

**CANADIAN
HUMAN RIGHTS
TRIBUNAL**



**TRIBUNAL CANADIEN
DES DROITS
DE LA PERSONNE**

BETWEEN/ENTRE:

Complainant RICHARD WARMAN **le plaignant**

and/et

Commission CANADIAN HUMAN RIGHTS COMMISSION **la Commission**

and/et

Respondent TERRY TREMAINE **l'intimé**

BEFORE/DEVANT:

MICHEL DOUCET CHAIRPERSON/
PRÉSIDENT

NICOLE BACON REGISTRY OFFICER/
L'AGENTE DU GREFFE

FILE NO./N^o CAUSE: T1104/8505
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CANADIAN HUMAN RIGHTS TRIBUNAL/
TRIBUNAL CANADIEN DES DROITS DE LA PERSONNE

HEARING HELD IN HEARING ROOM NO. 1 OF THE CANADIAN HUMAN RIGHTS
TRIBUNAL, 11TH FLOOR, 160 ELGIN STREET, OTTAWA, ONTARIO, ON
FRIDAY, AUGUST 11, 2006, AT 9:30 A.M. LOCAL TIME

APPEARANCES/COMPARUTIONS

Richard Warman	on behalf of the Complainant
Ikram Warsame/ Giacoma Vigna, Esq.	Counsel for the Canadian Human Rights Commission
Terry Tremaine/	on behalf of the Respondent

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1 Ottawa, Ontario

2 --- Upon resuming on Friday, August 11, 2006

3 at 9:30 a.m.

4 THE REGISTRAR: All rise, please.

5 THE CHAIRPERSON: Good morning.

6 THE REGISTRAR: Please be seated.

7 THE CHAIRPERSON: This morning we
8 will be hearing the closing arguments of the Commission
9 and of Mr. Warman.

10 Ms Warsame, are you ready to proceed?

11 MS WARSAME: That is correct, but
12 Mr. Warman will start first.

13 THE CHAIRPERSON: Mr. Warman will be
14 starting first?

15 Mr. Warman...?

16 --- Pause

17 MR. WARMAN: Good morning.

18 THE CHAIRPERSON: Good morning.

19 ARGUMENT

20 MR. WARMAN: Following a brief
21 introduction, these closing arguments will address the
22 question of the context in which hate messages must be
23 examined; the fact that hate speech does not constitute
24 free speech; the fact that I will be adopting the
25 submissions of counsel for the Canadian Human Rights

1 Commission; and a discussion of the appropriate
2 remedies in this case; followed by a short closing.

3 In essence, the defence put forward
4 by the respondent argues that it is acceptable in
5 modern-day Canadian society to post vitriolic hate
6 propaganda to the internet, attacking the Jewish, black
7 and other non-white communities, and homosexuals.

8 In order for the defence put forward
9 by the respondent to be accepted, Parliament would have
10 had to have dramatically misspoken itself when it
11 explicitly prohibited the use of the internet to post
12 messages that are likely to expose such groups to
13 hatred or contempt under section 13 of the Canadian
14 Human Rights Act.

15 In order for the defence put
16 forward by the respondent to be accepted, all of the
17 previous section 13 cases of Taylor, Nealy, Manitoba
18 Knights of the Ku Klux Klan, Canadian Liberty Net,
19 Heritage Front, Scott, Zundel, Machiavelli, Kyburz,
20 Warman, and Winnicki, decided by the Canadian Human
21 Rights Tribunal, Federal Court, Federal Court of
22 Appeal, and Supreme Court respectively, would have to
23 have been wrongly decided.

24 It is my respectful submission
25 that Parliament meant what it said when it enacted

1 section 13 of the Canadian Human Rights Act. It is
2 my respectful submission that the entirety of the
3 body of section 13 case law has not in fact been
4 wrongly decided.

5 The questions arise: Are hate
6 messages in the eyes of the beholder? What is the
7 context in which they must be taken?

8 The following section is from the
9 decision of the Canadian Human Rights Tribunal in the
10 Taylor case. It demonstrates that the Tribunal has
11 already considered and rejected the defence offered by
12 the respondent that his comments were posted to some
13 sort of "Wild West" zone of the internet where bigotry
14 is the order of the day and Canadians cannot be held
15 accountable for their actions.

16 I cite the Smith and Lodge v. Western
17 Guard Party TD 1/79.

18 THE CHAIRPERSON: That is at Tab 11
19 of the Book of Authorities of the Commission?

20 MR. WARMAN: I believe so.

21 --- Pause

22 MR. WARMAN: It is, yes.

23 The Tribunal stated:

24 "In interpreting s. 13 of the
25 Canadian Human Rights Act,

1 however..."

2 THE CHAIRPERSON: I'm sorry, can you
3 just indicate which paragraph you are reading?

4 MR. WARMAN: Yes, I'm sorry. I
5 apologize. My references were to Quick Law so I --

6 THE CHAIRPERSON: I don't think there
7 is any paragraph in the text --

8 MS WARSAME: That's correct.

9 THE CHAIRPERSON: -- so I'm not sure
10 if you can identify where --

11 MS WARSAME: Actually, to assist the
12 Tribunal, yes. If you look at the top of each
13 paragraph there is a number.

14 THE CHAIRPERSON: There is a number
15 at the top of each paragraph. There is a page. Yes, I
16 see that.

17 --- Pause

18 MR. WARMAN: Yes, here we are. I
19 believe it is paragraph 34, which is, by my
20 guesstimate, about half way through the decision.

21 THE CHAIRPERSON: Yes. Yes, I see
22 that. All right.

23 MR. WARMAN: The Tribunal said:

24 "In interpreting s. 13 of the
25 Canadian Human Rights Act,

1 however, one must be concerned
2 with the possible
3 susceptibilities of those
4 individuals who may dial the
5 phone number in question. They
6 may have learned of the number
7 from the cards distributed by
8 the Respondents which provide no
9 clue of the type of message that
10 they will hear. It may well be
11 that by deciding to dial this
12 phone number they already have a
13 preconceived notion of the type
14 of message that they will hear.
15 If an individual comes upon this
16 phone number in the telephone
17 book where it is described as
18 `White Power Message' or learns
19 of it by reading it on a spray
20 painted hoarding, usually
21 associated with some racial
22 epithet, one could conclude that
23 that particular caller already
24 possesses feelings of hate and
25 contempt for minority groups.

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1 Those feelings may be confirmed
2 and inflamed further, however,
3 by messages which have an
4 authoritative flavour to them.
5 But in any event, the
6 personality makeup and the
7 preconceived feelings of the
8 actual callers are not in issue
9 in the interpretation of s. 13.
10 The question is whether the
11 matter communicated 'is likely
12 to expose a person or persons to
13 hatred or contempt'. It may be
14 that certain individuals find
15 the message so laughable or
16 repulsive that it is the sender
17 of the message who is exposed to
18 hate and contempt. On the other
19 hand, it is reasonable to
20 conclude that there is a
21 likelihood that some individuals
22 may well harbour feelings of
23 hatred and contempt for the
24 minority groups singled out in
25 the messages after listening

1 to them."

2 Our initial reaction to this material
3 was that it was crudely written and repugnant, not
4 credible, and perhaps not dangerously harmful. But we
5 have moved to a position of concern as we have
6 considered this matter and the evidence adduced.

7 Our feeling is in accord with Judge
8 McMahon who said of the hate tract that he considered
9 in the Buzzanga case...

10 "I am satisfied that the vast
11 majority of the residents of
12 this county would view the
13 contents of this document with
14 distaste if not outright
15 revulsion. However, there is
16 that certain segment in every
17 community whose views would be
18 reinforced and increased by the
19 message.' "

20 The Tribunal continued:

21 "We share the same distrust of
22 the rationality of mankind
23 expressed by the Special
24 Committee on Hate Propaganda in
25 Canada... (As read)

1 the good, it is too often true,
2 in the short run, that emotion
3 displaces reason and individuals
4 perversely reject the
5 demonstrations of truth put
6 before them and forsake the good
7 they know. The successes of
8 modern advertising, the triumphs
9 of imprudent propaganda such as
10 Hitler's, have qualified sharply
11 our belief in the rationality of
12 man. We know that under strain
13 and pressure in times of
14 irritation and frustration, the
15 individual is swayed and even
16 swept away by hysterical,
17 emotional appeals. We act
18 irresponsibly if we ignore the
19 way in which emotion can drive
20 reason from the field."

21 They make specific reference to the
22 imprudent propaganda such as Hitler's. That same
23 propaganda is repeated here in this case before you.

24 The intent of the complainant in
25 viewing the messages is as irrelevant as the intent of

1 the person responsible for having posted those
2 messages. Choosing to post hate messages in a portion
3 of the internet where such messages are more common
4 does not immunize Canadians from being held responsible
5 for violating the Act.

6 The next question is: Is hate speech
7 free speech?

8 The Supreme Court's reasons in Taylor
9 display an ample awareness of the need to balance the
10 competing interests of freedom of expression versus the
11 consensus within the international community that hate
12 propaganda should be suppressed given the historically
13 self-evident risk of harm to the targeted communities.

14 To the extent that the respondent
15 seeks to frame some positive right to engage in hate
16 speech, a similar argument was raised in the case of
17 Payzant v. McAleer and Canadian Liberty Net.

18 This is at Tab 10 of the Commission's
19 Book of Authorities and the citation begins at page 7.

20 In this case, the respondent
21 initially attacked paedophilia, associated
22 homosexuality with paedophilia, and then suggested that
23 homosexuals should be stomped into bogs. The
24 three-member panel of the Tribunal stated:

25 "Counsel for the Respondent

1 McAleer based part of his
2 argument on fair comment and
3 free speech. The fact that the
4 Respondent does not approve of
5 homosexuality is certainly a
6 view that he is free to
7 communicate telephonically as
8 long as he does not do so in
9 such a manner as to offend..."

10 THE CHAIRPERSON: I'm sorry. I don't
11 want to interfere, but where is that on page 10? I'm
12 not sure I have the right page.

13 MR. WARMAN: Page 7 is the beginning
14 of the association of homosexuality with paedophilia.

15 THE CHAIRPERSON: I believe it's not
16 the same pagination here.

17 MR. WARMAN: I'm sorry. Then it
18 skips ahead to page 9, which is where I am reading
19 from now.

20 THE CHAIRPERSON: All right.

21 MR. WARMAN: It is just above
22 the "Order".

23 THE CHAIRPERSON: All right. Yes, I
24 see that.

25 I'm sorry.

1 MR. WARMAN: No. I apologize for not
2 giving the exact citation for that part of it.

3 The three-member panel of the
4 Tribunal stated:

5 "Counsel for the Respondent
6 McAleer based part of his
7 argument on fair comment and
8 free speech. The fact that the
9 Respondent does not approve of
10 homosexuality is certainly a
11 view that he is free to
12 communicate telephonically as
13 long as he does not do so in
14 such a manner as to offend
15 s. 13(1) of CHRA."

16 Similarly, in one of the most recent
17 hate messaging cases of Warman v. Kulbashian et al. --
18 that is found at Tab 14 of the Commission's Book of
19 Authorities at paragraph 59 -- Tribunal Member Hadjis
20 dismissed the ability of a respondent to disseminate
21 hate messages under the cloak of "free speech".

22 In addressing the respondent's
23 arguments that the impugned material constituted
24 political discourse and was not intended to expose
25 any designated groups to hatred or contempt, Member

1 Hadjis stated:

2 "Intent to discriminate,
3 however, is not a pre-condition
4 to a finding of
5 discrimination..."

6 He cites the Simpson-Sears and
7 O'Malley case, as well as the Taylor case.

8 "Moreover, the language of s. 13
9 is clear, in that it is the
10 effect of messages that has
11 attracted the attention of
12 Parliament. The question to be
13 asked is not whether the
14 conveyor of the message intended
15 to communicate hate or contempt,
16 but whether the message itself
17 is likely to expose persons
18 belonging to the identifiable
19 groups to hatred or contempt.
20 If indeed the newsletter's
21 content was intended to express
22 a supposed political opinion,
23 the message could have been
24 communicated without resort to
25 the extremist and denigrating

1 language that pervades editions
2 of the newsletter that were
3 entered into evidence..."

4 The attack of others based on
5 their race, religion, and national or ethnic origin
6 using calls for ethnic cleansing and slurs, such as
7 are present in this case, does not constitute
8 legitimate political discourse. It promotes simply
9 hatred and contempt.

10 I would like to move now to address
11 the question of appropriate remedies in this case.

12 As noted in my Statement of
13 Particulars, I am seeking the following remedies and
14 will address each one in turn:

15 a) An Order that the respondent
16 cease the discriminatory practice, pursuant to
17 section 54(1)(a) of the Canadian Human Rights Act.

18 b) An Order that the respondent pay
19 compensation pursuant to section 54(1)(b) of the
20 Canadian Human Rights Act.

21 c) An Order that the respondent pay
22 a penalty pursuant to section 54(1)(c) of the Canadian
23 Human Rights Act.

24 With regard to the cease and desist
25 order, as per usual in hate messaging cases I am

1 seeking a permanent cease and desist order in
2 accordance with paragraph 54(1)(a) of the Act in order
3 to have Mr. Tremaine cease the discriminatory practice
4 of communicating hate messages through the internet or
5 other federal telecommunications undertaking.

6 In terms of the reasons for such an
7 order, I would refer the Tribunal to Madam Jensen's
8 decision in Warman v. Winnicki, which is found at
9 Tab 15 of the Commission's Book of Authorities,
10 specifically paragraphs 191 and 192.

11 At paragraph 192, Madam Jensen
12 stated:

13 "It should also be noted that,
14 in deciding whether to issue a
15 cease and desist order, the
16 potential impact of such an
17 order on the Respondent is not
18 my only consideration. I must
19 also consider the likely impact
20 of a cease and desist order on
21 other members of Canadian
22 society such as those who are
23 likely to be exposed to hatred
24 or contempt as a result of the
25 Respondent's messages. As the

1 Supreme Court of Canada noted in
2 Taylor, the process of hearing a
3 complaint made under s. 13(1)
4 and, if substantiated, issuing a
5 cease and desist order reminds
6 Canadians of our fundamental
7 commitment to equality of
8 opportunity and the eradication
9 of racial and religious
10 intolerance.... Therefore, I am
11 of the view that a cease and
12 desist order is entirely
13 appropriate in the present
14 case."

15 With regard to the specific wording
16 of the order, I would ask for an order using the same
17 wording as that found in paragraph 193 of the Winnicki
18 decision with Mr. Tremaine's name simply be substituted
19 for that of Mr. Winnicki.

20 With regard to special compensation
21 under section 54(1)(b), to order compensation under
22 this section the test that is clear from the plain
23 words of the Act is whether a victim is specifically
24 identified in the discriminatory messages and a finding
25 by the Member that the respondent engaged in the

1 practice wilfully or recklessly. It is to be noted
2 that no other factors are enumerated that are to be
3 taken into consideration within the wording of the
4 section, in contrast, for example, to section 54(1)(c).

5 As will be noted in Ms Warsame's
6 closing submissions, Mr. Tremaine makes repeated and
7 abhorrent references to Jews as parasites. I draw your
8 attention to Tabs 12, 14 --

9 THE CHAIRPERSON: Tabs or Exhibits?

10 MR. WARMAN: The same.

11 Exhibit HR-12, 14, 15, 16, 18, 20, 37A.

12 He refers to Jews as "vermin" at
13 HR-16; as a "virus" at HR-22 and 35A; as a "cancer"
14 at HR-18; the "poisoners of all nations" at HR-32;
15 and calls for their ethnic cleansing out of Canada
16 and ultimately all western nations at HR-17, 20, 23,
17 32 and 36.

18 It is within that context that
19 I believe the references to me specifically must
20 be understood.

21 At HR-25, page 5 of 7, Mr. Tremaine
22 identifies me by name and then states:

23 "It is not enough that the site
24 was shut down."

25 THE CHAIRPERSON: Which one is that?

1 I'm sorry.

2 MR. WARMAN: HR-25, page 5 of 7.

3 Mr. Tremaine identifies me by name
4 and then states:

5 "It is not enough that the site
6 was shut down. They want to go
7 after those who created it in
8 the first place. How very
9 Jewish! They never forget and
10 never forgive. Well, their time
11 will come. As someone, (I
12 cannot remember who) once said,
13 when the end of the Jews finally
14 comes they will wish they had
15 the SS there to protect them."

16 At HR-28, page 3 of 5, Mr. Tremaine
17 indicates that:

18 "...hearing Warman's voice on
19 the phone was an interesting
20 experience. To paraphrase
21 Julius Streicher, when you
22 battle Jews you are battling
23 demons."

24 At HR-34, pages 4 to 6 of 7,
25 Mr. Tremaine reposts the following words of

1 another person regarding me, thus causing them to
2 be communicated within the meaning of section 13
3 of the Act:

4 "...he seems quite familiar with
5 Jews and if he is indeed not a
6 Jew, then he is doubtlessly
7 familiar with the general
8 contempt that Jews hold for
9 non-Jews. This must make him
10 very squeamish (as evidences
11 from facial expressions while
12 reciting some of his more
13 egregious lies) to say the
14 least."

15 Mr. Tremaine continues with his own
16 comments, interjecting:

17 "Warman's actions are starting
18 to be counter productive and are
19 drawing increasing attention to
20 how the Jews have robbed Canada
21 of its rights to free speech."

22 Later:

23 "Warman is not speaking on his
24 own initiative but is a mouth
25 piece for B'nai Brith, his

1 handlers. It is just like the
2 Jews to always overstep. That
3 is their fatal flaw that ALWAYS
4 brings them down. They wore out
5 their welcome in countless
6 countries over the centuries
7 with their chutspah and it will
8 happen here.

9 I think Warman is a Jew
10 simply because of his
11 unrestrained capacity for
12 malevolence. He does not appear
13 to have a White man's
14 conscience."

15 He closes his post with the quote
16 from Julius Streicher:

17 "He who fights the Jews battles
18 the Devil".

19 At HR-37B, page 5 of 7, Mr. Tremaine
20 repeats another person's assertion that I am a
21 "creature" who is "...tak[ing] away the rights and
22 lives of many patriotic Canadians?"

23 Mr. Tremaine responds:

24 "Warman is just the front man,
25 the performing monkey, for the

1 B'nai Brith and the Canadian
2 Jewish Congress. They run this
3 country and it is sinking into
4 the bottomless pit of Jew Hell."

5 The facts in this case are similar to
6 those found in the Tribunal's deliberations in the
7 Kyburz case.

8 The Kyburz case is at Tab 12 of the
9 Commission's Book of Authorities and I would draw your
10 attention specifically to paragraphs 87 to 91.

11 In that case the Tribunal found that
12 an award of special compensation in the amount of
13 \$15,000 was appropriate.

14 At paragraphs 89 to 91 specifically,
15 the Tribunal stated:

16 "Mr. Kyburz began including
17 regular references to
18 Mr. Warman, who he identified by
19 name, in his postings on the
20 Patriots on Guard web site as a
21 result of Mr. Warman's efforts
22 to shut down the site. The
23 references to Mr. Warman are
24 noteworthy for their degree of
25 vitriol, motivated, at least in

1 part, by Mr. Kyburz' perception
2 that Mr. Warman was himself
3 Jewish. This reflects a
4 recurring pattern in Mr. Kyburz'
5 web postings: as soon as anyone
6 disagrees with his views, that
7 person immediately becomes part
8 of the world-wide Jewish
9 conspiracy."

10 We have seen that in this case
11 as well.

12 "Mr. Warman testified that he
13 was not Jewish. In our view,
14 the fact that Mr. Warman was not
15 himself Jewish does not detract
16 in any way from the viciousness
17 of the attacks launched against
18 him by Mr. Kyburz. These
19 attacks were clearly motivated,
20 at least in part, by Mr. Kyburz'
21 perception that Mr. Warman was
22 Jewish. Based upon this belief,
23 Mr. Kyburz ascribed very
24 negative character traits, as
25 well as criminal behaviour to

1 Mr. Warman. Mr. Warman, quite
2 understandably, found this
3 conduct to be very hurtful. In
4 our view, Mr. Warman is a victim
5 of the discriminatory practice.

6 Mr. Kyburz' behaviour was
7 both willful and repeated. In
8 our view, Mr. Warman is entitled
9 to a significant award under
10 this head. Accordingly, the
11 Tribunal awards Mr. Warman the
12 sum of \$15,000 as special
13 compensation, pursuant to
14 subsection 54(1)(b) of the Act."

15 The personal attacks against me by
16 Mr. Tremaine found above demonstrate clearly that he
17 perceived me to be Jewish.

18 The attacks include a thinly veiled
19 threat and reference to the extermination of the Jews
20 by the Nazis in WWII at HR-25; that I am like a demon
21 at HR-28; that I have an "unrestrained capacity for
22 malevolence" and that fighting Jews is like battling
23 the Devil at HR-34; and further, that I am a
24 "performing monkey" helping to sink Canada "into the
25 bottomless pit of Jew Hell" at HR-37.

1 Mr. Tremaine has known since at least
2 being served with my complaint against him that his
3 postings were causing affront. Rather than halting his
4 bigotry, he instead chose to redouble his attacks and
5 began to include me in them by name. Such conduct is
6 clearly wilful, or at the very least reckless, and thus
7 meets the second, and last, part of the test under
8 section 54(1)(b) of the Act.

9 Given the heinous nature of these
10 attacks and their repetitive nature, it is submitted
11 that special compensation in the amount of \$10,000
12 would be appropriate.

13 With regard to the penalty under
14 section 54(1)(c) of the Act, the Tribunal may make an
15 order that a respondent found to have violated
16 section 13 of the Act pay a penalty of not more than
17 ten thousand dollars.

18 The factors the Tribunal shall take
19 into consideration under the legislation are:

20 "(a) the nature, circumstances,
21 extent and gravity of the
22 discriminatory practice; and
23 b) the willfulness or intent of
24 the person who engaged in the
25 discriminatory practice, any

1 prior discriminatory practices
2 that the person has engaged in
3 and the person's ability to pay
4 the penalty.

5 In interpreting the Act's words,
6 it is my submission that on the plain reading of
7 the words, there is no indication that any of the
8 factors should be given greater or lesser
9 consideration than the others.

10 The facts in this case for the
11 penalty section are again similar to those found in the
12 Tribunal's consideration in the Kyburz case at
13 paragraphs 93 to 97.

14 As will be noted by Ms Warsame and my
15 submissions previously, the nature, circumstances,
16 extent and gravity of the discriminatory messages
17 posted by Mr. Tremaine are horrific in their nature and
18 gravity by virtue of their viciousness.

19 It is hard to imagine messages
20 more grave than describing the Jewish community as
21 "parasites" and "vermin", and calling for the
22 ethnic cleansing of Jews, blacks, and other
23 non-whites from Canada.

24 These posts are nasty, vicious, and
25 extreme, as described by the three-Member Tribunal

1 panel in Kyburz at paragraph 96.

2 All of this militates in favour of
3 the most severe penalty.

4 In terms of the extent of the hate
5 messages, Exhibit HR-37B indicates that Mr. Tremaine
6 has posted almost 1,900 messages to Stormfront as of
7 28 July 2006, and Mr. Tremaine confirmed this in his
8 testimony. The repeated nature of Mr. Tremaine's hate
9 messages again argues in favour of a penalty at the
10 highest end of the spectrum.

11 Mr. Tremaine's wilfulness and
12 intent in engaging in the discriminatory practice, is
13 self-evident in his reaffirmation on the stand of all
14 of the hate propaganda that he has written, his
15 complete and utter lack of remorse, and having given
16 no indication that he has any intent of stopping until
17 required to do so. This again supports the highest
18 possible penalty.

19 Balanced against those three factors
20 are the facts that there is no evidence before the
21 Tribunal of prior discriminatory practices and
22 Mr. Tremaine's limited testimony that he does not own a
23 home or car and is currently under-employed.

24 That said, the evidence to that
25 effect rests solely on Mr. Tremaine's testimony, in

1 that he failed to supply any supporting evidence in the
2 form of pay stubs, T4 forms, et cetera.

3 Given that there are three factors
4 militating in favour of the highest possible penalty,
5 one that is neutral, and one that is a mitigating
6 factor, I submit that a penalty of \$7,500, similar to
7 that in the Kyburz case, would be appropriate.

8 In closing I would simply state that
9 in words that could have been written for this case --
10 and that seem to follow on -- of McMurtry, C.J., at the
11 time the Attorney General of Canada, who said that you
12 cannot regulate what is in a man's heart and that no
13 law can do so.

14 Martin Luther King Jr. once said:

15 "Morality cannot be legislated
16 but behaviour can be regulated.
17 Judicial decrees may not change
18 the heart, but they can restrain
19 the heartless."

20 Barring any questions you may have,
21 Mr. Chair, those are my submissions.

22 THE CHAIRPERSON: I think that
23 is complete.

24 Thank you very much, Mr. Warman.

25 MR. WARMAN: Thank you.

1 --- Pause

2 MS WARSAME: Good morning, Mr. Chair.

3 THE CHAIRPERSON: Good morning.

4 ARGUMENT

5 MS WARSAME: The Commission adopts
6 the complainant's argument with respect to remedy, but
7 also with respect to other elements that he put
8 forward.

9 The internet is the classic tool
10 for the mass distribution of information in our
11 modern society. It is also the tool of choice for
12 hate propaganda because of its borderless and
13 far-reaching nature.

14 The case before you, Mr. Chair, deals
15 with the messages posted by Terry Tremaine. Terry
16 Tremaine calls himself a National Socialist. In
17 response to the Commission's statement of particulars
18 he stated:

19 "I have a God-given right to say
20 and (write) what I think if I
21 chose to do so".

22 He testified that he posted all the
23 messages filed by the Commission as evidence.

24 He stated that he has posted over
25 1,900 messages. He stated:

1 "I totally support everything I
2 wrote in Stormfront."

3 He praised Adolf Hilter, a man known
4 as the mastermind of the genocide of the Jews and
5 ethnic cleansing.

6 He testified that he used swastika
7 because he is a Social Nationalist.

8 He testified that it is redundant to
9 say Jews are parasite or vermin.

10 He testified that blacks are never
11 equal to white racially or morally.

12 He testified that blacks and Jews
13 are a poisonous influence and will destroy every
14 civilized society.

15 This is the man that Mr. Warman
16 filed a complaint on October 2004 which is the matter
17 before you.

18 Mr. Chair, the main issue that will
19 be decided by you with respect to this file are as
20 follows: Did the Respondent, acting alone or acting
21 in concert with others, communicate or cause to be
22 communicated, the material which is the subject of
23 the complaint?

24 The second issue is: Was the
25 material communicated by way of the internet?

1 The third issue is: Is the material
2 likely to expose persons to hatred based on those
3 persons being identifiable on a prohibited ground?

4 Finally, what remedies the Tribunal
5 should provide in this case.

6 Before, Mr. Chair, I address the main
7 issue in this case, I would like to address the
8 argument and the points raised by the respondent
9 yesterday.

10 Mr. Fromm, the respondent's agent.
11 stated that the Tribunal should not be allowed to rule
12 on the material that was not included in the original
13 complaint.

14 Mr. Chair, I would like to refer you
15 to HR-1, which is Mr. Warman's complaint.

16 In his complaint Mr. Warman stated
17 that Terry Tremaine discriminated on the basis of race,
18 colour, national, ethnic origin, and religion, by
19 communicating messages over the internet that will
20 expose blacks, aboriginals, Asians and Jews to hatred
21 and contempt.

22 Mr. Warman, in his complaint, clearly
23 stated that the date of the alleged discriminatory
24 conduct is February 2004 and ongoing.

25 The respondent did not object when

1 the postings that were not included in the complaint
2 were provided to him as part of the Commission's case,
3 nor when the postings were enter as evidence during the
4 hearing.

5 This issue, Mr. Chair, was addressed
6 by the Tribunal in the case of Warman v. Winnicki,
7 which is at Tab 15.

8 --- Pause

9 MS WARSAME: I would like to direct
10 your attention to paragraph 16 of Tab 15.

11 If you look at page 4, which is the
12 page before, the Tribunal is dealing with the
13 following issue:

14 "Is the Tribunal Permitted to
15 Rule on Material That Was Not
16 Included In the Original
17 Complaint?"

18 In response to that the Tribunal held
19 the following:

20 "The evidence does not disclose
21 the basis for a new complaint or
22 a new series of complaints, but
23 rather goes to the issue of
24 whether the Respondent was
25 engaging in an ongoing violation

1 of sections 14.1 and 13(1) of
2 the Act".

3 At paragraph 17 the Tribunal referred
4 to the case of LeBlanc and stated:

5 "...the evidence..."

6 Talking about the postings that were
7 not included in the complaint:

8 "...was admissible because the
9 complaint form referred to
10 incidents of discrimination that
11 were ongoing and the evidence
12 appeared to be the continuation
13 of the complaint."

14 THE CHAIRPERSON: You are reading
15 from where?

16 MS WARSAME: Paragraph 17.

17 THE CHAIRPERSON: Where in
18 paragraph 17?

19 MS WARSAME: In the middle of
20 the paragraph.

21 THE CHAIRPERSON: "The Tribunal
22 ruled..."?

23 MS WARSAME: Yes, "The Tribunal
24 ruled".

25 Mr. Chairman, I would like to also

1 direct your attention to the case Warman v. Kyburz
2 at Tab 12, paragraphs 70 and 71.

3 --- Pause

4 MS WARSAME: In that case the
5 Commission was trying to file -- requested actually to
6 file material posted by the respondent which was not
7 previously disclosed to the respondent.

8 In that case the Tribunal held, at
9 paragraph 70:

10 "In this case, while Mr. Kyburz
11 would arguably not have been
12 aware of the Commission's
13 intention to rely on the most
14 recent postings, Mr. Warman's
15 complaint did allege that the
16 discriminatory practice was
17 ongoing."

18 Mr. Chair, it is our position that
19 the case law clearly establishes that the Tribunal is
20 permitted to rule on any material that was not included
21 in the complaint and the specification of the words
22 "and ongoing" in the complaint clearly reflects the
23 possibility that additional evidence of the violation
24 of section 13 will occur.

25 It is important also to note,

1 Mr. Chair, that in his own admission Mr. Tremaine
2 stated that he posted over 1,900 postings.

3 I will now address the second issue
4 raised by the respondent.

5 As you will recall, Mr. Chair, the
6 respondent argued that in this case there was no
7 repeated communication caused by the respondent. He
8 argued that in order to make a posting in Stormfront,
9 it is necessary to register as a member. He also
10 alleged that because a message when it is posted is
11 only sent once, this is a clear indication that there
12 is no repeated communication as required by
13 section 13(1) of the Canadian Human Rights Act.

14 It is our position that this argument
15 has no basis in fact and in law. Mr. Warman testified
16 that anyone can get access to Stormfront website. You
17 only need to register if you want to make a posting.
18 He testified that he accessed the site on a number of
19 separate occasions.

20 Mr. Tremaine also confirm that you
21 need registration if you want to make a posting.
22 However, he even added that there is a special forum
23 available to the people who may disagree with the view
24 express in Stormfront, such as minorities, blacks
25 and Jews.

1 He testified that he visits
2 Stormfront two to three times a day and he posted more
3 than 1,900 messages.

4 Mr. Chair, I would like to highlight
5 the case Citron v. Zundel at Tab 5 which deals with the
6 issue of what constitutes a repeated communication.
7 The case is at Tab 5 of the Commission's Book of
8 Authorities, paragraph 112.

9 --- Pause

10 MS WARSAME: Paragraph 112, the
11 Tribunal held:

12 "The requirement that there be
13 repeated communication is a
14 constituent element of s. 13(1),
15 and we find as a fact that there
16 was repeated communication of
17 the material posted to the
18 Zundelsite."

19 Then the Tribunal continues
20 and states:

21 "We heard from a number of
22 witnesses ... that they accessed
23 the material in issue on the
24 Zundelsite on a number of
25 separate occasions".

1 At paragraph 113 the Tribunal
2 held that:

3 "... the very nature of the
4 Internet make `repeated'
5 communication inevitable and
6 deliberate."

7 In the same paragraph, the third
8 sentence, the Tribunal held:

9 "This technology was calculated
10 to facilitate browsing and the
11 repeated transmission of
12 material posted on a chosen
13 site. A key advantage of the
14 Internet is that it provides an
15 inexpensive means of mass
16 distribution. We are thus
17 satisfied that there was
18 repeated communication from the
19 Zundelsite."

20 Then the Tribunal makes other
21 references that you can find at paragraphs 115 and 116.

22 Mr. Chair, I would like to also refer
23 you to the case of In the case of Barrick Gold
24 Corporation which is at Tab 1, paragraphs 31 and 32.
25 In that case, at paragraphs 31 and 32 the Court held:

1 "Communication via the Internet
2 is instantaneous, seamless,
3 interactive, blunt, borderless
4 and far-reaching. It is also
5 impersonal, and the anonymous
6 nature of such communications
7 may itself create a greater risk
8 that the defamatory remarks are
9 believed..."

10 That case is a case of defamation via
11 the internet.

12 If you look at paragraph 32 of the
13 same case, the Court held that:

14 "Although Internet
15 communications may have the
16 ephemeral qualities of gossip
17 with regard to accuracy, they
18 are communicated through a
19 medium more pervasive than
20 print, and for this reason they
21 have tremendous power to harm
22 reputation. Once a message
23 enters cyberspace, millions of
24 people worldwide can gain access
25 to it."

1 Mr. Chair, it is our position that
2 the communications caused by the respondent in this
3 case were repeated communications as required by
4 section 13.

5 As the person creating the
6 posting, Mr. Tremaine is ultimately the person who
7 makes available to others material to be communicated
8 to them.

9 I will now go to the third argument
10 put forward by the respondent.

11 The respondent alleges that it is
12 necessary to identify. He alleges for example there is
13 no one of the alleged victims who are present or
14 required intervenor status in this case. It was
15 Mr. Warman and not Jews or blacks who filed the
16 complaint.

17 Mr. Chair, I would like to draw your
18 attention to section 40(1) of the Canadian Human Rights
19 Act. That section states:

20 "Subject to subsections (5) and
21 (7), any individual or group of
22 individuals having reasonable
23 grounds for believing that a
24 person is engaging or has
25 engaged in a discriminatory

1 practice may file with the
2 Commission a complaint in a form
3 acceptable to the Commission."

4 Section 40 refers to subsections (5)
5 and (7). If you go section 40(5) of the Act it states
6 the following:

7 "No complaint in relation to a
8 discriminatory practice may be
9 dealt with by the Commission
10 under this Part unless the act
11 or omission that constitutes the
12 practice..."

13 If you go to (b) it states:

14 " occurred in Canada and was a
15 discriminatory practice within
16 the meaning of section 5, 8, 10,
17 12 or 13 in respect of which no
18 particular individual is
19 identifiable as the victim"

20 --- Pause

21 MS WARSAME: It is our position,
22 Mr. Chair, as is clearly stated in the legislation,
23 that there is no need to be a victim in order to a file
24 a complaint under sections 5, 10, 12 or 13 of the
25 Canadian Human Rights Act.

1 --- Pause

2 MS WARSAME: In the same argument,
3 Mr. Fromm, the respondent's agent, stated that the
4 allegedly targeted groups did not file the complaint or
5 participate in the proceeding. Therefore, he states,
6 they will not have knowledge that they have been
7 exposed to hate.

8 I would like to direct your
9 attention, Mr. Chair, to the case of Warman v. Winnicki
10 at Tab 15, paragraph 46.

11 At paragraph 46 Ms Jensen in Warman
12 v. Winnicki referred to Nealy v. Johnston and the use
13 of the word "likely" in section 13 of the Canadian
14 Human Rights Act, and she stated the following:

15 "...the use of the word 'likely' in
16 s. 13(1) means that it is not
17 necessary that evidence be adduced to
18 prove that any particular individual
19 or group took the messages seriously
20 and directed hatred or contempt
21 toward others. Nor is it necessary
22 to show that, in fact, anyone was so
23 victimized."

24 The Tribunal then continued and
25 stated the following:

1 "Unlike the other sections in
2 the Act dealing with
3 discrimination, s. 13(1)
4 provides for liability where
5 there is no proven or provable
6 discriminatory impact..."

7 The Tribunal explained the reason why
8 the Court decided that way. The Tribunal states:

9 "... the difficulty involved in
10 determining how many people had
11 received the message and to
12 gauging the impact of the
13 message on these people."

14 justify the reason why the Court looked at section 13
15 in that particular way.

16 It is our position, Mr. Chair, that
17 the case law, and particularly the Act clearly
18 authorizes any individual or group of individuals to
19 file human rights complaints with respect to certain
20 discriminatory practices such as internet hate
21 propaganda.

22 Now that I have addressed the
23 different arguments put forward by the respondent, I
24 would like to briefly address the first issue in this
25 case, which is: Did the respondent, Terry Tremaine,

1 acting alone or acting in concert with others,
2 communicate or cause to be communicated, the material
3 which is the subject of this complaint?

4 THE CHAIRPERSON: You shouldn't be
5 very long on that point because it was admitted.

6 MS WARSAME: No, it will be
7 extremely brief.

8 THE CHAIRPERSON: It was admitted.

9 MS WARSAME: Yes.

10 Mr. Tremaine does not deny
11 communicating the messages which form the basis of the
12 complaint. He actually admitted under oath that he did
13 communicate all the messages entered as evidence by the
14 Commission and he totally supports everything he wrote
15 in Stormfront.

16 The evidence also established that
17 Terry Tremaine is also mathdokter. Terry Tremaine
18 later confirmed that he is mathdokter.

19 It is our position that all the
20 postings entered into evidence were authored by Terry
21 Tremaine. He recognized in his Statement of
22 Particulars that he made the postings.

23 So the evidence is clear in this case
24 that Mr. Tremaine, acting alone or acting in concert
25 with others, communicated or caused to be communicated

1 the material which is the subject matter of this case.

2 Let me now briefly go to the second
3 issue, which is: Were Mr. Tremaine's messages
4 communicated telephonically by way of internet?

5 Mr. Chair, the evidence Mr. Warman is
6 that all of Mr. Tremaine's messages were found on
7 several websites. He cited the following websites:
8 Stormfront, the National-Socialist Party of Canada;
9 mathdokter99.htmlplanet.com and its mirror website
10 mathdokter99.tripod.com and mathdokter99.50megs.com.

11 THE CHAIRPERSON: I don't think there
12 is an issue there. Also, I think that is admitted that
13 it was through the internet.

14 MS WARSAME: So I can move on to the
15 second question.

16 Finally, the last issue that needs
17 that needs to be decided by the Tribunal is: Is the
18 material likely -- the material posted by Terry
19 Tremaine -- likely to expose a person or persons to
20 hatred or contempt by reason of the fact that those
21 persons are identifiable on the basis of a prohibited
22 ground of discrimination?

23 It is the Commission's position that
24 section 13 must be interpreted in light of the harm it
25 is meant to address.

1 The Tribunal has the benefit of the
2 Supreme Court of Canada's analysis of section 13 in the
3 case of Taylor which is at Tab 3 of the Book of
4 Authorities of the Canadian Human Rights Commission.

5 In that case, the Supreme Court went
6 through a constitutional analysis of the section which
7 recognized the importance of freedom of expression in
8 our society. Tab 3, paragraph 59.

9 In Taylor, Justice Dickson,
10 writing for the majority, at paragraph 59 is
11 stating the following:

12 "...the nature of human rights
13 legislation militates against
14 an unduly narrow reading of
15 s. 13(1)..."

16 of the Canadian Human Rights Act.

17 He quoted Justice Lamer, as he then
18 was, in Insurance Corp. of B.C. v. Heerspink, to the
19 effect that a human rights code:

20 "...is not to be treated as
21 another ordinary law of general
22 application. It should be
23 recognized for what it is, a
24 fundamental law."

25 In deciding whether or not section 13

1 of the Canadian Human Rights Act breached the Charter's
2 guarantee of freedom of expression, the Supreme Court,
3 at paragraph 13, looked at the purpose of the Canadian
4 Human Rights Act as is stated in section 2 of the Act.

5 The Court held the following:

6 "The purpose of this Act is to
7 extend (to the present) laws in
8 Canada to give effect ... to the
9 principle that all individuals
10 should have an equal opportunity
11 with other individuals to make
12 for (himself or herself) the
13 lives that (he or she is) able
14 and wish to have ... without
15 being hindered in or prevented
16 from doing so by discriminatory
17 practices based on race,
18 national or ethnic origin,
19 colour, religion...."

20 The Court also looked at the freedom
21 of expression under section 2 of the Charter, as well
22 as section 15 and section 27, which deal with the
23 equality section and the multiculturalism section.

24 At paragraph 40 of Taylor the Supreme
25 Court referred to the Cohen Committee Report and stated

1 the following:

2 "...individuals subjected to
3 racial or religious hatred may
4 suffer substantial psychological
5 distress, the damaging
6 consequences including a loss of
7 self-esteem, feelings of anger
8 and outrage and strong pressure
9 to renounce cultural differences
10 that mark them as distinct.
11 This intensely painful reaction
12 undoubtedly detracts from an
13 individual's ability to, in the
14 words of s. 2 of the Act, 'make
15 for himself or herself the life
16 that he or she is able and
17 wishes to have'."

18 At paragraph 19, the Court refers to
19 comments made by Justice Mahoney, then speaking for the
20 Court of Appeal in Taylor, and he states the following:

21 "...`the concern of any free
22 and democratic society to
23 avoid the vilification of
24 individuals or groups by reason
25 of their race and/or religion is

1 self-evident'."

2 And that:

3 "In his view, Canada was a
4 multicultural country, and such
5 multiculturalism represents a
6 positive characteristic of it's
7 national persona."

8 The Commission submits that the test
9 to be used in determining whether or not the material
10 published and posted by Terry Tremaine is likely to
11 expose people to hatred or contempt is as set out by
12 the Tribunal in Nealy v. Johnston, which is at Tab 9,
13 and which was cited with approval by the Supreme Court
14 in Taylor at Tab 3 at paragraph 60:

15 At paragraph 60 the Supreme Court
16 held the following:

17 "With `hatred' the focus is a
18 set of emotions and feelings
19 which involve extreme ill will
20 towards another person or group
21 of persons. To say that one
22 `hates' another means in effect
23 that one finds no redeeming
24 qualities in the latter. It is
25 a term, however, which does not

1 necessarily involve the mental
2 process of `looking down' on
3 another or others. It is quite
4 possible to `hate' someone who
5 one feels is superior to one in
6 intelligence, wealth or power."

7 Then the Court defines the term
8 "contempt" as follows:

9 "`Contempt' is by contrast a
10 term which suggests a mental
11 process of `looking down' upon
12 or treating as inferior the
13 object of one's feelings."

14 It is our position that the test to
15 be used by this Tribunal, and the test used in many
16 Tribunal cases and Court decisions, is the test set out
17 by the Supreme Court in Taylor.

18 Mr. Chair, it is our position that on
19 a balance of probabilities the messages posted by Terry
20 Tremaine involve extreme ill will towards blacks and
21 Jews and they characterize them as having no redeeming
22 qualities and to treat them as inferior.

23 It is clear that the materials which
24 were posted by Terry Tremaine on the Stormfront
25 website, as well as other websites, are likely to

1 expose people to hatred or contempt based on the fact
2 that they are Jewish, black, aboriginal and non-white.

3 Let me briefly highlight how the
4 messages of Terry Tremaine characterize persons of the
5 Jewish faith.

6 Although I do not intend to go
7 through all the messages that are in evidence, I will
8 go through a few examples of how Mr. Tremaine's
9 messages characterize a person of the Jewish faith.

10 Mr. Chair, I would like to refer you
11 to HR-7. I will briefly read for the record, and for
12 your attention, some of the messages that he posted.

13 At H-7 Mr. Tremaine stated the
14 following:

15 "I must also give my father some
16 credit for my awakening. ... I
17 overheard my father say on one
18 of these occasions that Hitler
19 was right about the Jews."

20 At HR-8 Mr. Tremaine stated the
21 following:

22 "Hitler stood in opposition to
23 International Jewry and Marxism.
24 ...
25 Hitler was a man and like all

1 other men was not perfect.
2 ...
3 We should take from the past
4 what we can use effectively to
5 secure the existence of our
6 people (and the future for White
7 children)...
8 And, we must always remember to
9 stand against the common enemy
10 of all humanity, International
11 Jewry."

12 At HR-12 he stated the following:

13 "The Jew cannot help being a Jew
14 any more than a rat can help
15 being a rat. The Jews have been
16 a parasitic race for 5000 years
17 and will remain so. No healthy
18 host population can tolerate a
19 parasite feeding on it without
20 eventually rejecting it."

21 At HR-14 he stated the following:

22 "When I look at photos of Ariel
23 Sharon I feel like I am looking
24 at the very face of pure evil.
25 ...

1 It is time for the world to
2 ACT against these hideous
3 parasites!"

4 In HR-17 he states the following:

5 "In no case..."

6 In that posting he was referring to
7 what solution is available to make Canada 100 percent
8 white and he stated the following:

9 "In no case would a Jew be
10 allowed to remain on our
11 territory. They would be
12 allowed to leave peacefully with
13 whatever goods they could put in
14 a suitcase."

15 In HR-18 he stated the following:

16 "Hitler called them..."

17 He was talking about the Jews:

18 "... the Masters of the Lie and
19 he was right on that."

20 He stated:

21 "...they gravitate towards all
22 that is disgusting and
23 depraved."

24 They are involved:

25 "...in organized crime, drugs,

1 and white slavery."

2 He also states that they control the
3 main institutions, such as mass media, financial,
4 political, judicial and law enforcement.

5 At HR-19 he stated:

6 "The holohoax story attempts to
7 invert that and portay the juden
8 as victims of the 'evil Nazis'."

9 In examination in chief, Mr. Tremaine
10 testified that it is redundant to say that Jews are
11 parasite and vermin. He stated that he doesn't have
12 any tolerance for the Jews and he stated that the Jews
13 are inherently a parasitic race,

14 He also suggests that we should maybe
15 reactivate the Madagascar plan. He testified that
16 maybe all Jews should be shipped to the African Island
17 of Madagascar.

18 When asked if he hates Jews and
19 blacks he stated the following: I don't hate them, but
20 I detest their poisonous influence. Jews have
21 encouraged the destruction of a very civilized society.
22 Their goal is to overthrow civilization.

23 When asked: Why do you use a
24 swastika as symbol?, he stated "Because I am a
25 Social Nationalist.

1 The basic theme of the material
2 communicated to its readers by Mr. Tremaine is that
3 Jewish people have no redeeming qualities and that they
4 are destroying the white race.

5 These messages reinforce classic
6 anti-semitic myths that Jews have a disproportionate
7 degree of power and control in the media and
8 government, and that Jews pose a menace to the
9 civilized world.

10 Mr. Tremaine's messages communicate
11 that Jews are parasites, descendants of demons. He
12 described people of the Jewish faith in extremely
13 negative characteristics. He trivialized the suffering
14 of the Jew people caused by the Holocaust by
15 characterizing the "holocaust" as a "holohoax".

16 It is submitted that the tone and
17 extreme denigration of Jews is clearly not a legitimate
18 debate, as Mr. Fromm suggested. This is not the type
19 of expression that section 2 of the Charter was meant
20 to protect.

21 The themes communicated by
22 Mr. Tremaine against people of the Jewish religion
23 are the similar theme that was found to discriminate
24 against people of the Jewish religion to hatred.
25 They were the similar messages found in other cases

1 that expose people of the Jewish faith to hatred
2 and contempt.

3 I would like to refer the
4 Tribunal to the case of Citron v. Zundel at Tab 5,
5 paragraphs 137 to 145.

6 The Tribunal at paragraphs 137 to 145
7 refers to themes in that case which are very similar to
8 the themes found in Mr. Tremaine's postings.

9 In Zundel, Jews were described as
10 liars, including lying about the holocaust, and that
11 because of this the truth needed to be revealed. The
12 Jews always tried to hide it.

13 In Zundel Jews were described as
14 criminals, acting on a global level to elevate their
15 power and wealth. Jews were also described as have
16 tremendous power and control with respect to the media.

17 The themes communicated by
18 Mr. Tremaine were similar to the ones communicated in
19 the case of Kakhi v. Canadian Liberty Net, which is at
20 Tab 6, at paragraphs 21 to 23.

21 THE CHAIRPERSON: There are no
22 paragraphs.

23 MS WARSAME: At page 21, sorry.

24 THE CHAIRPERSON: I'm just trying to
25 see. There are no pages.

1 MS WARSAME: Let me just find it.

2 Give me one second.

3 --- Pause

4 THE CHAIRPERSON: I will find it.

5 There is no problem. Go ahead, I will find it.

6 MS WARSAME: Basically the Tribunal
7 highlights, at pages 21 to 23, that the material which
8 was the subject of the complaint is described as
9 communicating the messages that Jews use tools such as
10 the media to:

11 "...threaten the cultural, moral
12 and racial foundations of white
13 European society."

14 It is our position the messages
15 communicated by Tremaine are very similar to the
16 messages communicated in *Khaki v. Canadian Liberty Net*
17 where the Tribunal found that the respondents
18 discriminated and exposed Jews to hatred.

19 I would like to also refer you to the
20 case of *Smith v. Western Guard Party*, Tab 11, page 26.

21 In that case the Tribunal held that
22 the Jews were described as the following, at page 26:

23 "Not only is there extreme
24 criticism of Jews as being the
25 root cause of many of the

1 economic and political problems
2 facing Canada, but the messages
3 over the period of time that
4 they were telephonically
5 delivered increasingly call for
6 violence against Canadian
7 minorities and especially Jews.
8 The messages contain aggressive
9 overtones..."

10 It is our position, Mr. Chair, that
11 the messages communicated by Mr. Tremaine clearly
12 expose the people of the Jewish faith to hatred and
13 contempt contrary to section 13 of the Canadian Human
14 Rights Act.

15 Let me now highlight a few of the
16 messages which expose black and other non-whites to
17 hate and contempt.

18 I will go through a few examples of
19 how Mr. Tremaine's messages characterize people of the
20 black race and other non-whites.

21 At HR-6, Mr. Chair, in a posting
22 which is entitled "Olympic Medals per capita (by
23 country)", Mr. Tremaine wrote:

24 "Having lived in the Bahamas for
25 four years I can tell you that

1 with all that fried chicken,
2 macaroni and cheese ... it's
3 suprising..."

4 Talking about the blacks:

5 "... they can get off the
6 couch."

7 In another message, at HR-7, again he
8 is referring to the blacks in the Bahamas, he states
9 the following:

10 "... I discovered that blacks
11 are intellectually inferior to
12 Whites.

13 ...

14 ... I mean they were
15 intellectually inferior at a
16 more fundamental level. In my
17 job I encountered blacks who
18 were well educated on paper but
19 who seemed to lack a certain
20 intellectual spark which most,
21 even relatively uneducated,
22 whites possess. I also came to
23 see black culture as
24 fundamentally depraved and
25 disgusting. It is only fit for

1 blacks and is certainly not
2 anything a self-respecting white
3 person should associate..."

4 I would like to refer you now to
5 HR-13 where he says the following about aboriginals.

6 I heard:

7 "... AIDS is rampant among the
8 'First Nations' here in Sask.

9 ...

10 ... I don't really care if AIDS
11 wipes out the whole lot of them.

12 It would make our job easier."

13 At Hr-17 he makes a posting with
14 respect to the solution he is putting forward in terms
15 of creating and establishing 100 percent white Canada.
16 He says the following:

17 "Speaking for myself only I
18 expect this white nation to
19 comprise most of what is now
20 Canada with most of what is now
21 the US. Non-white immigration
22 would be banned. Non-whites
23 living within our borders would
24 be encouraged to leave or submit
25 to voluntary sterilization.

1 Under such a plan our nation
2 would be 100% White within one
3 generation*. It could be
4 accomplished without significant
5 bloodshed if non-whites were
6 willing to co-operate....
7 Blacks could be repatriated to
8 Africa.
9 ... Asians would be sent to
10 their country of origin. If
11 that were impossible then
12 the sterilization plan would
13 kick in."

14 At HR-23 he refers to the police
15 state as a method which will help people to "purge the
16 non-whites out of the system ... very quickly."

17 At HR-26 he again states the
18 following about aboriginals:

19 "Like most natives..."

20 He is talking about a woman gambling,
21 allegedly gambling at the library:

22 "Like most natives she is almost
23 certainly on welfare and instead
24 of being out looking for useful
25 employment she was gambling her

1 welfare money away."
2 At HR-33 he proposed the following:
3 "We would all like a 100% White
4 country tomorrow, if not sooner.
5 The fact is, we are stuck with
6 this multi-racial situation and
7 must deal with it through
8 effective political means. I am
9 supporting the equation 75%
10 White = White. Some may not
11 like that. Keep in mind,
12 however, that it was the
13 position of (National-Socialist)
14 Germany."

15 Mr. Chair, is our position that
16 Mr. Tremaine's messages state the following. He
17 describes the persons belonging to the black race as
18 being intellectually inferior.

19 Mr. Tremaine's messages are that
20 blacks and other non-whites are destroying the country
21 and they should be deported outside of this country.

22 He even proposed a new Constitution
23 for what he called "Canada". He testified yesterday
24 that in order to stay in Canada and become a citizen of
25 this country you have to be 75 percent white, and he

1 stated that he followed the Nuremberg Race Law.

2 He stated, if you are non-white you
3 shall have no access to work, you shall have no access
4 to citizenship, and you shall not be able to vote.

5 Mr. Chair, it is our position that
6 the themes in Mr. Tremaine's messages targeting people
7 of the black race and other non-whites are the same as
8 messages in other Tribunal and Court decisions which
9 have been found to likely expose persons to hatred
10 or contempt.

11 For your attention -- and I will not
12 read it -- I would like to highlight the case of Khaki
13 at page 22.

14 Briefly, in that case the Tribunal
15 held the following with respect to hate against
16 non-whites:

17 "... messages point out that
18 immigrants are non-whites and
19 are not Europeans, bear no
20 resemblance to our founding
21 fathers; bring poverty, crime
22 and corruption to our society
23 ... that there is a good reason
24 not just to dislike them or be
25 suspicious of them but to be

1 contemptuous of them. When one
2 is described as a human refuge
3 or a threat to the very
4 substance of civilization..."

5 That is how blacks and other
6 non-whites were described in Khaki.

7 Similar themes also were found in the
8 case of Manitoba Coalition against Racism and
9 Apartheid, Inc. v. Marcus, which is at Tab 7.

10 It is our position, Mr. Chair, that
11 the Tribunal must find in this case that the materials
12 which were posted by Terry Tremaine are likely to
13 expose people to hatred or contempt on the basis of the
14 fact that those individuals belong to the black race or
15 are non-white and/or are Jewish.

16 It is the position of the
17 Commission, and we respectfully submit that this
18 Tribunal must find, that all of the elements of a
19 breach of section 13 have been proven on a balance
20 of probabilities and that Mr. Tremaine must be found
21 to have breached section 13 of the Canadian Human
22 Rights Act.

23 Mr. Chair, the Commission is
24 adopting the complainant's argument with respect to
25 remedies so I will not provide additional argument with

1 respect to remedies.

2 In conclusion, it is the position of
3 the Commission that freedom of expression is a
4 fundamental value in this country. Freedom of
5 expression encourages the quest for truth, the
6 promotion of individual self-development and the
7 protection of a vibrant democracy where the
8 participation of all individuals is accepted and
9 encouraged.

10 However, the Supreme Court of Canada
11 in Taylor stated the following with respect to the
12 decision of Keegstra decision at paragraph 49:

13 "Hate propaganda contributes
14 little to the aspirations of
15 Canadians or Canada in the quest
16 for truth, the promotion of
17 individual self-development or
18 the protection and fostering of
19 a vibrant democracy where the
20 participation of all individuals
21 is accepted and encouraged."

22 These are my submissions.

23 THE CHAIRPERSON: Thank you very
24 much, Ms Warsame.

25 This concludes the hearing in this

1 matter. I will now take the matter into consideration
2 and will render a decision on the issue in the coming
3 months.

4 I would like to thank every
5 participant in this hearing for helping to move this
6 along in a very orderly and very proper manner.

7 Again, Mr. Tremaine, thank you very
8 much; Ms Warsame, Mr. Vigna, Mr. Warman.

9 I would like to thank also the people
10 from the Registry Office and the stenographer and
11 everybody else who was involved.

12 Thank you very much and the best of
13 luck to all of you in your future endeavours.

14 Thank you.

15 --- Whereupon the hearing concluded at 11:00 a.m.

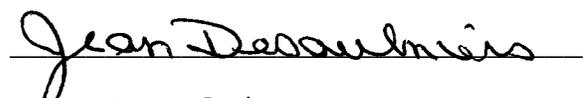
16

17 I HEREBY CERTIFY THAT I HAVE, to
18 the best of my skill and
19 ability, accurately taken down
20 and transcribed the foregoing.

21

22

23



24

Jean Desaulniers,

25

Stenomask Reporter

StenoTran