have already found that it was responsible for the publication of the Vinland Voice Newsletter, which contained the attack against Mr. Warman. However, in the joint Statement of Particulars filed by the Commission and the Complainant in advance of the hearing, special compensation pursuant to s. 54(1)(b) was not included in the list of remedies being sought against the Canadian Ethnic Cleansing Team. This remedial claim was introduced for the first time during final submissions. Given the tardiness of the claim, in my view, it would be inappropriate to issue an order for special compensation against this respondent.

C. Interest

[141] Mr. Kulbashian is ordered to pay simple interest on the award of special compensation calculated on a yearly basis at the Bank Rate (monthly series) established

by the Bank of Canada. The interest shall run from the date of the complaint until the date of payment.

D. Penalty

[142] 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, pursuant to s. 54(1)(c). 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 that he has engaged in, and his ability to pay the penalty.

The Commission has requested that the maximum penalty be imposed against each of the respondents.

(i) Mr. Kulbashian

[143] The Commission and Mr. Warman did not establish that Mr. Kulbashian was involved in the drafting or editing of any of the Hate Message material found on the tricityskins.com website. For that matter, it was not proven that he contributed any of the Hate Messages that were found on the wpcect.com website or in the Vinland Voice newsletter, prior to Mr. Richardson's arrest. I have found, however, that Mr. Kulbashian contributed to the newsletter's content thereafter by drafting several messages, including the message that was directed against Mr. Warman personally.

[144] On the other hand, all of the Hate Messages (including those on the tricityskins.com website) were caused to be communicated via the Internet through Mr. Kulbashian's direct involvement, as the provider of web hosting and related technical services. While his participation did not include drafting the many of the Hate Messages, I am persuaded that he caused all the Hate Messages to be communicated, and that he did so wilfully.

[145] Mr. Kulbashian argued that his penalty should be reduced on account of his conduct, once informed of the nature of the material being posted. Thus, when Mr. Wilson's fellow police officer called Mr. Kulbashian to complain about the newsletter article that had named Mr. Wilson personally, Mr. Kulbashian had the reference removed from the website within hours. In general, Mr. Kulbashian takes issue with the fact that Mr. Wilson, Mr. Warman, and the Commission did not notify him of any objectionable material having been found on the website, before going ahead and laying criminal charges against him or filing the human rights complaint, as the case may be. Mr. Kulbashian contends that he was too busy to keep track of the material being posted on the Internet through his web server. He claims that if a notice of complaint had been made to him about the Hate Messages, he would have had the material taken off the Internet as promptly as the Vinland Voice article about Mr. Wilson.

[146] This argument, however, assumes a false naiveté on Mr. Kulbashian's part. He knew that a good number of "clients" were "racialist". They shared the same post office box as his business, Affordable Space.com. He was a key member of the Canadian Ethnic Cleansing Team. He acknowledged having designed the template for its website, wpcect.com. Moreover, Mr. Kulbashian wrote articles and commentary in its newsletter, the Vinland Voice. The name alone of this group should have alerted him to the possibility that the messages on the website may violate the *Act*. In addition, as a regular member of the Tri-City Skins, he likely was familiar with the organization's website.

Indeed, he was so mindful of the likelihood of his clients' posting hateful messages that one of the reasons he opted to use a computer server situated outside Canada was to evade s. 13 of the *Act*.

[147] It lacks credulity, therefore, for Mr. Kulbashian to come today before the Tribunal and feign ignorance of the nature of the material that was being communicated by way of his web hosting services. On the contrary, the above demonstrates that he was aware of the content of the material, and consciously and deliberately enabled its dissemination. This is wilful conduct within the meaning of the *Act*.

[148] With respect to the existence of prior discriminatory practices, while there was some mention in the evidence of a prior arrest for assault that was allegedly "hate" related, I have insufficient information from which to draw any conclusions.

[149] The Commission did not lead any evidence regarding Mr. Kulbashian's ability to pay the penalty. The Tribunal in *Warman v. Kyburz, supra*, seemed to accept the proposition that the burden may rest on a respondent to demonstrate his ability to pay the penalty. In that case, however, the Tribunal took into account evidence that was unsworn and untested by cross-examination. Indeed, s. 50(3) of the *Act* authorizes the Tribunal to accept any evidence and other information, whether on oath or otherwise, that it sees fit, whether or not that evidence or information would be admissible in a court of law. In the present case, although Mr. Kulbashian did not testify, in the course of the hearing process, it emerged that he is a college student in his mid-20's who resides at his parents' home. He is raising a young child on his own. While the available information is not conclusive, I believe that Mr. Kulbashian's financial means are fairly limited, and that his ability to pay is accordingly restricted.

[150] Taking all of these factors into account, I order Mr. Kulbashian to pay a penalty in the amount of \$1,000. Payment of the penalty shall be made by certified cheque or money order payable to the "Receiver General for Canada", and must be received by the Tribunal within 120 days of Mr. Kulbashian's being notified of this decision.

(ii) Mr. Richardson

[151] There is no evidence of any involvement by Mr. Richardson with respect to the tricityskins.com website. I have, however, determined that, up until his arrest, he was directly involved in the drafting, editing, and posting of the Hate Messages in the Canadian Ethnic Cleansing Team's newsletter. The communication of these Hate Messages was obviously wilful. There is no evidence before me of any prior discriminatory practices by him.

[152] No evidence was formally adduced with respect to Mr. Richardson's ability to pay a penalty but based on information that was gleaned during the hearing process, I am persuaded that he is a person of very modest financial means. He indicated that he is on a "fixed income" due to an undisclosed disability. When the Tribunal considered conducting a portion of the hearing in Ottawa, Mr. Richardson made it clear that he lacked the resources to pay for his travel and accommodations. He required the assistance of a parent for transportation from the family's home in Hamilton to the hearing in Oakville. Having regard to all of the circumstances, I order Mr. Richardson to pay a penalty of \$1,000. Payment of the penalty shall be made by certified cheque or money order payable to the "Receiver General for Canada", and must be received by the Tribunal within 120 days of Mr. Richardson's being notified of this decision.

(iii) The Canadian Ethnic Cleansing Team

[153] Although the Hate Messages posted on the Canadian Ethnic Cleansing Team's websites were, in my view, somewhat less severe than those found on tri-cityskins.com, the messages exposed persons to hatred and contempt, just the same. These messages were deliberately placed on the Internet, a method that allowed them to be communicated to as large an audience as possible.

[154] I have no evidence of whether the group of persons known as the Canadian Ethnic Cleansing Team has ever engaged in any discriminatory practices in the past nor do I have any evidence of its ability to pay. In all of the circumstances, I order the Canadian Ethnic Cleansing Team to pay a penalty of \$3,000. Payment of the penalty shall be made by certified cheque or money order payable to the "Receiver General for Canada". The Canadian Ethnic Cleansing Team did not formally appear at the hearing, although I have determined that Mr. Kulbashian and Mr. Richardson were key members of this group. I therefore order that the penalty must be received by the Tribunal within 120 days of the date when either Mr. Kulbashian or Mr. Richardson receives this decision, whichever is earlier.

(iv) Affordable Space.com

[155] Inasmuch as Affordable Space.com was the business through which Mr. Kulbashian provided his web hosting services to the websites that carried the Hate Messages, it is in contravention of the *Act* to the same extent as Mr. Kulbashian. Thus, I am prepared to impute the wilfulness of Mr. Kulbashian's conduct to that of the business through which he operated. I do not know what Affordable Space.com's ability to pay a penalty may be, nor am I aware of any prior discriminatory practices in which the firm may have been engaged.

[156] Having regard to all of these circumstances, I order Affordable Space.com to pay a penalty of \$3,000. Payment of the penalty shall be made by certified cheque or money order payable to the "Receiver General for Canada". I order that the penalty must be received by the Tribunal within 120 days of the date when Mr. Kulbashian receives this decision.

"Signed by"

Athanasios D. Hadjis

OTTAWA, Ontario

March 10, 2006

PARTIES OF RECORD

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| TRIBUNAL FILE: | T869/11903 |
| STYLE OF CAUSE: | Richard Warman v. Alexan Kulbashian, James Scott Richardson, Tri-City Skins.com, Canadian Ethnic Cleansing Team and Affordable Space.com |

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| DATE AND PLACE OF HEARING: | August 31, September 1, 2 and 3, 2004 November 8, 9, 10, 11 and 12, 2004 November 15, 16 and 17, 2004 February 23, 24 and 25, 2005 Oakville, Ontario |
| DECISION OF THE TRIBUNAL DATED: | March 10, 2006 |
| APPEARANCES: | |
| Richard Warman | On his own behalf |
| Monette Maillet/ Valerie Phillips | For the Canadian Human Rights Commission |
| Alexan Kulbashian Vahe Kulbashian | On his own behalf For the Respondent (Alexan Kulbashian) |
| James Scott Richardson | On his own behalf |