

Canadian Human
Rights Tribunal



Tribunal canadien
des droits de la personne

BETWEEN:

RICHARD WARMAN

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

PETER KOUBA

Respondent

REASONS FOR DECISION

MEMBER: Karen A. Jensen

2006 CHRT 50
2006/11/22

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I. WHAT IS THE COMPLAINT ABOUT?

[1] This complaint is about whether Peter Kouba, using the pseudonyms “proud18” and “WhiteEuroCanadian”, communicated hate messages over the Internet, contrary to s. 13(1) of the *Canadian Human Rights Act* (“*the Act*”).

[2] On June 8, 2004, Richard Warman filed a complaint with the Canadian Human Rights Commission (the Commission) alleging that from October 7, 2003 until June 2004 and ongoing, Peter Kouba communicated material on two Internet sites – www.stormfront.org (stormfront.org) and www.westerncanadaforum.com - that exposed First Nations people, East Asians, Pakistanis, Roma (also known as Gypsies) and other non-white people, as well as gays and lesbians and people of the Muslim, Hindu and Jewish faiths to hatred or contempt.

[3] The Respondent denied that he communicated the messages. He alleged that the impugned messages were passed off as his own. He also alleged that he was not the kind of person who would communicate material that would expose a person to hatred or contempt.

[4] In addition to presenting evidence of the alleged hate messages, the Canadian Human Rights Commission (the Commission) and the Complainant led evidence relating to the identity of the person who communicated the messages.

[5] For the reasons that follow, I find that the material presented during the hearing into this complaint violates s. 13 of the *Act*. I also find that it was the Respondent, Peter Kouba, using the pseudonyms “proud18” and “WhiteEuroCanadian” who communicated the impugned material over the Internet.

II. WHAT ARE THE CIRCUMSTANCES THAT GAVE RISE TO THE COMPLAINT?

[6] The Complainant testified that since the late 1990's he has had an interest in human rights, particularly in connection with the distribution of hate messages by those ascribing to white supremacist and neo-Nazi beliefs. This interest has led him to monitor the Internet for material that he regards as hate propaganda.

[7] In the course of monitoring the Internet in 2003, the Complainant came across material on a website at www.stormfront.org that appeared to have been communicated by an individual living in Edmonton, Alberta. This individual was using the pseudonym "proud18".

[8] The Complainant testified that stormfront.org is an international website, based in the United States. It provides "forums", which are sites on the Internet where people from around the world can communicate on-line about issues relating to white supremacy and neo-Nazi ideology. There are forums within stormfront.org that are dedicated to specific countries. The material communicated by proud18 was found on the Canadian forum of stormfront.org.

[9] Within a forum, there is a list of "threads" or topics of discussion. The list is organized in chronological order with the thread containing the most recent message, which is also known as a "posting", at the top of the list. The Complainant testified that any member of the public could read the postings within a thread on the Canadian forum of stormfront.org.

[10] The Complainant stated that in the summer and fall of 2003, he became concerned about the material that was being posted on the Canadian forum of stormfront.org by proud18 for a number of reasons. First, the kind of language that was being used by this individual in relation to Aboriginal Canadians, the Jewish community, homosexuals and other minority groups was extremely negative and threatening. The responses on the forum to proud18's postings were calling for the genocide of some groups, such as homosexuals and the mentally disabled. Furthermore, there were indications in proud18's postings that the author was part of a group,

known as Western Canada For Us (“WCFU”) that was planning neo-Nazi and white supremacist actions and events in the Alberta region.

[11] The Complainant testified that in February 2004, it became evident that WCFU was also developing a website. In March 2004, the Complainant found the WCFU website on the Internet for the first time. On a page in the forum section of that website, the Complainant viewed what he considered to be hate messages directed towards gay and lesbian people. This material was posted by someone using the pseudonym “WhiteEuroCanadian”, who was designated as a moderator. The Complainant believed that WhiteEuroCanadian was the same individual who went by the moniker “proud18” on the stormfront.org website. He believed that this individual was the Respondent, Peter Kouba. The Complainant testified that postings on the WCFU Forum could be viewed by anyone regardless of whether the person was a member of Western Canada For Us.

[12] The Complainant expressed his concerns about the messages on stormfront.org and the WCFU websites to the Edmonton Police Hate Crimes Unit and then, in June 2004, he filed a complaint with the Canadian Human Rights Commission.

III. WHO APPEARED AT THE HEARING?

[13] The Commission fully participated at the hearing into the complaint and was represented by counsel. The Complainant also participated but was not represented by legal counsel, although it should be noted that he is a lawyer by profession.

[14] The Respondent did not attend the first day of the hearing. At the outset of the hearing, an Affidavit of Service was filed indicating that he had been personally served with a Notice of the case conference on June 9, 2006 to discuss the upcoming hearing, a Notice of Venue indicating the exact location and dates of the hearing and a Tribunal letter outlining the procedure for the hearing. On that basis, I was satisfied that the Respondent had been provided with ample notice

of the inquiry into the complaint as required by s. 50 of the *Act*. The hearing then proceeded on the first day in the Respondent's absence.

[15] On the second day of the hearing, the Respondent appeared. He was not represented by counsel or an agent. The Respondent cross-examined the Complainant and made submissions in closing argument. He chose however, not to testify or to call any evidence on his own behalf.

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

[16] The following three questions must be addressed in this case:

- (1) Can the Tribunal consider material that post-dates the filing of the complaint?
- (2) Is the material likely to expose a person or persons to hatred or contempt by reason of the fact that they are identifiable on the basis of a prohibited ground of discrimination?
- (3) Did the Respondent, Peter Kouba, communicate the material?

A. Question 1 – Can the Tribunal consider material that post-dates the filing of the complaint?

[17] The Complainant testified that he viewed the material on the stormfront.org and WCFU websites between October 9, 2003 and March 30, 2006. Material that post-dated the filing of the complaint in June 2004 was submitted as evidence of the “ongoing” violation of s. 13 as alleged in the complaint form. The complaint form, therefore, provided notice to the Respondent that material that was communicated after the date of the complaint would be tendered as evidence.

[18] Prior to the first day of the hearing, the Commission attempted to disclose the post-complaint material to the Respondent by electronic mail, but received notification that the Respondent's e-mail system was unable to receive the material. The material was subsequently

mailed to him and he was provided with a copy of the material when he arrived at the hearing on the second day.

[19] Although the Respondent denied having communicated the post-complaint material, he did not object to its production on the basis that he had been given insufficient notice of the material. Given therefore, that the evidence relates to the ongoing nature of the alleged violations of the *Act*, and the fact that the Respondent had notice through the complaint form and the disclosure of the material that additional material would be presented during the hearing, I find that it is appropriate for the Tribunal to consider the evidence that post-dates the filing of the complaint.

B. Question 2 – Is the Material Likely to Expose Members of the Targeted Groups to Hatred or Contempt?

[20] Section 13 of the *Act* makes it a discriminatory practice for a person to communicate by means of the Internet, material that is likely to expose someone to hatred or contempt by reason of the fact that he or she is identifiable on the basis of a prohibited ground of discrimination.

[21] “Hatred” has been defined as a feeling of deep ill-will, an emotion that allows for no redeeming qualities in the person to whom it is directed. Contempt suggests looking down upon or treating as inferior the object of one’s feelings (*Canada (Human Rights Commission) v. Taylor*, [1990] 3 S.C.R. 892 at paras. 60 - 61). Material is likely to “expose” members of the targeted group to hatred or contempt if it is more likely than not to leave members of the targeted group vulnerable to extreme ill-will, or if it creates the conditions in which hatred and contempt are likely to flourish (*Citron v. Zundel*, (No. 4) (2002), 41 C.H.R.R. D/274 at para. 134).

[22] An analysis of the growing body of s. 13 jurisprudence reveals that there are a number of hallmarks of material that is more likely than not to expose members of the targeted group to hatred or contempt. It may be useful at this point to provide a list of these hallmarks along with some examples from the case law to illustrate each point. The list is by no means exhaustive. It may, however, provide a useful context for the legal determination at hand.

[23] After each hallmark is presented, a description and analysis of the material in the present case that displays this hallmark is provided. It should be noted that a significant number of postings were entered into evidence during the hearing. Many were too lengthy to reproduce in the body of this decision. Therefore, I have provided descriptions and short excerpts of the postings made by proud18 and WhiteEuroCanadian in my analysis. Further detail and content of the messages are provided in Appendix A of this Decision.

(i) The Hallmarks of Hate Messages

(a) The targeted group is portrayed as a powerful menace that is taking control of the major institutions in society and depriving others of their livelihoods, safety, freedom of speech and general well-being

[24] The “powerful menace” theme is a common theme in cases where people of the Jewish faith have been the target of hate messages. For example, in *Citron v. Zundel, supra*, the messages expounded the “theory” that Jewish people operate a secret conspiracy designed to extort money and amass tremendous power and control on a global level. In that case, Jewish people were said to have duped the world into believing that the Nazi Holocaust took place in order to extort billions of dollars from countries in reparation. Jews were branded as liars, swindlers, racketeers and extortionists. The Tribunal found that such messages created the conditions in which hatred and contempt toward Jewish people would flourish since they encouraged people to think of Jews as a group of “liars, cheats, criminals and thugs” (*Zundel, supra*, at para. 140).

[25] The portrayal of the targeted group as a powerful menace can also be seen in *Schnell v. Machiavelli and Associates Emprize Inc.* (2002), 43 C.H.R.R. D/453, where the impugned messages warned readers that “homosexuals have an agenda”. That agenda was to have pedophilia legalized (*Schnell, supra*, at para. 36). Again, the implication is that without realizing it, the Canadian public was being tricked into allowing their children to be victimized. The Tribunal found that this created the conditions for hatred and contempt to flourish.

Does the Material in the Present Case Bear the “Powerful Menace” Hallmark?

[26] Proud18’s postings on stormfront.org about Aboriginal Canadians bear the “powerful menace” hallmark. They accuse the members of this group of extorting “billions” of dollars from Canadian taxpayers and claiming title to land that was never theirs. They warn readers not to fall into a guilt trap that has been set by Aboriginal people. For example, in a posting dated October 7, 2003, within a thread entitled “If you don’t like injuns, Then don’t read this”, proud 18 states:

Now if you like the dream of the cartoon native Indian then do not read any further. It will show you how primitive these savages truly are.

Injun Phil Fontaine is demanding close to \$2 billion more a year for 600 1st. nation [600? That’s the count Ottawa gives. One thing that puzzles me about this number is that 150 years ago there wasn’t close to even half those numbers], These injuns are breaking away from their tribes and forming new ones. They then get a min, of a hundred million and so on ... Why should we have to pay these “new” off-tribes?

On top of the close to \$8 Billion a year they get already for as they say “Spent on native programs to fulfil treaty and constitutional obligations”.

What efen “obligation”?

We have over the years given them hundreds of BILLIONS of dollars/ prime land / royalties / tax free living / lifetime welfare on top of their reserve money.

And yet they live like savages. Maybe there are a few clean ones out there ... MAYBE.

And another “on top of” these injuns keep beaking off about how much more money they want.

Billions of dollars down the drain. Hell give ten WHITE educated people a billion dollars and watch empires begin to form. And these injuns keep whinning about the high cost of LYSOL. (sic throughout)

[27] In a posting dated November 23, 2003, proud18 alleges that the extortion of money from White Canadians by Aboriginal Canadians has resulted in the demise of the Canadian health care and education systems.

[28] Similarly, proud18's messages about Jewish people mirror the "powerful menace" image that is portrayed in other hate message cases. Jewish people are said to control the media, the education system and our governments, thereby putting the non-Jewish population in grave danger. Jewish control over these institutions is alleged to be the reason that individual rights are being suppressed. For example, in a posting dated November 23, 2003, within a thread entitled "What will it take to motivate us?" proud18 writes:

We all have our storys of how crapy it is where we live. We have less and less rights. Hell we are a endangered species. Whites by popullation are the biggest minority in the world. Jews have taken over our education, our media, our governments, etc. (sic throughout)

[29] Like other messages bearing this hallmark, proud18's messages about Aboriginal Canadians and Jewish people attempt to generate feelings of outrage at being "robbed" and "duped" by a sinister group of people. In this way, the messages bearing this hallmark create the conditions for hatred of members of these groups to flourish.

(b) **The messages use "true stories", news reports, pictures and references from purportedly reputable sources to make negative generalizations about the targeted group.**

[30] Messages that make use of allegedly true stories, news reports, pictures and references to apparently reputable sources in an attempt to lend an air of objectivity and truthfulness to the extremely negative characterization of the targeted group have been found to be likely to expose members of the targeted group to hatred and contempt. They encourage readers to accept, without question, gross generalizations and stereotypes about the targeted group.

[31] For example, in *Warman v. Winnicki* 2006 CHRT 20, the Respondent made use of graphic photographic images of burned and dismembered people of African origin to convey his message

that when an African person comes to live in Canada, he or she will inevitably bring violence and death. The Tribunal found that this increased the likelihood that members of the African community would be exposed to hatred or contempt since the images evoked strong feelings of revulsion and disgust (*Warman v. Winnicki, supra*, at para. 90).

[32] In that same case, the respondent quoted from online news reports about crimes and events involving members of the targeted groups. The Tribunal found that the use of newspaper articles as “evidence” supporting the respondent’s statements lent a certain appearance of legitimacy to his messages. This, the Tribunal held, enhanced the persuasiveness of the messages and increased the likelihood that the messages would expose members of the targeted group to hatred and contempt (*Warman v. Winnicki, supra*, at para. 82).

Does the material in the present case bear the “true story” hallmark?

[33] Proud18 attempts to use “true stories” and news reports to justify the unfounded and racist generalization that most crime in Canada is committed by Aboriginal people. For example, in a posting dated February 11, 2004, proud18 recounts an allegedly true story reported in the news about an Aboriginal man whose murder sentence was reduced on appeal. Proud18 concludes as follows: “... if you are a injun you can get away with murder just because one is a injun. No wonder they commit most of the crime in Canada. They have the courts on their side and they act like it. Canada needs saving ASAP.”

[34] In another posting on stormfront.org dated November 30, 2003, proud18 starts a thread entitled “Indians sought in murder of 70 year old”. The posting recounts an allegedly true news story about the murder of a 70 year old woman in her home. Proud18 states:

Police are on the lookout for two injuns [so what else is new] who were seen running down the alley from her home. Now the doctors are scared to tell the 90 year old mother that her daughter was killed because they fear that she will die due to a broken heart. They only had each other in this world. (sic throughout)

[35] Proud18 draws the following conclusions:

It happened in Edmonton, I find that the Prarie injun is the “killer/rapist” type more then Ontario. But when it boils down to it they are all savages. (sic throughout)

[36] Proud18 also makes use of apparently true news stories to convey a negative message about Black people. For example, in a posting dated November 30, 2003 within a thread entitled “2 black serial rapists of white women”, proud18 recounts a story that was allegedly reported in the news, stating: “two bald nigs have been raping women in the Clearview part of town”. This leads proud18 to ask: “How come the feds can say that most serial killers are white males but you can’t even make it pubic that in Canada over 50% of the rapes are committed by blacks?”

[37] In a posting dated January 4, 2004 on stormfront.org, proud18 describes a media report about the serious injury and deaths that allegedly occurred during a gang fight involving people of the Hindu faith. According to the posting, the media report states that a White woman was involved with the gang and was also killed. In another posting on stormfront.org dated May 2, 2004, proud18 comments on a report in the media that a person of the Hindu faith had allegedly transmitted HIV/AIDS to three women. Proud18 uses these news items to make the point that if White women associate with people of the Hindu faith, they are race traitors and deserve to die.

[38] The use of allegedly “true stories” to justify extremely negative conclusions about members of the targeted groups is a powerful means of exposing them to hatred because it may seem to some readers that the conclusions are justified in light of the “evidence” provided by the stories and reports. The stories are often anecdotal in nature and devoid of any contextual details or background that might lessen the impact or weaken the inferences that are sought to be drawn.

[39] In numerous postings, proud18 encourages readers to join him in sharing their negative stories and experiences with Aboriginal people on the forum, so that any white nationalists who might be harbouring positive feelings toward Aboriginal people might be disabused of such

feelings. It would appear, therefore, that the goal of such communications is to expose members of the targeted group to hatred or contempt.

(c) The targeted group is portrayed as preying upon children, the aged, the vulnerable, etc.

[40] In *Schnell, supra*, the messages stated that gay and lesbian people lure children into pedophilia and homosexuality. Similarly, in *Payzant et al. v. McAleer and Canadian Liberty Net*, 26 C.H.R.R. D/271, aff'd 26 C.H.R.R. D/280 (F.C.T.D.), the messages were presented in such a way as to establish an association between pedophilia and homosexuality. This set the stage for a message calling for the execution of homosexuals. The Tribunal found that the association between pedophilia and homosexuality “primed” the recipient of the messages with disgust towards homosexuals, thereby rendering it more likely that message recipients would find the execution of homosexuals to be “not such a bad idea, maybe” (*Payzant et al, supra*, at para. 38).

[41] In *Warman v. Kyburz*, 2003 CHRT 18, the messages graphically described the filming of the sexual torture and rape of children for the purpose of producing pornography, and then made the claim that although not all consumers of child pornography are Jewish people, “Jews are disproportionately represented among them” (*Warman v. Kyburz, supra*, at paras. 25 and 26). The Tribunal found that such messages could only serve to foster hatred against Jewish people.

Does the material in the present case bear the “predator” hallmark?

[42] Some of the material in this case bears the “predator” hallmark. In a posting dated December 1, 2003, proud18 portrays Black men as “cannibals” and “head-hunters” who have sex with animals; when they cannot do this, they resort to raping white women. Ominously, proud18 declares at the end of this posting that “this [Black man] is what is moving in next door to you”.

[43] WhiteEuroCanadian’s material on the WCFU website regarding gay and lesbian people also bears the predator hallmark. In a posting on that website dated March 9, 2004, WhiteEuroCanadian declares that homosexual people are “not human beings, they are sexual

perverts in the [same] category as pedophiles, bestiality, S&M, etc.” It is because of this alleged tendency to prey on children that WhiteEuroCanadian states that he is opposed to homosexual people being “daycare workers, babysitters, teachers, bosses, etc.”

[44] Like the material in other hate message cases that bears this hallmark, the material in the present case that characterizes the targeted groups as “sexual predators” plays on the intense fear that people have that children, women and vulnerable people will fall victim to the criminal and violent sexual impulses of the targeted groups. This makes it highly likely that members of the targeted groups will be exposed to deep feelings of hatred.

(d) The targeted group is blamed for the current problems in society and the world

[45] In *Warman v. Alexan Kulbashian et al*, 2006 CHRT 11, some of the messages blamed Jewish and Muslim people for the death, on September 11, 2001, of thousands of “white folk” in the World Trade Center in New York. The messages encouraged “racialists” to engage in violent acts against members of these groups. The Tribunal found that by equating all Jewish and Muslim people with the terrorists responsible for the 9/11 attacks, the messages unquestionably exposed these people to hatred, contempt and real physical danger, as they suggested that all members of those communities would be legitimate targets of indiscriminate retributory violence (*Warman v. Kulbashian, supra*, at para. 55). The messages were also designed to tap into and exploit pre-existing feelings of anger and fear that were felt in Canada after the attacks.

[46] Some of the messages in *Taylor and the Western Guard Party v. Canadian Human Rights Commission and Attorney General of Canada* (1979), T.D. 1/79, linked the integration of non-White races into Canadian society to the decline in the quality of health care services. The Tribunal noted that the persuasive effect of these messages was generated by the fact that they linked the “race problem” to a particular problem in the country which might have been adversely affecting the recipients of the messages. Similarly, in that case, hatred or contempt toward Jewish people was fostered by attributing to them the blame for unemployment, inflation and the encroaching Third World War, three of what were seen as the most pressing problems in the world at the time.

Does the material in the present case bear the “cause of society’s problems” hallmark?

[47] In proud18’s postings on stormfront.org, the assertion is made that if Aboriginal people were not draining the Canadian economy of “10’s of billions” of dollars, the health care and education systems in Canada would be better. Proud18’s postings also blame Jewish people, through their alleged control over the education system, the media and government, for robbing Canadians of their fundamental right to free speech. Similarly, in a posting dated November 30, 2003 entitled “Muslim women break our laws” on stormfront.org, proud18 asserts that because Muslim women are permitted to cover their faces in public, they are able to commit anonymous acts of terrorism like throwing grenades. In that posting, proud18 deplors the Canadian government for allowing the threat of terrorism “in disguise” into Canada.

[48] These messages provide readers with scapegoats for the world’s problems by providing an outlet for strong negative emotions; they tap into these emotions and divert them towards the targeted groups. In this way they foster and legitimize hatred toward members of the targeted groups.

(e) The targeted group is portrayed as dangerous or violent by nature

[49] In *Warman v. Winnicki, supra*, the Respondent made use of graphic photographic images of burned and dismembered people of African origin to convey his message that when any African person comes to live in Canada, he or she will inevitably bring violence and death. The Tribunal found that this increased the likelihood that members of the African community would be exposed to hatred or contempt since the images evoked strong feelings of revulsion and disgust (*Warman v. Winnicki, supra*, at para. 90).

Does the material in the present case bear the “dangerous or violent by nature” hallmark?

[50] All of the groups targeted by the material in the present case are characterized, in one way or another, as dangerous or violent by nature. Aboriginal people are said to commit the majority of crime in Canada, while Black men are said to be responsible for 50% of all rapes (the other

50% allegedly being the fault of Aboriginal men). Asian people are portrayed as murdering gang members, Muslim people are characterized as terrorists and Jewish people are said to be taking control of Canadian society. On that basis, taking action against these groups is justified by proud18. Similarly, WhiteEuroCanadian characterizes homosexual people as pedophiles and argues that others should not be subjected to “sexual divients (sic) like homosexuals”.

(f) The messages convey the idea that members of the targeted group are devoid of any redeeming qualities and are innately evil

[51] In *Warman v. Kyburz, supra*, at para. 34, one of the messages portrayed Zionist Jews as having no redeeming qualities whatsoever because: “being frauds, criminals, war mongers, pedophiles, anti-life and full of hate is part of them ... It is their nature. They will not and cannot change.” The Tribunal found that when read in context, these messages tell the reader that Jewish people are innately devious, treacherous, and murderous. Not only do they want to kidnap, corrupt, and kill “white children”, their ultimate goal is to take over the world. (*Warman v. Kyburz, supra*, at para. 48). The Tribunal found that such messages served to foster hatred against Jewish people.

Does the material in the present case bear the “no redeeming qualities” hallmark?

[52] All of the messages in the present case bear this hallmark in that they characterize the targeted groups in resoundingly negative terms and do not suggest, in any way, that the members might possess any redeeming qualities.

[53] Proud18’s postings regarding Aboriginal Canadians are particularly pointed in this regard. In a posting dated November 18, 2003, within a thread entitled “Native Robbery” proud 18 states: “Sooner or later those Indians all break the law, its in their DNA to be bad”. In another posting, proud18 rhetorically asks “those who like these savages” for an example of “ONE benefit they have and one lousy contribution to society”. Proud18 responds to the question in the following way: “Just one instance that a injun is good, ... I can hear a pin drop in the forest with this defining (sic) silence”.

[54] In yet another posting dated October 11, 2003 within the thread entitled “If you don’t like Injuns, then don’t read this” proud18 writes:

So all you wn who love the injuns, keep passing this thread because you would see that your so called proud native is nothing but a waste of time and a drain on the rest of the population. Hell give them a whole province and those lazy s***** would die out in less then two generations without our handouts. (sic throughout)

[55] Proud18’s postings about Roma state that Roma are “a fithy group of Hindus”. According to proud18, they are “thieves, murderers, pimps and molesters” who were exiled from the Czech Republic and sent to Canada on the promise of free health care and education.

[56] The messages in this case foster the attitude that members of the targeted groups are so devoid of any redeeming characteristics that extreme hatred or contempt toward them is entirely justified. Furthermore, they convey the idea that is hopeless to expect civilized, law-abiding or productive behaviour from the targeted groups and they ridicule any reader who might harbour even a partially open mind towards members of the groups.

(g) The messages communicate the idea that nothing but the banishment, segregation or eradication of this group of people will save others from the harm being done by this group

[57] In *Nealy v. Johnston*, (1989), 10 C.H.R.R. D/6450, the messages claimed that non-white immigrants were “pre-human” and that they were allowed entry into Canada by the “Jewish conspiracy” in order to perpetrate “the legalized racial genocide” against the White race. The messages stated that the only solution was the forced deportation of non-white immigrants, or at the very least their segregation from the White population. The Tribunal found that such messages encouraged violence as a proactive means of “defense” against any who were seen as the enemies of racial purity (*Nealy v. Johnston, supra*, at para. 45668).

Does the material in the present case bear the hallmark of “calling for banishment, segregation or eradication of the targeted group”?

[58] In a posting on stormfront.org dated February 27, 2004, proud18 suggests that Aboriginal Canadians should be given a one-way ticket to Asia “and a case of Lysol / glue and they wont (sic) know where they are going.” Proud18 concludes as follows: “Then we could regain our rightful place as the first white Euro people on this continent”.

[59] In another posting, proud18 asserts that Aboriginal people “should not be restricted to reserves but should be confined to ZOO’s”. In yet another, proud18 states “[t]hese savages don’t learn anything, unless its being a savage beast that should not be put among civilized people”.

[60] Similarly, proud18’s postings about Black people assert that “they [Blacks] should still be in the jungle and not among civilized people”.

[61] Such messages convey the idea that Black and Aboriginal people are so loathsome that White Canadians cannot and should not associate with them. Such messages provide fertile ground for the growth of hatred and contempt.

(h) The targeted group is de-humanized through comparisons to and associations with animals, vermin, excrement, and other noxious substances.

[62] In *Warman v. Winnicki, supra*, Black people were described as sub-human beings devoid of any intelligence. They were also called cockroaches and “stupid nigger-apes”. The Tribunal held that these kinds of descriptions are de-humanizing, degrading and highly likely to expose Black people and other non-White or non-Caucasian people to hatred and contempt (*Warman v. Winnicki, supra*, at para. 80).

[63] Similarly, in *Warman v. Kyburz, supra*, at para. 49, the Tribunal stated that the use of terms such as “sub-human” and “vermin” to describe Jewish people could most certainly lead some readers to view Jews as being inferior beings, causing them to hold Jewish people in contempt.

Does the material in the present case bear the “sub-human” hallmark?

[64] Proud18’s messages about Aboriginal Canadians characterize them as “primitive savages”, “subhumans”, “who don’t even have one I.Q. point between the whole lot of them” and who are of more value as “fertilizer” than as living human beings. Non-white immigrants are described as “non-white scum that crawl here from all the garbage infested countrys (sic)” and non-white people in general are described as “mud”. Jewish people are called “stinking jews” and Roma are called “a filthy group of Hindus called Gypsies” who sullied the streets of Europe and are now doing the same in Canada.

[65] WhiteEuroCanadian states that homosexual people “are not human beings, they are sexual perverts”.

[66] Such descriptions may lead readers to associate members of the targeted groups with waste, sub-human life forms and depravity. By denying the humanity of the targeted group members, they create the conditions for contempt to flourish.

(i) Highly inflammatory and derogatory language is used in the messages to create a tone of extreme hatred and contempt

[67] The use of epithets such as “nig” or “nigger”, “mud”, “hebe”, “paki” and others has been found to contribute to the likelihood that a message will expose the targeted groups to hatred or contempt (*Warman v. Winnicki, supra*, at para. 80). In *Warman v. Kulbashian, supra*, at paras. 44 - 45, the Tribunal found that the use of the term “nigger”, with its inherent connotation of slavery, segregation and racism, in and of itself displayed hatred and contempt toward Black people.

[68] The messages in *Warman v. Winnicki, supra*, were riddled with profanity and a hysterical tone of rage. For example, in one message the respondent wrote the following:

“NIGGERS AND EAST INDIANS ARE SHIT!!!! GET OUT OF OUR CIVILIZATION YOU FUCKING MUDS!!!!”

[69] The level of vitriol, vulgarity and incendiary language contributed to the Tribunal’s finding that the messages in that case were likely to expose members of the targeted groups to hatred or contempt.

Does the language that is used in the present material create a tone of extreme hatred or contempt?

[70] Proud18’s postings are riddled with epithets such as “nig-nog”, “nig”, “paki”, “injun”, and “savages”. In one message, proud18 states that he called some Aboriginal people “injuns” in a restaurant and was told by them that this was offensive. Proud18’s response was allegedly that as long as Ottawa was giving White Canadians’ money to Aboriginal people, proud18 would continue to call them “injuns”.

[71] The tone created by such language and messages is one of profound disdain and disregard for the self-worth of the members of the targeted groups. The term “savages” harks back to the colonial days of North America when Aboriginal people were viewed by most Europeans as primitive human beings at best. The use of this deeply insulting term in full knowledge of the offense that it gives demonstrates the extent of proud18’s desire to expose Aboriginal people to hatred or contempt.

(j) The messages trivialize or celebrate past persecution or tragedy involving members of the targeted group

[72] In *Warman v. Kulbashian, supra*, the Respondents made “riddles” and “jokes” about the Holocaust. The Tribunal found these riddles and jokes made cruel light of the genocide of Jews in Nazi concentration camps. The effect was to dehumanize members of the targeted group and to set a tone of denigration that would allow hatred and contempt to flourish.

Does the material in the present case bear the hallmark of “trivializing or celebrating past tragedy”?

[73] Proud18 denies or trivializes the tragedy of the Holocaust by calling it a “hoax”, a lie perpetrated by Jewish people to extort money from non-Jewish people. Proud18’s postings about Asian people celebrate the death and serious injury that allegedly occurred during a gang fight involving people of the Hindu faith. The posting dated January 4, 2004, entitled “2 dead, 4 injured. Yipee”, describes the deaths and injuries of people of the Hindu faith as a “joyful result”. In another posting, proud18 comments on a report in the media that a person of the Hindu faith allegedly transmitted HIV/AIDS to three women. Proud18’s response to this news was: “Serves the women right, screwing a hindu. Hope they get it and fast.”

[74] With respect to Aboriginal Canadians, proud18 writes: “Personally I’m getting a bit tired every time I read about a injun tribe beating a white kid to death because they lost their land to our forefathers.”

[75] The trivialization and celebration of past tragedy in proud18’s postings creates a climate of derision and contempt which makes it likely that members of the targeted groups will be exposed to these emotions.

(k) Calls to take violent action against the targeted group

[76] In *Taylor, supra*, at page 38, the Tribunal noted that the impugned messages contained aggressive overtones that escalated in their call for violence against members of Canadian minority groups. These calls for violence were premised on the previous messages that attempted to convince the recipients that White Canadians were under attack by these groups and had to fight back or risk becoming victims of racial genocide.

[77] In *Warman v. Winnicki, supra*, at para. 101, the Tribunal held that calls for violent action against the targeted groups were not only likely to expose members of the groups to hatred and

contempt, but worse, they sought to justify, motivate and legitimize violent action against members of the targeted groups.

Do the messages in the present case bear the “call for action” hallmark of hate messages?

[78] The messages communicated by proud18 ask readers on stormfront.org to communicate their negative experiences with Aboriginal people. The goal is to persuade readers not to harbour any “sympathy for these red devils” and to take action. Although proud18 does not specify what is meant by “taking action”, the following posting suggests that it might not be peaceful:

The violence by these scum injuns on innocent white people is getting out of control. We must do something soon to prevent further attacks on our race.

[79] The call for violent action is echoed again in another posting by proud18:

The non-whites who pop out kids just to get more welfare money are the ones who should be castrated ...

[80] Proud18 poses the following questions to the stormfront.org readers in an apparent effort to motivate them to take action:

What I would like to ask of those that still are not too sure of what they want to do or if the 14 words is for them. What event would it take to have you cross that line and become a true white patriot?

If a black raped your spouse or child?
If you got beat up and mugged by a tribe of Indians?

What would it take? Or is common sence and good judgement good enough for you to see that your race needs all hands on deck?

And also at this time i'd like to ask some of those that have all ready seen the truth and decided the white race is worth fighting for, to share your story's with us. If you feel comfortable. (sic throughout)

[81] The call for action is, in fact, found throughout proud18's postings in statements such as "YOU FINALLY HAVE TO GET UP AND DO SOMETHING ABOUT THE PROBLEM." I find that the messages in this case bearing the "call to action" hallmark are highly inflammatory and provocative. They are likely to expose members of the targeted group not only to hatred and contempt but also to the possibility of violent action. While the call for action in proud18 and WhiteEuroCanadian's messages is not always explicitly a call for violent action, there is a clear inference to be drawn that some kind of confrontation, resistance or opposition is being called for. The imperative urgency of these messages suppresses judgment and open-mindedness. It demonizes the targeted groups, thereby making them vulnerable to hatred or contempt.

(ii) The Tribunal's Conclusion Regarding the Messages

[82] The hallmarks or attributes of hate messages are what distinguish them from legitimate speech that is not subject to sanction under s. 13 of the *Act*. All of these attributes involve an attack on the inherent self-worth and dignity of the members of the targeted group. To paraphrase the words of Justice Muldoon of the Federal Court, material that bears the hallmarks of a hate message disparages and ridicules other people "just for drawing breath, for living" (*Canada (Human Rights Commission) v. Canadian Liberty Net*, [1992] 3 F.C. 155, at para. 56).

[83] The messages in the present case bear many of the hallmarks of hate messages. They make use of allegedly true stories to justify the portrayal of members of the targeted group as dangerous and violent sub-humans who are worthy of nothing but the highest degree of contempt and hatred. They use racist epithets and slurs to create a tone of profound denigration and disgust. The messages advocate the exile or segregation of members of the targeted groups and exhort readers to "take action" to stop the evil menace created by these people.

[84] For these reasons, I conclude that the material that was presented during the inquiry into this matter from both the stormfront.org and the WCFU websites is likely to expose members of the targeted groups to hatred or contempt by reason of the fact that they are identifiable on the basis of a prohibited ground of discrimination. Therefore, the messages examined above shall hereinafter be referred to as "the hate messages".

C. Question 3 – Did the Respondent, Peter Kouba, communicate the hate messages?

[85] The Complainant and the Commission asserted that uncontroverted evidence presented during the hearing established that the Respondent, Peter Kouba, communicated the hate messages presented in this inquiry. The evidence adduced by the Commission consisted of testimony from Sergeant Stephen Camp from the Edmonton Police Force, a Witness Statement Form that was authored and signed by the Respondent, and evidence provided by the Complainant, Richard Warman.

(i) The Evidence of Sergeant Stephen Camp

[86] Sergeant Stephen Camp testified that he was a member of the Edmonton Police Service Hate Crimes Unit in 2003, when he began to monitor the Canadian forum on stormfront.org, a site he described as one of the primary sites for the propagation of hate. He noticed that there appeared to be a number of participants in the forum from Edmonton and other parts of Alberta. As a result, he began to monitor the activities and discussions of these individuals more closely. Sergeant Camp was particularly struck by the frequency of the postings made by one individual using the pseudonym “proud18”, who claimed to be from Edmonton. Sergeant Camp testified that he was concerned about the extreme nature of the hatred that was being expressed by this individual toward minority and Aboriginal communities in Edmonton.

[87] Sergeant Camp witnessed on-line collaboration between proud18 and other members of the Canadian forum of stormfront.org to form an Alberta-based organization called “Western Canada for Us”, that would organize white supremacist political actions in Edmonton. As a result, Sergeant Camp stated that the Edmonton Hate Crimes Unit became concerned that proud18 and other members of WCFU would initiate violent action against minority and Aboriginal communities in Alberta. For that reason, the Edmonton Police designated proud18, and a number of other individuals identified with WCFU, as “subjects of interest”. Intensive investigative efforts were then made to discover the identities of these individuals.

[88] Sergeant Camp testified that a number of investigative techniques were used to determine proud18's identity. First, proud18's postings revealed that this individual lived in Edmonton, was organizing rallies in Edmonton and was discussing the establishment of a Whites-only community in Alberta that was to be called "Whiteville". Surveillance was conducted on the rallies and meetings that proud18 had helped to organize. One such rally was held in February 2004, at the Sandman Inn in Edmonton. There, an individual who was identified as "Peter Kouba" spoke about Whiteville and the strategy that would be used to get Whiteville started. Sergeant Camp testified that Peter Kouba's statements during the rally were consistent with the statements that proud18 had made on the stormfront.org discussion forum.

[89] Sergeant Camp testified that the Police conducted computerized checks on the Motor Vehicle Registry and utilized other information sources such as the CPIC system (Canadian Police Information Centre) to trace proud18's identity. Sergeant Camp testified that through the Motor Vehicle Registry, the Police were able to match a picture with the name "Peter Kouba". They were also able to verify that Peter Kouba was one of the people attending the white supremacist rallies and meetings organized by proud18 and others on the Canadian forum of stormfront.org.

[90] Sergeant Camp testified that he continued to monitor the stormfront.org website on a daily basis to determine whether proud18 was, in fact, Peter Kouba. Sergeant Camp further testified that in the course of monitoring the Internet, he learned that proud18 and another individual using the pseudonym "SS-88", were collaborating in the development of a website for WCFU. Police investigations revealed that SS-88 had assumed leadership of the WCFU as well as the principal development of the website. The investigation also led the Edmonton Police to strongly suspect that SS-88 was an individual by the name of Glenn Bahr.

[91] In early March 2004, Sergeant Camp observed the WCFU website on the Internet for the first time. One of the moderators of the WCFU Forum was an individual using the pseudonym "WhiteEuroCanadian".

[92] He stated that within two weeks of monitoring the postings on stormfront.org and the WCFU website, it was obvious to him that a rift had developed between proud18 and other members of WCFU regarding the public image of the WCFU website. Sergeant Camp testified that he read postings on stormfront.org in which there was open disagreement between proud18 and other members of the forum about the use of neo-Nazi slogans and jargon on the WCFU website. Contrary to the views of SS-88 and other members of the forum, proud18 believed that the open espousal of neo-Nazi values on the WCFU website would turn the average person away from the cause of white nationalism.

[93] Toward the middle of March 2004, proud 18's postings revealed that proud18 had been "kicked off" the WCFU website because he did not espouse the neo-Nazi values held by SS-88 and other members of the WCFU.

[94] Sergeant Camp testified that he subsequently read a posting on the WCFU website by SS-88, the leader of the WCFU, that read: "Due to differences between WCFU and WhiteEuroCanadian he is no longer here. Do not believe the lies that he is spreading." This led Sergeant Camp to believe that WhiteEuroCanadian and proud18 were the same individual and that they were the pseudonyms using by Peter Kouba.

[95] Following up on these suspicions, Sergeant Camp decided to call Mr. Kouba on the telephone to ask him for a meeting in March 2004, to discuss the WCFU and Glenn Bahr. Sergeant Camp stated that the Edmonton Police were no longer interested in pursuing charges against Mr. Kouba since the Police had decided to concentrate their efforts on obtaining a conviction against Glenn Bahr, whom the Police believed to be the mastermind of the WCFU. Therefore, Sergeant Camp's purpose in meeting with Mr. Kouba was simply to obtain evidence from him against Glenn Bahr. Given the obvious rift that Sergeant Camp had observed develop between SS-88 and proud18 on the stormfront and WCFU websites, Sergeant Camp thought that it was likely that Peter Kouba, whom he believed to be proud18 and WhiteEuroCanadian, would be willing to provide information about Glenn Bahr, whom he believed to be SS-88.

[96] Sergeant Camp met with Peter Kouba on March 29, 2005. The conversation was wide-ranging and informal. Sergeant Camp stated that he confronted Mr. Kouba with the fact that, as proud18 on stormfront.org, he had said some very hateful and derogatory things about Jewish and Aboriginal people, as well as other minority groups. Sergeant Camp testified that Mr. Kouba responded by saying “yes”, but then adding that he made the postings not to promote hatred, but to promote white nationalism. Sergeant Camp stated that during the meeting, Mr. Kouba discussed his involvement in the stormfront.org forum as “proud18”.

[97] During that same conversation of March 29, 2005, Sergeant Camp discussed Mr. Kouba’s involvement as a moderator of the WCFU Forum using the pseudonym “WhiteEuroCanadian”. Sergeant Camp testified that Mr. Kouba did not deny that he went by the pseudonym “WhiteEuroCanadian” on the WCFU website. Moreover, Mr. Kouba elaborated on his theory of how the WCFU should be run and why white nationalists should not resort to neo-Nazi slogans and propaganda. He explained that he and Mr. Bahr had ideological differences regarding Mr. Bahr’s beliefs in neo-Nazism and the fact that Mr. Kouba did not want white nationalism to be publicly associated with neo-Nazi ideals. He told Sergeant Camp that this was why WhiteEuroCanadian had been kicked out of the WCFU and off the website.

[98] At the meeting on March 29, 2005, Peter Kouba drafted and signed a Witness Statement Form. This Statement, which was an account of the testimony that Mr. Kouba might give in a criminal trial against Glenn Bahr, was entered into evidence on the first day of the hearing into the present case. In this Statement, Peter Kouba wrote:

A/ I have no affiliation with Glenn Bahr or WCFU.

b/ When the WCFU came on line G.B. kicked me out and I was banned due to severe ideological differences. I was locked out of the WCFU site by G.B.

c/ I had no influence on the content’s of the WCFU site. G.B. had total control of the site.

d/ I left and at the same time got kicked out of WCFU because G.B.’s Nazi ideology and intent to make the WCFU site a hate site. (sic throughout)

[99] At the hearing, the Respondent told the Tribunal that he was the author of this Witness Statement.

(ii) The Evidence Presented by the Complainant and the Commission

[100] Through the Complainant's testimony, the Commission tendered evidence consisting of copies of postings that were allegedly made by the Respondent, Peter Kouba, and other participants in the WCFU forum and stormfront.org Canadian forum. It was argued that the content of these postings was consistent with the statements made by the Respondent in his Witness Statement Form, and that they corroborated the testimony of Sergeant Camp that Peter Kouba, using the pseudonyms "proud18" and "WhiteEuroCanadian", was the author of the hate messages in this complaint.

[101] The postings are organized under the factual allegations that they are alleged to support. They are as follows:

(a) proud18 lives in Edmonton.

[102] In a posting on stormfront.org dated October 19, 2003, proud18 states: "I lived in cowtown for a few years but now live in Edmonchuck."

[103] A posting dated November 24, 2003 on stormfront.org indicates that proud18's "location" is Edmonton.

(b) proud18 worked with SS-88 to develop a website and an organization devoted to establishing Whiteville and supporting white nationalism.

[104] In a posting on stormfront.org dated February 9, 2004, proud 18 states:

We have to come up with a \$130 cnd. to build the Whiteville site and get it operational asap. ... I'm not going to beg for donations here [dont know if you

can] but if anybody can help out in any way please contact me or SS-88. Thank you. (sic throughout)

[105] In another posting on stormfront.org dated March 2, 2004, proud18 refers a suggestion regarding the development of the WCFU website to SS-88 stating, “SS-88 you take this one, you know the pc better then (sic) me.”

[106] On March 4, 2004, proud18 made the following posting on stormfront.org: ...“We have to finish this site asap. Get ahold of SS-88 to get the info on how to work on the site. thx”

(c) proud18 espouses a philosophy regarding white nationalism that is at odds with that of other members of the WCFU.

[107] In a stormfront.org posting dated January 30, 2004, proud18 writes:

I have even been told by a member here that whites cant be proud to be white UNLESS they accept at least some of the Nazi philosophy and beliefs. That comment alone is enough to drive away thousands of potential members.

There are many here that I know personally that have relatives/friends/spouces / co-workers etc. that are intimated to join us here because they want to be able to be proud of their race, to help secure a bright future for our children, who are against immigration, who are against homs, to live among their own and help it's own communitys prosper etc.

We all agree [I hope] that we have many if not all these beliefs also. We also agree that we would welcome these white kin.

So why must we scare them off by giving them a big Seig Heil greeting? (sic throughout)

(d) proud18 is expelled from the stormfront.org forum and WhiteEuroCanadian is expelled from WCFU by SS-88.

[108] In a posting on Stormfront. org dated March 19, 2004, proud18 states:

Well after working my ass off for over a year and a half on getting white folks to put aside their differences and work together I got SS-88 to move out here and help out.

Well he helped out all right.

By backstabbing me and with a bunch of neo-nazi wannabees has staged a hostile takeover of wcfu and plans for Whiteville.

I bleed for my race and this is how I got repaid.

So I'm out of wcfu since it lost its focus and has turned into a neo-nazi hang out.

[109] On Friday, March 19, 2004, SS-88 posted the following message on the WCFU website within a thread entitled "WhiteEuroCanadian is no longer here":

Due to differences between WCFU and WhiteEuroCanadian he is no longer here. Do not believe the lies that he is spreading.

[110] A posting by proud18 on the stormfront.org discussion forum dated May 2, 2004 reads as follows:

Lucky I pay monthly to sf. Because the wcfu group has now started a thread saying I was some guy on a radio show. Now the wcfu has started a expulsion thread and the wcfu group is under orders to vote me out of Stormfront.

I have pized of a group and now they want to get rid of me, again.

I live for my white race and this is how things are. Hell this group stole my site and they wont be happy til I'm gone. ... (sic throughout)

[111] In the left hand margin of the message on stormfront.org, under the moniker "proud18", one reads: "Account Disabled".

(e) SS-88 is Glenn Bahr

[112] In a posting made in May 2004, on the stormfront.org Canadian forum, a forum member using the moniker “TemplarDan” states:

All hail the supreme leader!

HAIL BAHR!

[113] SS-88 responds to this posting by stating:

HAHA Dan! Stop it! WCFU is a group! WE all have our input! I just took the initiative of getting it going. ...

[114] The Complainant and the Commission asserted that the above-noted postings confirm that Peter Kouba was proud18 and WhiteEuroCanadian.

(iii) The Respondent’s Explanation

[115] In his Statement of Particulars and closing argument, the Respondent denied having communicated the hate messages on stormfront.org. He argued that his postings on stormfront.org had been subject to tampering. He stated that the Complainant had “picked through” the postings on the websites and presented only those that had been altered. The Complainant ignored the “many posts” where the Respondent asked why his postings and words were being changed by the website administrators.

[116] In his Statement of Particulars, the Respondent stated that he would bring with him to the hearing copies of postings to prove his defense. The Respondent did not follow through on that promise. Furthermore, he did not testify or lead any evidence in support of his allegation that the impugned postings were altered, edited or tampered with in any way. As the Tribunal noted in *Warman v. Kulbashian, supra*, at para. 115, it is not sufficient for the Respondent to make out a defense of this nature by hints and innuendo during the course of the hearing. If he is alleging that

he has been the victim of a “set up”, or that his messages have been tampered with, then it is incumbent upon Mr. Kouba to lead evidence in support of those allegations.

[117] Mr. Kouba claimed that he had no way of proving that he did not communicate the messages, because his postings on both websites were removed after he was banned. Whether this was the case or not cannot be established since there was no evidence presented on the issue of the removal of the messages. However, there were other means by which Mr. Kouba could have provided evidence that he did not make the postings. For example, he could have testified under oath that he did not make the postings or explained how he learned of the tampering and what he did about it. He could also have called other members of the stormfront.org Canadian Forum or the WCFU to testify that they had observed that his postings had been changed. Mr. Kouba’s claim that he was unable to defend himself against the complaint rings hollow in light of the options that were available to him.

[118] The evidence of Sergeant Camp was that at no point during the conversation of March 29, 2005, did Mr. Kouba ever indicate that anyone had tampered with, edited or changed any of his postings on either the stormfront.org discussion forum or the WCFU website. Sergeant Camp further testified that the Edmonton Police’s investigation of the members of the WCFU did not uncover any evidence that Mr. Kouba had complained to any of the WCFU members that his postings had been subject to tampering.

[119] Based on the fact that the Respondent did not lead any evidence regarding the allegation that his postings on the stormfront.org website were tampered with, and the testimony provided by Sergeant Camp that the Respondent did not complain earlier about any kind of tampering, I find that this allegation has no substance.

[120] The Respondent further argued, in his closing submissions, that there was no direct evidence that he was the communicator of the hate messages in this case. Direct evidence would involve testimony from a witness who actually saw the Respondent communicate the messages or a document that directly establishes that the Respondent communicated the messages. In cross-examination, the Complainant admitted that he did not have direct knowledge of whether

the Respondent communicated the impugned material. The Complainant stated that his belief that this was the case was based on the circumstantial evidence that he had gathered over time.

[121] It is not a requirement in law that facts in issue in a case be proved by direct evidence. In many cases, the facts may only be established through the proof of other facts (Sopinka, Lederman and Bryant, *The Law of Evidence in Canada*, 2nd ed. (Toronto: Butterworths, 1999), at p. 38). This is what is known as circumstantial evidence.

[122] As has often been noted in human rights jurisprudence, discrimination is not a practice that one would expect to see displayed overtly (see for example: *Morin v. Canada (Attorney General)* 2005 CHRT 41 at para. 191). In fact, rarely are there cases where one can show by direct evidence that discrimination is being practiced. The Tribunal therefore, is often required to consider all of the circumstances in determining if discrimination has occurred. An inference of discrimination may be drawn where the evidence offered in support of it renders such an inference more probable than the other possible inferences or hypotheses.

[123] As in many cases of discrimination, there is no direct evidence in this case that the Respondent communicated the hate messages. Therefore, in making a determination regarding the identity of proud18 and WhiteEuroCanadian, the Tribunal must assess the circumstantial evidence that was presented.

[124] During the hearing, the Respondent objected to the introduction of some of the evidence on the basis that it was irrelevant and was hearsay. He also argued, at the end of the hearing, that all of the evidence regarding the identity of the communicator of the hate messages was hearsay and should, therefore, be accorded very little weight. At the hearing, I ruled that the evidence regarding the Respondent's identity was relevant, and that section 50(3)(c) of the *Act* authorized the Tribunal to accept hearsay evidence. On that basis, the evidence was admitted.

[125] The Tribunal is, however, mindful of the potential vulnerabilities of hearsay evidence. One such potential weakness is that the person who is said to have made the hearsay statements is not present at the hearing and therefore, his or her evidence cannot be tested. Another problem

with hearsay evidence may be that its reliability and authenticity are not certain. The frailties of hearsay evidence may, however, be addressed by the weight that is accorded to it as the Tribunal makes its decision. The weight that is accorded to evidence also depends, to a large extent, upon its probative value, or the degree to which it tends to establish the facts in support of which it is presented.

[126] Some of the hearsay evidence adduced by the Commission with regard to the Respondent's identity was not particularly reliable or probative and therefore, I have given it very little weight. For example, the Commission produced copies of postings on stormfront.org regarding the alleged participation of the Respondent in a radio call-in show. It was alleged that in one of these postings the Respondent, writing as "proud18", responded to assertions by another member of the stormfront.org Forum that proud18 was "Peter Kuda" and that he had participated in the radio show. In the posting in question, proud18 admitted neither to being "Peter Kuda" nor to appearing on the radio station. Therefore, I find that the probative value of this evidence is weak, and I have accorded little weight to this evidence.

[127] However, Sergeant Camp's testimony, the Witness Statement Form, and the postings on stormfront.org and the WCFU website presented in the previous section are highly probative and reliable. Hence, for the following reasons, I have accorded this evidence significant weight.

[128] Sergeant Camp gave credible testimony about the basis for his conclusion that proud18 and WhiteEuroCanadian were the pseudonyms used by the Respondent. I find Sergeant Camp's testimony with regard to the meeting of March 29, 2005, to be particularly salient. During the meeting, Sergeant Camp referred to proud18's postings on stormfront.org and WhiteEuroCanadian's postings on the WCFU website. Sergeant Camp's evidence was that Mr. Kouba did not deny having made those postings and indeed, attempted to justify them by saying that he made them not for the purpose of promoting hatred, but to promote white nationalism and white pride.

[129] Mr. Kouba had the opportunity to challenge Sergeant Camp's evidence through cross-examination. He chose not to do so and in fact, was not in attendance on the day that

Sergeant Camp testified. Moreover, he chose not to take the stand himself and provide his side of the story. Mr. Kouba can hardly then say, at the close of the hearing, that the truth of what Sergeant Camp reported about the meeting that took place on March 29, 2005 has not been tested and therefore, should not be given much weight. I find, therefore, on a balance of probabilities, that Mr. Kouba made the statements as recounted by Sergeant Camp in his testimony.

[130] During the hearing, the Respondent admitted that he authored the Witness Statement Form. Therefore, its authenticity is established. The Respondent argued, however, that the Witness Statement Form did not include an admission on his part that he was proud18 or WhiteEuroCanadian. I take the Respondent's point. However, the probative value of the Witness Statement Form lies in the fact that it establishes that Glenn Bahr expelled Peter Kouba from the WCFU because of ideological differences related to Bahr's espousal of neo-Nazi philosophy.

[131] When the contents of the Witness Statement Form are compared to the postings made by proud18 on the stormfront.org website and by SS-88 on the WCFU website, to the statements made by Peter Kouba in his meeting with Sergeant Camp on March 27, 2005, a strong inference arises that Peter Kouba was the individual using the pseudonyms "proud18" and "WhiteEuroCanadian" to communicate the hate messages.

[132] The postings indicate that proud18 lived in Edmonton and that he and SS-88 started a group by the name of Western Canada for Us. Shortly after WCFU mounted its website on the Internet, SS-88 expelled WhiteEuroCanadian from the WCFU website because of ideological differences. Proud18 complained about his expulsion from the WCFU website on the Stormfront discussion forum. This matches with the statements made by the respondent Peter Kouba in his Witness Statement Form.

[133] Accordingly, I find that the postings that relate to the identity of "proud18" and "WhiteEuroCanadian" are corroborated by the Witness Statement Form. I have therefore, given them significant weight.

[134] I have also accorded significant weight to the evidence of Sergeant Camp. He gave his testimony in a clear, convincing and forthright manner. Sergeant Camp's testimony was internally consistent as well as being consistent with the other evidence presented in this case.

(iv) The Tribunal's Conclusion Regarding the Identity of the Communicator of the Hate Messages

[135] The Canadian Human Rights Commission adduced credible evidence that supported its allegation that the Respondent, using the pseudonyms "proud18" and "WhiteEuroCanadian", communicated the hate messages over the Internet. The Respondent failed to provide an evidentiary defense to the case made out by the Commission. For the reasons stated above therefore, I find that the evidence in this case was sufficient to establish, on a balance of probabilities, that the Respondent, Peter Kouba communicated the hate messages in this case.

V. REMEDY

[136] Section 53(2) of the *Act* states that if the Tribunal finds that the complaint has been substantiated, the member may, subject to section 54, make an order against the person found to be engaging or to have engaged in the discriminatory practice. Section 54(1) sets out the orders that may be made with respect to hate messages. It incorporates, by reference, certain orders that may be made under section 53 for other cases of discrimination.

[137] The Commission and the Complainant have requested the following:

- (1) an order that the Respondent cease the communication of messages like the ones that were the subject of the complaint;
- (2) an order that the Respondent pay a penalty in the amount of \$7,500.

(1) An Order that the Respondent Cease the Discriminatory Practice

[138] The Tribunal orders that the Respondent, Mr. Peter Kouba, cease the discriminatory practice of communicating over the Internet, material of the type that was found to violate s. 13(1) in the present case, or any other matter of a substantially similar content that is likely to expose a person or persons to hatred or contempt by reason of the fact that that person or persons are identifiable on the basis of a prohibited ground of discrimination.

(2) Penalty

[139] Section 54(1)(c) of the *Act* permits the Tribunal to order a respondent in a s. 13 complaint, where the complaint has been substantiated, to pay a penalty of up to \$10,000. The Commission requested an Order that the Respondent be required to pay a penalty in the amount of \$7,500 in this case.

[140] In deciding whether to order the Respondent to pay a penalty in this case, Parliament has directed, under s. 54(1.1), that the Tribunal take the following factors into account:

1. The nature, circumstances, extent and gravity of the discriminatory practice;
2. The willfulness or intent of the person who engaged in the discriminatory practice;
3. Any prior discriminatory practices that the person has engaged in; and
4. The person's ability to pay the penalty.

[141] I find that the numerous hate messages in this case that were communicated over a period of nearly three years were highly contemptuous and injurious. They portrayed members of the targeted groups as evil and criminal by nature. The especially troubling part about the Respondent's messages is not just that they were profoundly bigoted; they also willfully and intentionally exhorted readers to share their negative experiences with members of the targeted

groups with other Forum readers. In so doing, the Respondent encouraged readers to participate in a campaign to convince the “White world” that members of the targeted groups are worthy of nothing but the highest degree of hatred and contempt. This active promotion of hatred and contempt towards members of the targeted groups is fundamentally at odds with the goal of the *Canadian Human Rights Act*, which is to promote a society in which all are free from discrimination and all are worthy of equal opportunity regardless of personal traits such as race, national or ethnic origin, colour, and sexual orientation.

[142] There was, however, no information that the Respondent had engaged in any prior discriminatory practices.

[143] Nevertheless, taking into account the nature, circumstances, gravity and intentional nature of the communication in the present case, the suggested penalty of \$7,500 seems appropriate. The Respondent did not provide the Tribunal with any indication of his ability to pay the suggested penalty of \$7,500. Therefore, in the absence of any such information from the Respondent, I find that there is no reason to reduce the penalty.

[144] Taking all of these factors into account, I order the Respondent to pay a penalty in the amount of \$7,500. 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 Respondent's being notified of this decision.

“Signed by”

Karen A. Jensen

OTTAWA, Ontario
November 22, 2006

APPENDIX A

Aboriginal People

The following are excerpts from some of the postings about Aboriginal Canadians made by proud18 on the Canadian forum of stormfront.org:

(a) Posting date: October 7, 2003

Thread Title: "If You Like Injuns, Then don't read this."

Post #1

I know our friends in America have blacks as their number one minority. But here in Edmonton we have stinking injuns. ...

Now before we get to the real horrors go grab a smoke or a drink, sit back and read about The Proud Injun.

*****Injuns want another \$2 Billion from our pockets??*****

Now if you like the dream of the cartoon native Indian then do not read any further. It will show you how primitive these savages truly are. Injun Phil Fontaine is demanding close to \$2 billion more a year for 600 1st. nations [600? That's the count Ottawa gives. One thing that puzzles me about this number is that 150 years ago there wasn't close to even half those numbers], These injuns are breaking away from their tribes and forming new ones. They then get a min. of a hundred million and so on ... Why should we have to pay these "new" off-tribes?

On top of the close to \$8 Billion a year they get already for as they say "Spent on native programs to fulfil treaty and constitutional obligations".

What efen "obligation"?

We have over the years given them hundreds of BILLIONS of dollars/ prime land / royalties / tax free living / lifetime welfare on top of their reserve money. And yet they live like savages. Maybe there are a few clean ones out there ... MAYBE.

And another "on top of" these injuns keep beaking off about how much more money they want.

Billions of dollars down the drain. Hell give ten WHITE educated people a billion dollars and watch empires begin to form. And these injuns keep whinning about the high cost of LYSOL. (*sic* throughout)

(b) Posting date: October 11, 2003

Thread Title: "If You Like Injuns, Then don't read this."

Post # 18

So all you wn who love the injuns, keep passing this thread because you would see that your so called proud native is nothing but a waste of time and a drain on the rest of the population. Hell give them a whole province and those lazy s***** would die out in less then two generations without our handouts. (*sic* throughout)

(c) Posting date: October 11, 2003

Thread Title: "If You Like Injuns, Then don't read this."

Post #21

I remember a poll on here awhile back and it asked if you feel sorry and sympathize with them and I was shocked at the high numbers of so called proud white folks who said things like "they are my friends" etc. I notice those folks are nowhere to be seen on this thread, seems they are scared to show their yellow stripes in public again?

Everytime we see a story or personal experience of someone we should add it to this thread. Maybe our American and European friends who love the movie versions of these savages would see the truth and realize it is just more jew media brainwashing they have been brainwashed by.

In Edmonton you see a ton of stuff and I'll keep adding stuff as often as I can. (*sic* throughout)

(d) Posting date: October 13, 2003

Thread Title: "If You Like Injuns, Then don't read this."

Post #25

You don't know Canadian injuns too much. They don't get addicted to Lysol they choose to drink it. It is cheap and gives them a buzz.

But it still boggles my mind that a lot of wn have sympathy for these red devils. How can you have feelings for these subhumans and still call yourself a wn or even just a proud white man? (*sic* throughout)

(e) Posting date: October 18, 2003
Thread Title: “Indians”
Post #5

Yeah, stinking red devil savages who don't even have one I.Q. point between the whole lot of them. (*sic* throughout)

(f) Posting date: October 19, 2003
Thread Title: “Indians moving closer to the suburbs”
Post #2

Down by the Stampede grounds all those homes are bought by the stampede board and in the near future they will rip the homes down and expand the grounds. Then the migration will really start. Walk down Stephen Avenue mall downtown and see these Lysol guzzlers passed out all over. They should HAVE to stay on their reserves if they want govt. money. I lived in cowtown for a few years but now live in Edmonchuck. Not much different. Take care. (*sic* throughout)

(g) Posting date: October 25, 2003
Thread Title: “Funny Indian Story”
Post #1

In a posting dated October, 25, 2003, proud18 writes:

The other day we were in a cafe and this Indian at the next table told us they are offended by the term “Indian” that it should be aboriginals / native. They were pretty upset but then I looked at them and said “you guys take our money thanks to the Indian Act so till Ottawa changes it I'll keep saying Indian.” The look on their faces was a Kodak moment. They just shut up after that. If any Indian is offended by Indian tell them it is the law.

An individual going by the moniker “Cabinger” replies to proud18's posting in the following words: “It could be worse. You could have called him “injun”.

Proud18 then replies to “Cabinger” as follows:

I did a few times but they were drunk so it probbably sounded like indian. (*sic* throughout)

(h) Posting date: October 28, 2003
Thread Title: "Funny Indian story"
Post #5

What is really irritating is that we have among us sympathizers for these red savage Indians, wn's who actually like Indians as equals and friends. Same goes for the homos sympathizers. Just look at the Indian and homo threads and you can see how apperantly so called solid wn's are saying stuff like "we took their land, we owe them, they are noble people" and about homos you will read stuff like "as long as they are white then they are my kin". Gross to say the least.

If folks just posted bad new from their local area that deals with Indians, then it would take up more space on the forum then any other thread ever started.

Evil, that's the nature of the Indians. (*sic* throughout)

(i) Posting date: November 18, 2003
Thread Title: "Native Robbery"
Post #2

Sooner or later those Indians all break the law, its (*sic*) in their DNA to be bad.

(j) Posting date: November 21, 2003
Thread Title: "If You Like Injuns, Then don't read this."
Post #49

In a previous posting by someone using the pseudonym "Time to Unite" states:

... they [Aboriginal Canadians] are nothing but dirt lazy diseased infested parasites who should be put out of their so called misery, and at least they would be doing something good; being enriched soil for plants."

The response to this by proud 18 is as follows:

Good one, I thought that was their purpose in life. They have no other benefit to society but fertilizer.

[...]

Picture how much better our life would be if there were no damn injuns? All those 10's of BILLIONS of dollars we give them each year could give us the best health care and schooling in the world.

Indians are filthy savages and whoever thinks otherwise is a Injun lover and race traitor ... PERIOD.

To those who like these savages tell me ONE benefit they have and one lousy contribution to society. Just one. And none of this stupid “we took their land” crap. Because the non-whites have taken our ancestrol land in Europe AND they pay the white folks f-all for living there.

Just one instance that a injun is good, I can hear a pin drop in the forest with this defining silence.

(k) Posting date: November 25, 2003

Thread Title: “If You Like Injuns, Then don’t read this.”

Post #64

In a posting dated November 25, 2003, proud18 responds to the following posting by someone using the pseudonym **WhiteFusion**:

How about we make the natives have to answer a skill testing question before receiving their money.

Proud18’s response is as follows:

Since they have very low primitive IQ’s then they would never see a single penny. Great idea.

(l) Posting date: February 10, 2004

Thread Title: “If You Like Injuns, Then don’t read this.”

Post #66

The violence by these scum injuns on innocent white people is getting out of control. We must do something soon to prevent further attacks on our race.

(m) Posting date: February 10, 2004

Thread Title: “This will blow your mind”

Post #1

Proud18 comments on an appeal of an Aboriginal man’s criminal sentence in the following terms:

So in closing our justice system is no longer equal for all citizens, if you are a injun you can get away with murder just because one is a injun. No wonder they commit most of the crime in Canada. They have the courts on their side and they act like it.

Canada needs saving ASAP.

(n) Posting date: February 20, 2004

Thread Title: "If You Like Injuns, Then don't read this."

Post #73

Savages should not be restricted to reserves but should be confined to ZOO's.

(o) Posting date: February 21, 2004

Thread Title: "If You Like Injuns, Then don't read this."

Post #76

These savages don't learn anything, unless it is being a savage beast that should not be put among civilized people.

(p) Posting date: February 27, 2004

Thread Title: "Something funny about Harper"

Post #5

The injuns say they migrated from asia so lets offer them free one way tickets and a case of Lysol / glue and they wont know where they are going. Then we could regain our rightful place as the first white Euro people on this continent.

Black and Other Non-Caucasian People

The following are examples of some of proud18's postings on the Canadian forum of stormfront.org regarding Black and other non-Caucasian people.

(a) Posting date: November 22, 2003

Thread Title: "Alberta / Sask. / Manitoba Party?"

Post #1

Personally I'm getting a bit tired every time I read about a injun tribe beating a white kid to death because they lost their land to our forefathers. I'm sick and tired of reading about some nig-nog raping a white woman. You can only hear it so many times before YOU FINALLY HAVE TO GET UP AND DO SOMETHING ABOUT THE PROBLEM. (sic throughout)

(b) Posting date: November 24, 2003

Thread Title: "What will it take to motivate us?"

Post #3

So we wait for things to get much more worser before people do something.
Weak people is all I got to say to that.
These same people would sit by watching their kids get molested by nigs I
assume. (sic throughout)

(c) Posting date: November 27, 2003

Thread Title: "mandatory birth control for welfare recipients"

Post #16

The non-whites who pop out kids just to get more welfare money are the ones
who should be castrated. ... these non-white scum that crawl here from all the
garbage infested countrys get treated better then a good Aryan woman. (sic
throughout)

(d) Posting date: November 30, 2003

Thread Title: "2 black serial rapists of white women"

Post #1

Since summer two bald nigs have been raping women in the Clearview part of
town. They targed women at bus stops. Yesterday they raped a 17 year old.
What is shocking is that this is the first time the public is hearing about the
many rapes by these two bald blacks with bad English.
7 women have been raped now. If it is not injun killers it is black rapists.
How come the feds can say that most serial killers are white males but you cant
even make it public that in Canada over 50% of the rapes are committed by
blacks?
Maybe then white women would avoid blacks.
One of those women should sue the city and cops for knowing black serial
rapists are on the loose but due to their colour the cops didn't want to say "2
black rapists". This country is going down the toilet real fast. (sic throughout)

(e) Posting date: December 1, 2003

Thread Title: "2 black serial rapists of white women"

Post #6

These blacks in Africa go around screwing monky's / zebras and everything
else that is around.
They come here and have no animals to screw so they resort to raping women.
They should still be in the jungle and not among civilized people.

Some are canibals other are head hunters and this is what is moving in next door to you. (sic throughout)

(f) Posting date: January 13, 2004

Thread Title: "Enemies of our movement"

Post #4

...If I had to choose just one group that I think is holding us down. That would have to be my own people. The nigs / pakis / Asians etc. are easy to spot and identify as a enemy so they can be prepared for. But the peace loving liberal multicultural homo loving whites are the biggest thret to our future. We have to be cautious of what we say or do in front of our own kind. We are supposed to be one mighty race and these lemmings bought into this love thy mud crap and over time forgotten how to be proud of our race. Whithout our race the world would still be living in mud huts and caves. (sic throughout)

Jewish People

The following are some of proud18's postings on Stormfront.org that relate to people of the Jewish faith.

(a) Posting date: November 24, 2003

Thread Title: "American seeking CDN Jew princess"

Post #1

This millionar piece of crap said he wants a Canadian woman for a wife but only Jews need aply. The 3 finalist jew sluts are all from Toronto. I wonder if his jew friends in the media gave him such huge press coverage to promote the jew crap whore. At least there will be one less jew in Canada. (sic throughout)

(b) Posting date: November 23, 2003

Thread Title: "What will it take to motivate us?"

Post #1

Just curious as to what each of us considers the "final straw". Lot of us have our hearts in the right place but there is those dreaded excuses of "have to watch what I say atwork", "don't have time to do anything" etc. There seems to be a barrier that prevents some of us to cross the line and realy become active in any way possible. I did a poll on general rants and most of us here spend over 3 hours a day on the computer. That's a whole day [almost] out of each week that you could do some pro-white activities in real life.

We all have our stories of how crappy it is where we live. We have less and less rights. Hell we are an endangered species. Whites by population are the biggest minority in the world.

Jews have taken over our education, our media, our governments, etc.
(emphasis added)

Lots of super reasons to get fully committed to the cause.

We who are 24/7 committed all have our stories of how we seen the “truth” of a event that opened our eyes.

What I would like to ask of those that still are not too sure of what they want to do or if the 14 words is for them. What event would it take to have you cross that line and become a true white patriot?

If a black raped your spouse or child?
If you got beat up and mugged by a tribe of Indians?

What would it take? Or is common sense and good judgement good enough for you to see that your race needs all hands on deck?

And also at this time i'd like to ask some of those that have all ready seen the truth and decided the white race is worth fighting for , to share your story's with us. If you feel comfortable.

(c) Posting date: November 30, 2003

Thread Title: “2 black serial rapists of white women”

Post #8

In response to a question asking what about the race of the victims of a number of alleged rapes, proud18 replies:

At least two were white. But it is now only 4 rapes, yesterday it was reported as 7 victims and possibly more of the ones that didn't report it.

Serves the white women right for even talking to nig-nogs.

But did you notice on the bottom of the story they put in a sentence about a teen getting raped by a White male in the city?

That has nothing to do with the black serial rapists. But I guess **the jew media** had to point out that white males also commit rapes. (emphasis added)

(d) Posting date: January 6, 2004
Thread Title: "Nazi suspect to be targeted"
Post #3

In response to a posting that provided excerpts from a news stories about the plans of the Justice Minister at the time, the Honourable Irwin Cotler, to bring suspected Nazi war criminals to justice, proud18 writes:

Any wonder who he is going to target? Once a jew always a stinking jew.
The commies are coming, The commies are coming.

Roma

The following are excerpts from proud18's postings on stormfront.org that discuss Roma:

(a) Posting date: November 30, 2003
Thread Title: "Isnt that a waste...?"
Post #2

Back in Europe people bring their own bags and buggys to go shopping. The dirty streets come from one filthy group of Hindus called Gypsies.

(b) Posting date: February 27, 2004
Thread Title: "Something funny about Harper"
Post #5

In response to a suggestion that Aboriginal Canadians should be given a one-way ticket to India, proud18 states:

That is what the Czech Republic did with the Gypsy problem about 5 years back.

They took out ads saying the Government will pay for a one way ticket ... to Canada. I know they should of offered their homeland which is India. But the Gypsies left India so why go back and to what? This way they jumped at the chance for Canada. They talked about [in the ad] how in Canada they will get paid to stay at home and not work. Canada would give them FREE access to all health and education etc. Some of you may remember that. Soon after the Canadian government announced all Czech citizens must now apply for a visa [not the credit card].

They solved a lot of their problems. You know who they picked first? All the biggest theifs / murderes / molesters / pimps etc.

People of the Muslim Faith

The following posting by proud18 regarding people of the Muslim faith was entered into evidence:

There is a law that prevents a person from wearing a mask. It is not enforced much but it is there. Muslim women wear their faces covered, is that not a crime then? You get 5 of them all masked and one throws a granede (sic). How can anyone recognize the terrorist? We are letting them into the country with a disguise and its okay? Damn government. ...

People of the Hindu Faith

The following postings made by proud18 on stormfront.org were entered into evidence at the hearing:

(a) Posting date: January 4, 2004

Thread Title: "2 dead, 4 injured. Yipee."

Post #1

Well the hindus are fighting a turf war in Vancouver with the Asians. Saturday in a nightclub in town there was a brawl between these two rival groups. The end and joyful result was 2 shot to death and 4 wounded. 2 of the 4 are in critical care.

This is a great way to start the New Year. The dead include a white woman in her 20's that was with the Asian gang.

Even though she was white I have no pity for this race traitor. She chose to be around them and now she died with them. A just ending.

(b) Posting date: May 4, 2004

Thread Title: "Foreigner trys (sic) to spread HIV in Canada"

Post #4

In response to a posting made about the conviction of an individual who transmitted HIV to three women, proud 18 writes:

Serves the women right, screwing a hindu. Hope they get it and fast.

CANADIAN HUMAN RIGHTS TRIBUNAL

PARTIES OF RECORD

TRIBUNAL FILE:	T1071/5205
STYLE OF CAUSE:	Richard Warman v. Peter Kouba
DATE AND PLACE OF HEARING:	July 10 & 11, 2006 Edmonton, Alberta
DECISION OF THE TRIBUNAL DATED:	November 22, 2006
APPEARANCES:	
Richard Warman	For himself
Giacomo Vigna / Ikram Warsame	For the Canadian Human Rights Commission
Peter Kouba	For himself