

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

RICHARD WARMAN

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

BOBBY WILKINSON

Respondent

REASONS FOR DECISION

MEMBER: Athanasios D. Hadjis 2007 CHRT 27
2007/07/10

I. INTRODUCTION 1

A. The Respondents failed to appear at the hearing 1

B. Section 13 of the Act 3

C. What is the material that Mr. Warman alleges constitutes hate messages within the meaning of s. 13 of the Act? 4

(i) What is the material that was posted by Rocket440? 4

a) September 30, 2003 - Name of discussion: The People's Voice 4

b) October 1, 2003 - Name of discussion: America's media controlled by Jews 7

c) October 20, 2003 - Name of discussion: Heil Hitler 8

d) November 17, 2003 - Name of discussion: Alberta's need for a strong Nazi party 8

e) November 24, 2003 - Name of discussion: Join the National Nazi Socialist Movement 9

f) December 12, 2003 - Name of discussion: Ah Bliss 10

(ii) What is the material that was posted by persons using monikers other than Rocket440? 11

(iii) Is the material likely to expose members of the targeted groups to hatred or contempt, within the meaning of s. 13(1)? 11

D. Were the impugned messages communicated repeatedly? 15

E. Does the evidence establish that the Respondent Bobby Wilkinson communicated or caused to be communicated the impugned messages on the Internet? 15

F. Has a case of discrimination been established against the "Canadian Nazi Party"? 20

G. Remedies 23

(i) An order that the discriminatory practice cease (s. 54(1)(a)) 23

(ii) Penalty (s. 54(1)(c)) 23

I. INTRODUCTION

[1] The Complainant, Richard Warman, alleges in his complaint that the Respondents, Bobby Wilkinson and the Canadian Nazi Party ("CNP"), engaged in a discriminatory practice, within the meaning of s. 13 of the *Canadian Human Rights Act*, by communicating repeatedly hate messages through an Internet website. The discrimination is alleged to have been based on disability, religion, race, colour, sexual orientation, and national or ethnic origin. Mr. Warman claims that the messages communicated matter that would likely expose "mentally disabled persons, Jews, Hispanics, blacks, gays and lesbians, Roma (a.k.a. gypsies), Pakistanis, Arabs, Chinese, and Japanese, to hatred and/or contempt".

A. The Respondents failed to appear at the hearing

[2] At the opening of the hearing, which was conducted at the Tribunal's offices in Ottawa, the Tribunal called for appearances. Mr. Warman was present as was the lawyer representing the Canadian Human Rights Commission. The Tribunal asked if the Respondents were in the hearing room. There was no response. The Tribunal's registry officer stepped outside of the hearing room into the waiting area and again asked if the Respondents were present. There was no response.

[3] The Tribunal then adjourned for 15 minutes. During the break, the staff at the Tribunal's reception desk confirmed to the registry officer that no one had telephoned in on behalf of the Respondents. When the hearing reconvened, there was still no sign of the Respondents or their representatives.

[4] The Tribunal Registry's record of activity in this case demonstrates that the Respondents were made aware of these proceedings or reasonably ought to have been aware of them. When the Commission notified the Tribunal of its decision to refer Mr. Warman's complaint for hearing, it enclosed with its letter a copy of the complaint together with a form completed by the Commission entitled "Summary of Complaint". This form indicated the same address for both Mr. Wilkinson and the CNP. The Commission subsequently informed the Tribunal that the original address given was incorrect (for reasons that I explain later in this decision), and on June 6, 2006, provided the Tribunal with Mr. Wilkinson's new address.

[5] It is the Tribunal's practice, following the referral of a complaint, to send a number of letters to the parties. In the present case, the first letter, which was mailed on July 7, 2006, asked the parties if they were interested in participating in the Tribunal's mediation process. Although the letter was mailed to the updated address, the Tribunal did not receive any response from the Respondents. The Tribunal, therefore, followed up with a second letter on July 31, 2006. This letter did not elicit a response either. Consequently, the Tribunal retained a process server to serve both letters. In the process server's Affidavit of Attempted Service, which was produced as an exhibit at the hearing, the process server stated that between August 29 and September 12, 2006, he made five attempts to personally serve at Mr. Wilkinson's home over several days at varying times. On each occasion, the process server found no one at home. The documents could therefore not be served. During one of these visits, a neighbour confirmed to the process server that Mr. Wilkinson resided at that address.

[6] The Tribunal retained a process server to serve a subsequent letter, dated November 23, 2006, inviting Mr. Wilkinson to participate in a case conference call with the Tribunal. The process server indicated in his Affidavit of Attempted Service that he made three attempts to serve the letter at Mr. Wilkinson's address but there was no answer at the door. The process server stated that on the third attempt, he spoke to a neighbour who confirmed that he had just spoken to Mr. Wilkinson and that he was still in his home. The neighbour described Mr. Wilkinson's car and it matched the description of the car parked in the front yard of the home. The process server knocked on the door and identified himself. He announced that he had papers to deliver from the Canadian Human Rights Tribunal. He could hear someone inside the home telling a dog to be quiet. The process server then placed the documents in a sealed envelope and taped it to the front door.

[7] Subsequent affidavits from the process server indicate that there was no answer at the door when he made several attempts to serve a letter summarizing the case conference call as well as another letter containing the Notice of Hearing, which indicated the date, time and location of the hearing. Both letters were therefore placed in sealed envelopes and taped to the front door of the dwelling.

[8] Given this information, and the fact that the Respondents or their representatives failed to present themselves at the opening of the case, I decided to proceed with the hearing in their absence. They did not appear at any time during the course of the one-day hearing, nor did they notify or contact the Tribunal Registry following the hearing.

[9] The Respondents have not provided the Tribunal with any submissions or other documents. The recitation of the facts in this decision is therefore based solely on the evidence adduced by the Commission and Mr. Warman.

B. Section 13 of the Act

[10] In order to substantiate a complaint of discrimination under s. 13(1), it must be established that:

a person or group of persons acting in concert
communicated telephonically or caused to be so communicated, repeatedly, in whole or in part
by means of the facilities of a telecommunication undertaking within the legislative
authority of Parliament,

any matter that is likely to expose a person or persons to hatred or contempt by reason of the fact that that person or those persons are identifiable on the basis of a prohibited ground of discrimination.

[11] Section 13(2) specifies that s. 13(1) applies to matter that is communicated by means of the Internet.

C. What is the material that Mr. Warman alleges constitutes hate messages within the meaning of s. 13 of the Act?

[12] Mr. Warman states in his complaint that the alleged hate messages were found on a message board (or "forum") that he claims forms part of the CNP's website. I will be referring to this message board as the "CNP Forum". The Internet address of the CNP's website is said to be "pub68.ezboard.com/bcanadiannaziparty". The Commission and Mr. Warman allege that Mr. Wilkinson administered and maintained the website, including the CNP Forum, and that he was also personally responsible for some of the impugned postings thereon.

[13] The alleged hate messages can be divided into two categories. The first consists of material that has been posted on the CNP Forum by someone using the moniker "Rocket440", and the second consists of material that has been posted by person(s) using other monikers. As I explain later in this decision, the evidence establishes that the postings by Rocket440 were in fact made by the Respondent Bobby Wilkinson, and that Mr. Wilkinson administered the CNP website (i.e. "pub68.ezboard.com/bcanadiannaziparty"), including its message board, the CNP Forum.

(i) What is the material that was posted by Rocket440?

[14] The following material was posted by Rocket440 on the CNP Forum. Postings on the CNP Forum were organized under a number of discussion groupings. I have therefore indicated the date of the posting and the name of the discussion under which the posting was made.

a) September 30, 2003 - Name of discussion: The People's Voice

[15] On September 30, 2003, Rocket440 made four postings within five minutes of each other. These postings did not form part of a conversation with other people who were also posting messages, as is a common practice on message boards. Instead, each posting appears to have been made up of a large number of email messages that were sent by numerous persons to some unnamed individual. The email messages were grouped within Rocket440's four postings according to year - 1997, 1999, 2001, and 2002-2003. Certain comments were inserted between the email messages, the content of which would suggest that all of this material had been previously posted on some other website. It appears that Rocket440 had copied this material from the other website and posted it on the CNP Forum.

[16] A total of 49 pages (single-spaced) of these postings were filed by Mr. Warman. The general theme of this material is fairly consistent. I have included a number of excerpts from the passages highlighted by Mr. Warman during his testimony. There are numerous grammatical and typographical errors in the postings, which I have opted not to remove or correct:

You MORON! I can tell you this much, you buttfucking jewlover, you'll burn in hell. By protecting the jewish scum, that we know Our Lord Jesus Christ hated so much, you act like the devil himself. You know as well as I do that no one was "gassed" in Auschwitz, and most of the LIE they call "Holocaust" is just that, a lie.

Here in America, we have Niggers who don't want to get a fucking job, their lazy black asses do nothing but collect social security, welfare, and food stamp! We put those monkeys in fucking houses, we pay for their fucking bastard kids, we buy their cars! [...] The NIGGERS! Those porch monkeys don't want to fucking work, they just smoke crack, and leech off an already oxidised system. [...] Sure a few kikes fried in Hitlers rule, who says they didn't ask for it? They served a devine perparse in the war, their skin made nice boots, and they help the medical field out tremendously! What do the niggers help us do? [...] They drive down the road with fucking jungle bunny music blasting away. They are the scourge of the nation, and yet, nothing is done. You want to kill a nigger? Stop welfare! You want to scare one? Take the bastard to an auction! [...] They are all the time talking about "Free Africa" send those fucking niggers back there, we don't need them! Fuck, send back all the towel heads, kikes, spics, wetbacks send them all in a big boat, then sink the fucking thing! Watch them scurry like rats fighting each other for survival, then shoot each one who just about makes it! [...] You are a trator to your race and your country if you think that the niggers will ever do shit to benefit mankind other than dieing!

Message from the KKK-Colition of USA, Niggers we own you... we owned your grandfathers coons and grandmother coons, and they had your nigger parents and your counsive nigger selfves and therfor I own all you niggers and niggilits so bow down and suck my cock!!! [...] THE CONSTITUTION OF THE "WHITE" UNITED STATES OF AMERICA WERE WROTE BY WHITE MEM FOR WHITE MEN! AND NOT YOU EVIL NIGGERS! SO I DECLARE INDEPENDECE DAY IS THE OPENING DAY FOR NIGGER HUNDING DAY [...]

White Power For ever, kill all niggers, jews and faggots... they all can burn in hell..

Hitler should have finished the job as far as the Jewish race is concerned!!! DEATH TO ALL THE JEWS AND NIGGERS!!!!!!! WHITE POWER!!!!!!! SIEG HEIL!!!!!!!

You are a fucking cock sucking jew and I hope you burn in a nazi jew burning oven with the rest of those inferior jews and niggers.

Niggers are no better than my dog that I kick at night, my dog doesn't get to roam the streets why should any nigger. Niggers should be where they astarted, either on a farm picking cotton or in Africa and trying to do things by themselves.

I pray one day soon that a führer will come and lead our people and rid of all the fucking kikes, niggers, spics, chinks, japs, etc... and our world will be once again "the fatherland".

I strongly urge my government and any other mostly white country to rise up and kill all Arabs, African, Indian asian, or anyother not white person in the world.

Arabs. They are sub-humans who do not deserve to share this planet with us.

Why can a nigger who isn't qualified for a job get it just because he's black; that's discrimination to the white man. The only faith I have left in this country is that the KKK and White Power grops all across the nation will fix this terrible mess with genocide.

b) October 1, 2003 - Name of discussion: America's media controlled by Jews

[17] On this date, Rocket440 posted a text that ran for almost two full pages single-spaced, under the discussion entitled "America's media controlled by the Jews". The text itself is entitled "Three Jewish Newspapers". I have excerpted a number of sections from this text:

The suppression of competition and the establishment of local monopolies on the dissemination of news and opinion have characterized the rise of Jewish control over

America's newspapers. The resulting policy could hardly be better illustrated than by the examples of the nation's three most prestigious and influential newspapers: the New York Times, the Wall Street Journal, and the Washington Post. [...] They are the ones that decide what is news and what isn't, at the national and international levels. They originate the news; the others merely copy it. And all three newspapers are in Jewish hands.

[...]

The New York Times was founded in 1851 by two Gentiles [...]. After their deaths, it was purchased in 1896 [...] by a wealthy Jewish publisher, Adolph Ochs. His great-great-grandson, Arthur Sulzberger, Jr., is the paper's current publisher and the chairman of the New York Times Co. The executive director is Joseph Lelyveld, also a Jew (he is a rabbi's son).

[...]

The Washington Post, like the New York Times, had a non-Jewish origin. [...]

It was [later] purchased at a bankruptcy auction by Eugene Mayer, a Jewish financier and former partner of the infamous Bernard Baruch, industry czar in America during the First World War.

The Washington Post is now run by Katherine Meyer Graham, Eugene Mayer's daughter.

[...]

The Washington Post Co. has a number of other media holdings in newspapers [...], in television [...], and in magazines, most notably the nation's number-two weekly newsmagazine, Newsweek.

The Wall Street Journal, which sells 1.8 million copies each weekday, is the nation's largest-circulation daily newspaper. It is owned by Dow Jones & Company, Inc., a New York corporation that also publishes 24 other daily newspapers and the weekly financial tabloid Barron's, among other things. The chairman and CEO of Dow Jones is Peter R. Kann, who is a Jew. Kann also holds the posts of chairman and publisher of the Wall Street Journal.

Most of New York's other major newspapers are in no better hands than the New York Times and the Wall Street Journal. In January 1993 the New York Daily News was bought from the estate of the late Jewish media mogul Robert Maxwell (born Ludvik Hoch) by Jewish real-estate developer Mortimer B. Zuckerman. The Village Voice is the personal property of Leonard Stern, the billionaire Jewish owner of the Hartz Mountain pet supply firm. And, as mentioned above, the New York Post is owned by News Corporation under the Jew Peter Chernin.

Forum Administrator

c) October 20, 2003 - Name of discussion: Heil Hitler

[18] On this date, Rocket440 posted a reply to another participant on the CNP Forum, who had adopted "Fuhrer" as his moniker. Fuhrer's initial posting on a discussion that he had entitled "Heil Hitler" was:

I am High school student who believes in Nazism, and has Adolph Hitler as his Hero.

The first posting following this entry on the forum was made by Rocket440, who simply said "great". Mr. Warman filed in evidence a whole series of subsequent postings in this discussion attributed to different monikers, but there is no evidence that any of these entries were made by Rocket440.

d) November 17, 2003 - Name of discussion: Alberta's need for a strong Nazi party

[19] On this date, Rocket440 made a posting in a discussion that another participant in the CNP Forum had opened, entitled "Alberta's need for a strong Nazi party". He wrote the following:

Niggers are becoming a household object...but no matter what, parents will always cringe when their sons/daughters bring home a Nigger.

Why is it it's ok to openly advertise the fact that you love Niggers, but a moral sin to even dare put down a Black.

Forum Administrator/Napkin Monitor

The term "Napkin Monitor" was not explained or defined in the evidence. However, I did receive evidence regarding the functions of a forum administrator, on which I elaborate later in this decision.

e) November 24, 2003 - Name of discussion: Join the National Nazi Socialist Movement

[20] On this date, Rocket440 made what appears to be the initial posting of a new discussion entitled "Join the National Nazi Socialist Movement: Info on Joining the National Nazi Movement". The posting begins with the following paragraphs:

"At a time when only deeds count and words are of little importance"

Adolf Hitler-

In a time when racism is so considered an act of utter atrocity, and the thinkings of narrow minded people, why does the white race allow so much of it to be directed towards us?

It's perfectly acceptable for one Black to call another Black a "Nigger". It's acceptable for Blacks to even have a television station for themselves entitled "Black entertainment television". Who could also forget about "Black History Month", Kwanza, and even the Black Panthers. It has even stretched into sexuality. Gay pride parade, something most of us are familiar with, well why can't we have a straight pride parade? or heterosexual pride parade? The gay community would not stand for it just as the Black community doesn't stand for the KKK, though the Black Panthers are perfectly acceptable.

It's time to take a stand, the last stand. It's time for the 4th coming. Are you not tired of interracial relationships? The white race is being sullied and in a matter of time will completely wiped out. Are you not tired of immigration laws?

Simply being angry will not stop these great annoyances. We must band together as a single nation of Whites, and reclaim what is due as the master race.

We have plans to do it right this time. We will gain power through numbers, and by Government. If we can have members in Government of all states, and Countries there will be no need for war, and even if there is a need no one can declare war on the world. Join us today, and help out in any way you can.

Rocket440 then set out the "prerequisites" for joining the National Nazi Movement as follows:

- at least 17 years of age
- Pure white background
- Supporter of the Nazi, and socialist movement
- Prepared to take action
- Love your race

Please post the following vitals in this forum

- Name

- Age
- Location
- Race
- Email

Thanks goes out to all supporters. Remember you're not supporting this forum, but you're supporting the greater good and your race.

Heil Hitler

Forum Administrator/Napkin Monitor

f) December 12, 2003 - Name of discussion: Ah Bliss

[21] Rocket440's posting on this day was a quick reply to another person's prior posting in the same discussion, which had said:

We need to Elect a Nazi/socialist party, get rid of all the foreigners (niggers, paki's, jews etc...) and restore Canada to a country that is not just sitting idly by and waiting for others to make decisions for us. Canada needs a good kick in the knickers to get itself out of the rut that democracy and equality of peoples has dug us into.

Rocket440's reply was simply:

Couldn't have said it better myself!

Forum administrator/Napkin Monitor.

(ii) What is the material that was posted by persons using monikers other than Rocket440?

[22] Mr. Warman highlighted a number of other excerpts from the pages that he viewed and printed from the CNP Forum, which were written by persons using monikers other than Rocket440. Mr. Warman contends that Mr. Wilkinson, as administrator of the website, is liable under s. 13 of the *Act* for any matter found on the website that offends this provision. Some of these excerpts are as follow:

October 21, 2003 - Posting by "1488 EffeKt 1488" in the discussion entitled "Where do you stand?": "Blacks: it's a known fact they brings [*sic*] crime, they are nothing but trouble. Kill them all I say. Jews: Do I even need to say why? Kill em all I say".

November 5, 2003 - Posting by "fuhrrer" in the discussion entitled "Heil Hitler": "In the dawn of Nordic civilization, lesser races used to cringe in their rude huts and pray, `Lord, save us from the fury of the men of the North!' It was THAT kind of man who built Western civilization. If civilization is now to be saved from the swarms of degenerate Jews, their cannibal accomplices and their unspeakably depraved liberal friends, it will be THAT kind of man who saves it, NEVER sneaks".

(iii) Is the material likely to expose members of the targeted groups to hatred or contempt, within the meaning of s. 13(1)?

[23] To be caught by s. 13(1) of the *Act*, it must be established that the impugned matter 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.

[24] In *Nealy v. Johnson* (1989), 10 C.H.R.R. D/6450, the Canadian Human Rights Tribunal found that the term "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. The Tribunal added that "contempt" suggests looking down upon or treating as inferior the objects of one's feelings. The two terms are not necessarily co-extensive. In some instances, hatred may be the result of envy of superior qualities such as intelligence, wealth and power, which contempt, by definition, cannot be.

[25] The *Nealy* Tribunal 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 of the communication 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.

[26] These findings were later endorsed by the Supreme Court of Canada in *Canada (Human Rights Commission) v. Taylor*, [1990] 3 S.C.R. 892. The Court added that the terms "hatred or contempt" in s. 13(1) refer to unusually strong and deep-felt emotions of detestation, calumny and vilification.

[27] I find that the material presented in this case is likely to expose the targeted groups to hatred or contempt within the meaning of s. 13(1). In *Warman v. Kouba*, 2006 CHRT 50, the Tribunal analyzed the "growing body of s. 13 jurisprudence" and observed that there a number of hallmarks of material that is more likely than not to expose members of a targeted group to hatred or contempt. In my view, many of these hallmarks can be found in the material that is before me in the present case.

[28] One of the hallmarks identified in *Kouba* is the communication of the idea that members of the targeted group are devoid of any redeeming qualities and are innately evil, or the idea that nothing but banishment, segregation or eradication of the targeted group will save others from the harm being done by this group. The September 30, 2003, postings contain comments reflecting these hallmarks. Many of the messages call for "getting rid of" minority groups and the "death of all Jews and Niggers". Another message urges government to "rise up and kill" all Arabs, African, Indian, Asian or any other "not white person in the world". Elsewhere in these postings, Arabs are said to be non-humans who do not deserve to share the planet "with us".

[29] In Rocket440's posting of November 24, 2003, he calls for the segregation, if not banishment, of all non-whites, by exhorting others "to band together as a single nation of Whites, and reclaim what is due to the master race".

[30] Calls for the annihilation of a targeted group are found in the messages on the CNP Forum posted by persons other than Rocket440. On October 21, 2003, 1488EffeKt1488 wrote, "Kill [all Blacks] I say. Jews : Do I even need to say why? Kill em all I say."

[31] The *Kouba* decision points out that another common hallmark of hate messages is the dehumanization of targeted groups through comparisons to and associations with animals, vermin, excrement and other noxious substances. Similarly, the use of highly inflammatory and derogatory language, creating a tone of extreme hatred and contempt, is also indicative of hate messages.

[32] The September 30, 2003, postings are replete with such messages. Blacks are referred to as "porch monkeys" and are compared to dogs. People of Arabic origin are described as "sub-humans". Disparaging language regarding numerous targeted groups is used throughout these texts (e.g. "fucking kikes, niggers, spics, chinks, japs", "fucking cock sucking jew", " kill ass niggers, jews and faggots", "niggers and nigglets", "towel heads"). In Rocket440's postings of November 17 and 24, 2003, he repeatedly referred to Blacks as "niggers".

[33] The trivialization or celebration of past persecution or tragedy involving members of a targeted group are also hallmarks of hate messages. One can find messages of this sort in the September 30, 2003, postings. One remark states that "no one was 'gassed' in Auschwitz, and most of the LIE they call 'Holocaust' is just that, a lie". Another excerpt mocks the victims of the Holocaust and celebrates their victimization by stating "a few

kikes fried in Hitlers rule [...] they served a divine purpose in the war, their skin made nice boots, and they help the medical field out tremendasly" [*sic*]. Elsewhere in these postings, the slavery of African Americans is mocked: "You want to scare one? Take the bastard to an auction", and "Niggers we own you ... we owned your grandfather coons and grandmother coons [...].

[34] Calls to take violent action against a targeted group are also a hallmark of hate messages. There are many such incitements to be found in the material put before me in this case. In the postings of September 30, 2003, there are calls to "kill all niggers, jews and faggots", and messages wishing that another participant on the message board "burn in a nazi jew burning oven with the rest of those inferior jews and niggers". As I noted earlier, in the posting of October 21, 2003, 1488EffeKt1488 asserts that Blacks and Jews should be killed ("Kill them all I say").

[35] Another hallmark identified in *Kouba* relates to the portrayal of the targeted group as a powerful menace that is taking control of major institutions in society and depriving others of their livelihoods, safety, freedom of speech and general well-being. The material posted on October 1, 2003, under the discussion "America's media controlled by Jews" falls within these categories. The article argues that Jews have taken over control of major media outlets in America from Gentiles. It links the evidently undesirable phenomenon of the "suppression of competition and the establishment of local monopolies on the dissemination of news and opinion" with the "rise of Jewish control over America's newspapers". It relies upon purported facts regarding the ethnic and religious backgrounds of persons involved in news media to advance these negative generalizations, which is another hallmark identified in *Kouba*.

[36] One could argue that the concentration of media ownership constitutes a legitimate object of public discourse. However, given the context of the other material regarding Jews that Rocket440 had posted on the CNP Forum (e.g. "fucking cock-sucking Jew", "death to all the Jews", "...burn in a Nazi Jew burning oven with the rest of those inferior Jews and niggers"), it is evident that the posting is not a discussion about the state of capitalism in North America, but rather a portrayal of Jews as a menace to Canadian society.

[37] In sum, therefore, messages found on the CNP Forum, posted by Rocket440 and others, bear one or more of the hallmarks of hate messages, within the meaning of s. 13 of the *Act*. I therefore conclude that this material is likely to expose members of the targeted groups (including Blacks, Jews, Asians, homosexuals, and Latin Americans) to hatred or contempt by reason of the fact that they are identifiable on the basis of a prohibited ground of discrimination.

D. Were the impugned messages communicated repeatedly?

[38] According to s. 13(1) of the *Act*, the communication of hate messages must occur "repeatedly" to constitute a discriminatory practice. Mr. Warman testified that any member of the public would have been able to access the CNP Forum via the Internet. Since the messages could be viewed at any time by anyone using the Internet, in my view, they were indeed being communicated "repeatedly" (see *Warman v. Kulbashian*, 2006 CHRT 11 at para. 62; *Schnell v. Micka* (20 August 2002: CHRT), para. 129; *Canadian Human Rights Commission v. Winnicki*; 2005 FC 1493 at para. 32).

E. Does the evidence establish that the Respondent Bobby Wilkinson communicated or caused to be communicated the impugned messages on the Internet?

[39] In order to establish the link between the impugned messages found on the CNP Forum and the Respondent Bobby Wilkinson, Mr. Warman produced discussion excerpts from the CNP Forum as well as from another online forum that is found on a website called "Stormfront.org", which is based in the United States.

[40] One of the discussion participants on Stormfront.org used the moniker "MeinStruggle". Participants to this forum could indicate their "location" in the margin next to their postings. Meinstruggle gave "Canada" as his location. In a posting on the Stormfront.org forum, dated October 2, 2003, MeinStruggle wrote the following: "I am attempting to start my own movement. Visit our board for more info". He then identified the "board" as "pub68.ezboard.com/bcanadiannaziparty", which is the address of the website where Mr. Warman says he viewed the hate messages discussed earlier in this decision, i.e. the CNP Forum.

[41] On November 23, 2003, a message was posted on the CNP Forum by "two Italian Nazi guys", seeking advice on how to immigrate to Canada. Someone using the moniker "Rocket440" responded to the message on November 26, 2003, and suggested that they communicate with him directly by email to his email address, bobby.wilkinson@sympatico.ca. At the end of Rocket440's message appeared the words "Forum Administrator/Napkin Monitor".

[42] Bell Sympatico is an Internet Service Provider that is operated by Bell Canada. Mr. Warman testified as to his understanding that Bell Sympatico allows its clients to whom it provides Internet access, to use a small amount of space on its website (sympatico.ca) where they can establish their own small Internet website. These small websites are typically registered under the client's email address. Mr. Warman claims that he gained this understanding from the evidence that was adduced in another Tribunal case in which he was involved, *Warman v. Winnicki*, File T1021/0205. These client websites can be accessed via a Bell Sympatico website known as www3.sympatico.ca. On December 8, 2003, Mr. Warman submitted the name "bobby.wilkinson" to this website, and a web page identified as the "Index of /bobby.wilkinson/" appeared. There were no folders or files listed under the index, but Mr. Warman testified, based on his understanding of how this Bell Sympatico service functioned, that for the index to exist, there must have been an active Bell Sympatico client using the name "bobby.wilkinson". Given the Respondents' absence from the hearing, Mr. Warman's evidence on this point was not contradicted.

[43] On November 29, 2003, Rocket440 posted a message on the CNP Forum, in response to a posting by someone from Toronto who had just joined the forum. Rocket440 replied, "Welcome! I'm from Ottawa, but I visit T.O. regularly." He signed off his message again as the "Forum Administrator".

[44] Mr. Warman produced a printout of what he described as the home page of the Canadian Nazi Party's website and forum. It consists principally of a table of contents listing the various topics of existing discussions that were present on the CNP Forum. At the top of the page, there is an image of a Swastika. At the end of the home page is a link on which a visitor can click to "Contact [the] Administrator". Mr. Warman testified that by clicking on this link, his email program automatically generated a window for a new email message, the addressee of which was bobby.wilkinson@sympatico.ca.

[45] Mr. Warman stated in his evidence that the last time he had managed to view the CNP Forum on the Internet was on December 21, 2003. When he attempted to access the

website on February 23, 2004, he was denied entry. Instead, a "system message" from "ezboard" appeared stating that the website was "Banned and Locked Down!" The message went on to say:

(canadiannaziparty) has been locked down in accordance with ezboard's Terms of Use

Reason: hate speech

[46] Mr. Warman testified that "ezboard" is an Internet web hosting service that is available from a website known as "ezboard.com". It enables users to set up websites and forums for free. I gather from the wording of the CNP Forum's Internet address that this message board was hosted by ezboard.com (i.e., pub68.ezboard.com/bcanadiannaziparty).

[47] On August 28, 2004, MeinStruggle made a posting on the Stormfront.org forum. The title of his posting was "Calling All Aryans in Canada, Please Help". He stated in his first paragraph:

My name is Bobby, I formerly ran the Canadian Nazi/Socialist forum off of ezboard until it was shutdown due to "Hate Speech". This was early last year, and the forum was shutdown around January of this yr.

The shutdown date falls between the date when Mr. Warman was last able to view the CNP Forum (December 23, 2003) and the date when he was denied entry to the website (February 23, 2004).

[48] In the same August 28, 2004, Stormfront.org posting, MeinStruggle wrote the following paragraph referring to a human rights complaint having been filed against him but served on his grandfather:

This morning a letter arrived addressed to my grandfather (whom which the home in which I operated this site belonged to) ...now here's the good part "addressed to my grandfather but flat out accusing me of being a bigot, and uttering hate speech, which violates section 13(1) of the human rights act. Remember "addressed to my grandfather" the internet connecting is in my name, and the email address used for correspondence on the forum was in my name, as well as the user name on ezboard. All allegations pertaining to this case are directed at me, but addressed to my grandfather?

[sic throughout]

[49] The Commission filed documents at the hearing indicating that Mr. Warman's complaint in the present case was initially served by error on someone named Robert P. Wilkinson, who is not one of the Respondents. A memorandum to the Commission's file prepared by one of its human rights investigators, dated November 3, 2004, states that she had been contacted by a lawyer representing Robert P. Wilkinson. The lawyer explained that his client was the grandfather of the Respondent, Bobby James Wilkinson. He added that the younger Mr. Wilkinson had been living at his grandfather's home, and that the grandson owned a computer that he kept in the basement. On November 8, 2004, the Commission received a letter from the lawyer confirming that his client, Robert P. Wilkinson, "is not the same person as Bobby James Wilkinson, whose website and on whose computer the material complained of originated".

[50] The Commission apparently learned subsequently that the Respondent Bobby Wilkinson had at some point thereafter moved out of his grandfather's house. Consequently, the Commission hired a process server to trace his new address. On May 29, 2006, the process server notified the Commission that he had located Mr. Wilkinson

at an address in the Ottawa area. This information was eventually conveyed to the Tribunal. It was at this new address that the Tribunal's process server attended to serve the letters referred to earlier in this decision.

[51] Based on all of this evidence, I draw the following inferences. To begin with, someone named "Bobby" was posting on the Stormfront.org message board under the name MeinStruggle. Bobby claimed to run a message board of his own, which had the Internet address "pub68.ezboard.com/bcanadiannaziparty". This is the Internet address that appears on the printouts of the CNP Forum's pages, where Mr. Warman found and viewed the alleged hate messages. Bobby declared on Stormfront.org that his message board had been shut down by ezboard in a period that is consistent with the date when Mr. Warman testified that he could no longer access the website. I therefore conclude that Bobby was the CNP Forum's administrator.

[52] The forum's administrator (i.e., Bobby) posted messages on the board using the moniker Rocket440 and had an email address comprised of the name "bobby.wilkinson". The August 28, 2004, posting on Stormfront.org by Bobby (a.k.a. MeinStruggle) together with the information provided by Robert P. Wilkinson's lawyer lead me to conclude that the same individual (Bobby) is the grandson of the person mistakenly served with Mr. Warman's complaint (Robert P. Wilkinson). The grandson's name is Bobby Wilkinson.

[53] I have already determined that a number of the messages posted by Rocket440 (i.e., the forum administrator, Bobby Wilkinson) constitute hate messages within the meaning of s. 13 of the *Act*, as do several other messages posted on the CNP Forum under different monikers. While the evidence does not suggest that Mr. Wilkinson authored the posts issued under the monikers other than Rocket440 (i.e. it has not been shown that he "communicated" this matter), he may still be found to have engaged in a discriminatory practice under s. 13 if he caused these messages to be communicated. I have determined that Mr. Wilkinson was the administrator of the CNP Forum. Mr. Warman filed in evidence an excerpt from ezboard.com's online help page regarding the role of forum moderators on message boards. This document indicates that message board administrators apparently have the ability to edit or delete postings or the content of entire discussions. The administrator may also set the forum security settings so that posts are screened before they can be viewed by the public.

[54] On the basis of this evidence, I conclude that Mr. Wilkinson, as the CNP Forum's administrator, had the means to ensure that the impugned postings made by other participants were never viewed publicly or were subsequently removed. Moreover, since Mr. Wilkinson personally contributed to some of the discussion groups in which these postings were made (e.g. the discussion in which 1488EffeKt1488 posted the October 21, 2003, message), Mr. Wilkinson must have viewed them. He nevertheless allowed these messages to remain publicly posted. As such, I am satisfied that Mr. Wilkinson caused these messages to be communicated within the meaning of s. 13 (see *Warman v. Kulbashian*, *supra*, at paras. 111-2.).

[55] In my view, therefore, a *prima facie* case of discrimination by the Respondent Bobby Wilkinson has been established. These inferences, if believed, are "complete and sufficient to justify a verdict in the complainant's favour" in the absence of an answer from the Respondent Bobby Wilkinson (*Ontario (Human Rights Commission) v. Simpsons Sears Ltd.*, [1985] 2 S.C.R. 536 at 558 (*O'Malley*). Given Mr. Wilkinson's

absence from the hearing, no answer to the case made against him was provided, nor does any such answer or explanation emerge from the evidence that was produced by the other parties in this case.

[56] Furthermore, no evidence has been presented to me to contradict the inference that the individual named Bobby Wilkinson who has been served with numerous documents in these proceedings is the Bobby Wilkinson who administered the CNP Forum and who posted messages on this forum under the moniker Rocket440.

F. Has a case of discrimination been established against the "Canadian Nazi Party"?

[57] Mr. Warman has named the "Canadian Nazi Party" as a party in his complaint. He points out that the CNP Forum was found on a website whose name incorporated the words "Canadian Nazi Party" (i.e. pub68.ezboard.com/bcanadiannaziparty). The actual name used to describe the CNP Forum on the website was "National Nazi and Socialist Forum". When Mr. Wilkinson posted messages on the Stormfront.org message board in October 2003, he stated, "I'm attempting to start my own movement. Please visit the board for more info." The Internet address given in the messages was that of the CNP Forum.

[58] On the CNP Forum's main page, one could view a list of links to the forum's various discussions. One of those discussions was entitled "Join the National Nazi Movement - Information on joining the National Nazi Socialist movement". Clicking on the link brought the visitor to another page, at the bottom of which the "Prerequisites [*sic*] for joining the National Nazi Movement" were set out, as follows:

At least 17 years of age
Pure white background
Supporter of the Nazi and socialist movement
Prepared to take action
Love your race.

The page then asks the visitor to provide the following "vitals":

Name
Age
Location
Race
Email

[59] No evidence was led demonstrating that the Canadian Nazi Party exists as a legal entity. The only mention of this name in the evidence is found in the above-noted Internet address. Elsewhere on the website, there is some mention made of the "National Nazi Movement" and the "National Nazi Socialist Movement".

[60] It is a discriminatory practice for a group of persons acting in concert to communicate or cause to be communicated repeatedly hate messages over the Internet (ss. 13(1) and 13(2) of the *Act*). The "group of persons" contemplated in these provisions need not necessarily be organized within a distinct entity having a formal legal status (see *Nealy v. Johnston* (1989), 10 C.H.R.R. D/6450 at D/6464).

[61] On the home page of the website, there is a list of the various main discussions found on the CNP Forum. One of the discussion topics is entitled "Members". The description given of this discussion is "Member of the Nazi/Socialist Party". Mr. Warman entered into evidence a printout of a posting on this discussion by Rocket 440. The

subject heading of the posting is "Welcome to our newest member", following which is listed the name of an individual, his age, his background ("Scottish), his gender (male), his location (Toronto) and email address. Mr. Warman notes that this information matches precisely the details requested on the "Join the National Nazi Movement" form.

[62] However, in my view, this evidence establishes nothing more than that this supposed new member filled out the questionnaire on the CNP Forum website. Even if one were to accept that this individual was an actual member of Mr. Wilkinson's "movement", s. 13 of the *Act* contemplates more than the mere existence of a "group of persons". The persons must be "acting in concert" to communicate or cause to be communicated the impugned messages. There is no evidence that this supposed new member was in any way involved in the communication of the messages, nor is there any evidence, for that matter, of any meetings, gatherings or organizational structure of any sort, associated with this alleged group.

[63] Mr. Warman pointed out that the website's home page lists the monikers of the moderators for the CNP Forum discussion groups. There are two monikers listed: Meinstruggle (presumably Mr. Wilkinson) and Landser88, whose actual identity if he is someone other than Mr. Wilkinson, cannot be determined from the evidence before me. In my view, this information is not sufficient to demonstrate that two or more individuals were acting in concert to administer and/or moderate the content of the CNP Forum, through which the impugned hate messages were caused to be communicated. I am not persuaded that the "Canadian Nazi Party" ever existed in any form nor that it was anything more than Mr. Wilkinson's alter ego. The evidence does not establish that anyone other than Mr. Wilkinson acting alone administered the website.

[64] The complaint against the Canadian Nazi Party has therefore not been substantiated and is dismissed.

G. Remedies

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

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

[66] 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.

[67] Accordingly, I order Mr. Wilkinson to cease and desist from communicating or causing to be communicated, by the means described in s. 13 of the *Act*, and particularly the Internet, any matter of the type contained in the messages at issue in this case 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.

(ii) Penalty (s. 54(1)(c))

[68] The Tribunal may order a respondent who engaged in a discriminatory practice set out in s. 13 of the *Act*, to pay a penalty of up to \$10,000, pursuant to s. 54(1)(c). Section 54(1.1) enumerates 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 or she has engaged in, and his or her ability to pay the penalty.

The Commission and Mr. Warman have requested that a penalty of \$6,000 be imposed against each of the respondents.

[69] Commission counsel stated, in her final arguments, that the content of the hate messages was "both vicious and extreme". She pointed out that "not only did the messages attribute numerous and varied criminal acts to the [targeted] groups, described them as corrupt and devious, but some messages went so far as to openly advocate the extermination of Jews, Blacks and other non-whites". She concluded that "this ought to weigh heavily in favour of the assessment of a significant penalty". The evidence, in my view, supports this submission.

[70] I would add, further, that it does not matter whether Mr. Wilkinson actually authored some of the hate messages, including those of September 30, 2003. It was ultimately he who decided to post this material on the message board, irrespective of its origin. Besides, Mr. Wilkinson wilfully caused to be communicated repeatedly all of the impugned hate messages by establishing and administering the CNP Forum on which the messages were placed (see by analogy, *Warman v. Kulbashian, supra*, at para. 144).

[71] I have no direct evidence before me of Mr. Wilkinson's ability to pay a penalty, although from the fact that he was residing in the basement of his grandfather's home until some time between 2004 and 2006, it may be inferred that he is a relatively young person of modest means. I note as well that no evidence was introduced demonstrating that Mr. Wilkinson had engaged in prior discriminatory practices.

[72] Taking all of these factors into account, I order Mr. Wilkinson to pay a penalty of \$4,000. 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 the date on which this decision is served on Mr. Wilkinson.

"Signed by"

Athanasios D. Hadjis

OTTAWA, Ontario
July 10, 2007

PARTIES OF RECORD

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DATE AND PLACE OF HEARING:	January 24, 2007

	Ottawa, Ontario
DECISION OF THE TRIBUNAL DATED:	July 10, 2007
APPEARANCES:	
Richard Warman	For himself
Judith Parisien	For the Canadian Human Rights Commission
No one appearing	For the Respondent