



CANADIAN
HUMAN RIGHTS
COMMISSION

COMMISSION
CANADIENNE DES
DROITS DE LA PERSONNE

Investigations
Division

Division des enquêtes

Rec'd: Apr. 1/08

PROTECTED

XPRESSPOST

20071008

MAR 31 2008

Rogers Media Inc.
c/o Mr. Julian Porter, Q.C.
1 First Canadian Place
Suite 1600, 100 King Street West,
Toronto, Ontario
M5X 1G5

Dear Mr. Porter:

The investigation into the Canadian Islamic Congress complaint against Rogers Media Inc. has been completed. A copy of the investigator's report is enclosed for your review.

If you would like to submit comments on the report, you can do so by writing to me at the address below. Your submission must be no more than 10 pages in length including attachments and must not include any information related to confidential settlement discussions in the course of mediation or conciliation. Any such confidential information or any pages over the 10 page limit will not be placed before the Commission.

You can provide your submission by 18 April 2008. In order to avoid delay in the handling of this matter, extensions to this period will not be granted. Your submission may be disclosed to the other party.

The complaint form, the investigator's reports and submissions which we receive from the parties will be submitted to the Commission at one of its upcoming meetings. After reviewing these documents, the Commission will make a decision on the disposition of the case. The Commission can accept or reject the recommendation in the report. You will be advised of the Commission's decision as soon as it is rendered.

In order to protect the integrity of the investigative process, we respectfully request that the parties not share the investigation report.

Yours sincerely,

John Chamberlin
Manager, Investigations

Encl.: Investigation Report



CANADIAN
HUMAN RIGHTS
COMMISSION

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Investigation Report

Complainant: Canadian Islamic Congress

Respondent(s): Rogers Media Inc.

File Number(s): 20071008

Date Accepted: 13 August 2007

Section(s) of the Act: 13

Relevant Ground(s): Religion

Purpose of Investigation Report

The purpose of this report is to assist Commission members to determine whether:

- a) a conciliator should be appointed to attempt to resolve the complaint and/or;
- b) further inquiry by a tribunal is warranted or;
- c) the complaint should be dismissed.

In determining whether or not further inquiry is warranted, the Commission members do not determine whether discrimination has occurred. The Commission is a screening body which determines, for example, if a complaint warrants a conciliation process, further inquiry by the Canadian Human Rights Tribunal, or if it should be dismissed.

The Canadian Human Rights Tribunal is a separate agency from the Canadian Human Rights Commission and it is the Tribunal which decides if discrimination under the Act has occurred. The Tribunal's role is comparable to that of a judge, deciding the case fairly and impartially by weighing all the evidence introduced by all parties.

When making a decision, the Commission members may also consider the following circumstances:

- What measures have been taken by the parties to rectify the circumstances giving rise to the complaint?
- What are the positions of the parties with respect to an appropriate remedy to the complaint and if the parties do take a position, what are the comments of the investigator with respect to these positions?

Signature

Signature:

25 March 2008

Date

The Complaint

The issue in this complaint is whether the respondent communicated or caused to be communicated, by way of the internet, material that is likely to expose a person or persons to hatred or contempt on the basis of religion as is prohibited by section 13 of the *Canadian Human Rights Act* (CHRA).

1. The complainant alleges that the respondent has communicated or caused to be communicated discriminatory material by publishing an article on www.macleans.ca. The article is an excerpt of Mark Steyn's book *America Alone* entitled "The future belongs to Islam" (see Appendix "A"). The complainant alleges that the material in question is flagrantly anti-Muslim and in adopting a fear mongering tone, the article focuses on the influx of Muslim immigrants into Europe and North America. The complainant alleges that this article explicitly and implicitly states that this influx poses a threat to the fabric of Western society, to democracy, and to human rights due to the religious identity and beliefs of Muslims in general. The complainant further states that another significant theme contained in the article is that there is allegedly an ongoing war between Muslims and Non-Muslims, that Muslims are part of a global conspiracy to take over Western societies and to impose oppressive Islamic Law on them, and that Muslims in the West need to be viewed through this lens as the enemy. The complaint form provides examples from the text of the article which it alleges supports a number of negative assertions. It asserts that seeing the messages portrayed as objective fact by Maclean's had a serious impact on the complainant and on the Canadian Muslim community at large. It further states that this impact included harm to their sense of dignity and self-worth as Canadian Muslims.

2. The respondent states that the website is an archive for the content of the Macleans magazine and daily coverage of Canadian issues and events. It provides that the article in question is an opinion piece which allows a forceful stand to be taken. It says that an opinion piece cannot, in our society, be sifted to see that it is pure and full of happy, comfortable thoughts. It states that the basis of a free society is for free and reasoned debate to occur. It explains that disagreement is the price of liberty and the base of freedom of thought, belief, opinion and expression, including freedom of the press and other media communications. The respondent states that a reading of the piece in this context cannot possibly satisfy the strict definition of "hatred" defined in cases under the CHRA.

The Investigation Process

The investigation will examine whether there is support for the complainant's allegations that the respondent engaged in a discriminatory practice contrary to section 13 of the *CHRA* by considering:

- A) whether the material which forms the basis of the complaint was observed on the internet;
- B) whether the communication of the material took place in Canada;
- C) whether the respondent communicated or caused to be communicated the material which forms the basis of the complaint;
- D) whether the material is likely to expose a person or persons to hatred or contempt based on religion. In addressing this issue in this complaint, the investigation will consider the following factors:
 - i) the content of the material;
 - ii) the context in which the material was communicated.

Background

4. The complainant is the Canadian Islamic Congress (CIC). On its website, it states that it is Canada's largest national non-profit and wholly independent Islamic organization. It says it is an exclusively Canadian non-governmental organization (NGO) with no affiliation to any group, body, ideology or government. CIC claims it is "the independent voice of Canada's Muslims -- Sunni and Shi'a, men and women, youth and seniors".

5. The respondent is Rogers Media Incorporated. On its website, it states that Rogers Communications is a diversified Canadian communications and media company engaged in three primary lines of business including Rogers Wireless, Rogers Cable and Telecom and Rogers Media. It explains that Rogers Media is Canada's premier collection of category-leading media assets with businesses in radio and television broadcasting, televised shopping, publishing and sports entertainment. Further, the organization operates two businesses: Rogers Broadcasting and Rogers Publishing and that Rogers Publishing is Canada's largest magazine and periodicals publisher. The website states that Macleans is Canada's largest-circulation news magazine and Rogers Publishing also has a strong presence on the web including Macleans.ca.

Section 13 of the CHRA

6. Section 13 of the *Canadian Human Rights Act* reads as follows:
 - (1) It is a discriminatory practice for a person or a group of persons acting in concert to communicate telephonically or to cause to be so communicated, repeatedly, in whole or in part by means of the facilities of a telecommunication undertaking within the legislative authority of Parliament, any matter that is likely to expose a person or persons to hatred or contempt by reason of the fact that that person or those persons are identifiable on the basis of a prohibited ground of discrimination.

 - (2) For greater certainty, subsection (1) applies in respect of a matter that is communicated by means of a computer or a group of interconnected or related computers, including the Internet, or any similar means of communication, but does not apply in respect of a matter that is communicated in whole or in part by means of the facilities of a broadcasting undertaking.

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

7. In looking at the material which forms the basis of this complaint, it is important to examine the purpose and scope of section 13 of the *Canadian Human Rights Act*. This examination of the section was done by the Supreme Court of Canada in the case of *Canada v. Taylor*¹. The Supreme Court held in that case that although section 13 infringed the right of freedom of expression as guaranteed by section 2 of the *Charter*², it was demonstrably justified and is, therefore, constitutional.

¹*Canada (Human Rights Commission) v. Taylor*, [1990] 3 S.C.R. 892.

²*Constitution Act* 1982, section 1.

Intent of the legislation

8. In looking at the intent of section 13, the Supreme Court noted as follows:

[38] I believe that the broad legislative intent in implementing s. 13(1) can be gleaned directly from the statute in which it is found. The purpose of the Canadian Human Rights Act is stated as follows in s. 2:

2. The purpose of this Act is to extend the present laws in Canada to give effect, within the purview of matters coming within the legislative authority of the Parliament of Canada, to the principle that every individual should have an equal opportunity with other individuals to make for himself or herself the life that he or she is able and wishes to have, consistent with his or her duties and obligations as a member of society, without being hindered in or prevented from doing so by discriminatory practices based on race, national or ethnic origin, colour, religion, age, sex, marital status, family status, disability or conviction for an offence for which a pardon has been granted.

It is this purpose — the promotion of equal opportunity unhindered by discriminatory practices based on, inter alia, race or religion — which informs the objective of s. 13(1). In denoting the activity described in s. 13(1) as a discriminatory practice, Parliament has indicated that it views repeated telephonic communications likely to expose individuals or groups to hatred or contempt by reason of their being identifiable on the basis of certain characteristics as contrary to the furtherance of equality.

[39] Parliament's concern that the dissemination of hate propaganda is antithetical to the general aim of the Canadian Human Rights Act is not misplaced. The serious harm caused by messages of hatred was identified by the Special Committee on Hate Propaganda in Canada, commonly known as the Cohen Committee, in 1966. The Cohen Committee noted that individuals subjected to racial or religious hatred may suffer substantial psychological distress, the damaging consequences including a loss of self-esteem, feelings of anger and outrage and strong pressure to renounce cultural differences that mark them as distinct. This intensely painful reaction undoubtedly detracts from an individual's ability to, in the words of s. 2 of the Act, "make for himself or herself the life that he or she is able and wishes to have." As well, the Committee observed that hate propaganda can operate to convince listeners, even if subtly, that members of certain racial or religious groups are inferior. The result may be an increase in acts of discrimination, including the denial of equal opportunity in the provision of goods, services and facilities, and even incidents of violence.

[40] Since the release of the Report of the Special Committee on Hate Propaganda in Canada, numerous other study groups have echoed the Cohen Committee's conclusion that hate propaganda presents a serious threat to society. Affirmation of the Committee's findings may be found in the 1981 Report Arising Out of the Activities of the Ku Klux Klan in British Columbia by John D. McAlpine, the 1984 report of the Special Committee on Participation of Visible Minorities in Canadian Society, entitled Equality Now!, the Canadian Bar Association's Report of the Special Committee on Racial and Religious Hatred, also released in 1984, and the 1986 Working Paper 50 of the Law Reform Commission of Canada, entitled Hate Propaganda. It can thus be concluded that messages of hate propaganda undermine the dignity and self-worth of target group members and, more generally, contribute to disharmonious relations among various racial, cultural and religious groups, as a result eroding the tolerance and openmindedness that must flourish in a multicultural society which is committed to the idea of equality.

Limits on Freedom of Expression and Definition of Hatred and Contempt

9. In considering limits on freedom of expression, as well as the definition of hatred and contempt, the Supreme Court of Canada concludes:

[41] In seeking to prevent the harms caused by hate propaganda, the objective behind s. 13(1) is obviously one of pressing and substantial importance sufficient to warrant some limitation upon the freedom of expression. It is worth stressing, however, the heightened importance attached to this objective by reason of international human rights instruments to which Canada is a party and ss. 15 and 27 of the Charter.

[60] In my view, there is no conflict between providing a meaningful interpretation of s. 13(1) and protecting the s. 2(b) freedom of expression so long as the interpretation of the words "hatred" and "contempt" is fully informed by an awareness that Parliament's objective is to protect the equality and dignity of all individuals by reducing the incidence of harm-causing expression. Such a perspective was employed by the Human Rights Tribunal in *Nealy v. Johnston* (1989), 10 C.H.R.R. D/6450, the most recent decision regarding s. 13(1), where it was noted, at p. D/6469, that,

In defining "hatred" the Tribunal [in *Taylor*] applied the definition in the *Oxford English Dictionary* (1971 ed.) which reads (at p. 28):

"Active dislike, detestation, enmity, ill-will, malevolence."

The Tribunal drew on the same source for their definition of "contempt." It was characterized as

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

As there is no definition of "hatred" or "contempt" within the [Canadian Human Rights Act] it is necessary to rely on what might be described as common understandings of the meaning of these terms ... With "hatred" the focus is a set of emotions and feelings which involve extreme ill will towards another person or group of persons. To say that one "hates" another means in effect that one finds no redeeming qualities in the latter. It is a term, however, which does not necessarily involve the mental process of "looking down" on another or others. It is quite possible to "hate" someone who one feels is superior to one in intelligence, wealth or power. None of the synonyms used in the dictionary definition for "hatred" give any clues to the motivation for the ill will. "Contempt" is by contrast a term which suggests a mental process of "looking down" upon or treating as inferior the object of one's feelings. This is captured by the dictionary definition relied on in *Taylor* . . . in the use of the terms "despised," "dishonour" or "disgrace." Although the person can be "hated" (i.e. actively disliked) and treated with "contempt" (i.e. looked down upon), the terms are not fully coextensive, because "hatred" is in some instances the product of envy of superior qualities, which "contempt" by definition cannot be.

[61] The approach taken in *Nealy*, supra, gives full force and recognition to the purpose of the Canadian Human Rights Act while remaining consistent with the Charter. The reference to "hatred" in the above quotation speaks of "extreme" ill-will and an emotion which allows for "no redeeming qualities" in the person at whom it is directed.

"Contempt" appears to be viewed as similarly extreme, though is felt by the Tribunal to describe more appropriately circumstances where the object of one's feelings is looked down upon. According to the reading of the Tribunal, s. 13(1) thus refers to unusually strong and deep-felt emotions of detestation, calumny and vilification, and I do not find this interpretation to be particularly expansive....

[62] In sum, the language employed in s. 13(1) of the Canadian Human Rights Act extends only to that expression giving rise to the evil sought to be eradicated and provides a standard of conduct sufficiently precise to prevent the unacceptable chilling of expressive activity. Moreover, as long as the Human Rights Tribunal continues to be well aware of the purpose of s. 13(1) and pays heed to the ardent and extreme nature of feeling described in the phrase "hatred or contempt," there is little danger that subjective opinion as to offensiveness will supplant the proper meaning of the section.

10. In submissions before the Parliamentary Justice and Legal Affairs Committee in 1977, prior to the enactment of the CHRA, then Minister of Justice the Honourable Ronald Basford made the following remarks regarding the proposed section 13:

Clause 13 is the hate message section, which is here as a result largely of actions in Toronto... where some of the extreme groups have adopted the practice of having recorded hate messages on the telephone and this is an attempt, I think a balanced attempt, to endeavour to deal with that situation. I think the key words in terms of a hate message is that it has to be communicated telephonically

*repeatedly. I underline the word 'repeatedly', that it has to be part of a pattern, part of a behaviour.*³

11. In the case of *Citron v. Zundel et al*⁴, at para 113, the Tribunal concluded that material that is communicated via the internet is 'repeated' communication as is required by section 13:

We would also observe that the very nature of the Internet makes 'repeated' communication inevitable and deliberate. The evidence regarding the World Wide Web establishes that it is a specific application designed to enable the transmission and display of text, graphics, audio or video files over the Internet. This technology was calculated to facilitate browsing and the repeated transmission of material posted on a chosen site. A key advantage of the Internet is that it provides an inexpensive means of mass distribution.

12. Minister Basford further stated that "what is sought is some method of preventing these messages which, I would say, surely serve no social purpose".⁵

The Investigation

13. During the course of the investigation, the investigator reviewed the following documents:

- The future belongs to Islam by Mark Steyn dated 20 October 2006
- Case law as cited
- Minutes of Proceedings and Evidence of the Standing Committee on Justice and Legal Affairs, respecting Bill C-25, 1976-1977, Issue 12

A) Was the material observed on the Internet?

14. On 17 April 2007 and numerous times thereafter, a complainant representative visited www.macleans.ca whereby he observed and downloaded the alleged materials posted by the respondent.

15. The respondent does not dispute that the alleged information is on the Internet.

Findings: The evidence shows that the material which forms the basis of this complaint was observed on the internet.

B) Has the communication of the material at least partly taken place in Canada?

16. Rogers Communications is a diversified Canadian communications and media company. The investigator uses a Canadian mailing address and phone number to contact the respondent. This issue is not under dispute by the parties.

Findings: The evidence supports that the communication of the material has taken place in Canada.

³Minutes of Proceedings and Evidence of the Standing Committee on Justice and Legal Affairs, respecting Bill C-25, An Act to extend the present Laws in Canada that proscribe discrimination and that protect the privacy of individuals House of Commons, Second Session of the 30th Parliament, 1976-1977, Issue 12 , pg. 24.

⁴*Citron v. Zundel et al.* [2002], 41 C.H.R.R. D/274 (C.H.R.T.)

⁵Minutes of Proceedings and Evidence of the Standing Committee on Justice and Legal Affairs, pg. 28.

C) Did the respondent communicate or cause to be communicated the material which forms the basis of the complaint?

17. The respondent states that it owns and controls both the domain and website www.macleans.ca. It states that at the time of this article, one technical web producer was posting the content and that the story would have been edited by magazine staff. The respondent submits that documents are processed by a technical team member and posted to the site through Maclean's management system. Further, the respondent states that www.macleans.ca is hosted internally by Rogers IT.

Findings: The evidence shows that the respondent communicated or caused to be communicated the material which forms the basis of the complaint.

D) Is the material likely to expose a person or persons to hatred or contempt based on religion?

i) Content of the material

18. The material which forms the basis of this complaint is taken from an article which is an excerpt of Mark Steyn's book *America Alone* entitled "The future belongs to Islam". The examples are from the material posted on the www.macleans.ca website which were observed and downloaded by the complainant.

Complainant's Position

19. The complainant alleges that the excerpts below are consistent with the hallmarks of hate as described in the decision of the Canadian Human Rights Tribunal in *Warman v. Kouba*⁶.
20. Firstly, '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.'⁷ It states that the essence of the article is that Muslims are going to take over the Western world and impose Islamic law on society. The excerpts are as follows:
- *The Muslim world has youth, numbers and global ambitions. The West is growing old and enfeebled, and lacks the will to rebuff those who would supplant it. It's the end of the world as we've known it.*
 - *On the Continent and elsewhere in the West, native populations are aging and fading and being supplanted remorselessly by a young Muslim demographic. Time for the obligatory "of course": of course, not all Muslims are terrorists – though enough are hot for jihad to provide an impressive support network of mosques from Vienna to Stockholm to Toronto to Seattle. Of course, not all Muslims support terrorists – though enough of them share their basic objectives (the wish to live under Islamic law in Europe and North America) to function wittingly or otherwise as the "good cop" end of an Islamic good cop/bad cop routine.*
 - *In a few years, as millions of Muslim teenagers are entering their voting booths, some European countries will not be living formally under sharia, but – as much as parts of Nigeria, they will have reached an accommodation with their radicalized Islamic compatriots, who like many intolerant types are expert at exploiting the "tolerance" of pluralist societies. In other Continental countries, things are likely to play out in more traditional fashion, though without a significantly different ending.*

⁶*Warman v. Kouba* [2006] CHRT 50.

⁷*Ibid.*, para. 20.

21. The complainant also cites the following examples from the article in trying to establish that the messages use “‘true stories’, news reports, pictures and references from purportedly reputable sources to make negative generalizations about the targeted group.”⁸ The complainant submits that the aim of these excerpts is to legitimize the notion that Muslim youth will wreak havoc and that they have the potential to cause destruction to the fabric of Western Society and that a Muslim takeover of Western societies and subjecting them to Islamic law is imminent. The excerpts are as follows:
- *You may vaguely remember seeing some flaming cars on the evening news toward the end of 2005. Something going on in France, apparently. Something to do with – what’s the word? – “youths”. When I pointed out the media’s strange reluctance to use the M-word vis-a-vis the rioting “youths”, I received a ton of emails arguing there’s no Islamist component...*
 - *“We’re the ones who will change you,” the Norwegian iman Mullah Krekar told the Oslo newspaper Dagbladet in 2006. “Just look at the development within Europe, where the number of Muslims is expanding like mosquitoes. Every Western woman in the EU is producing an average of 1.4 children. Every Muslim woman in the same countries is producing 3.5 children.” As he summed it up: “Our way of thinking will prove more powerful than yours”.*
 - *Of the country’s [Belgium’s] Turkish and Moroccan population, 35 per cent are under 18 years old. The “youth” get ever more numerous, the non-youths get older. To avoid the ruthless arithmetic posited by Benjamin Franklin, it is necessary for those “youth” to feel more Belgian. Is that likely? Colonel Gadhafi doesn’t think so: There are signs that Allah will grant Islam victory in Europe – without swords, without guns, without conquests. The fifty million Muslims of Europe will turn it into a Muslim continent within a few decades.*
22. The complainant alleges that material from the article also portrays the targeted group “as preying upon children, the aged and the vulnerable, etc.”⁹ The complainant submits that the article suggests that the Muslim population’s higher than average fertility rate will result in disaster for non-Muslim citizens of the West, implying that Muslims will prey upon aging, non-Muslim citizens of Western society. The excerpts submitted by the complainant are as follows:
- *Age + Welfare = Disaster for you; Youth + Will = Disaster for whoever gets in your way.*
 - *On the Continent and elsewhere in the West, native populations are aging and fading and being supplanted remorselessly by a young Muslim demographic.*
 - *In June 2006, a 54 year old Flemish train conductor called Guido Demoor got on the Number 23 bus in Antwerp to go to work. Six – what’s the word again? – “youths” boarded the bus and commenced intimidating the other riders. There were some 40 passengers aboard. But the “youths” were youthful and the other passengers less so. Nonetheless, Mr. Demoor asked the lads to cut it out and so they turned on him, thumping and kicking him.... Three “youths” were arrested, and proved to be – quelle surprise! – of Moroccan origin.*
23. The complainant submits that the following excerpts also characterize Muslim people as terrorists or suggest that terrorism exists where they reside and that they are “dangerous or violent by nature”¹⁰:

⁸Ibid., para. 29.

⁹Ibid., para. 39.

¹⁰Ibid., para. 48.

- *On Sept. 11, 2001, the American mainland was attacked for the first time since the War of 1812. The perpetrators were foreign – Saudis and Egyptians. Since 9/11, Europe has seen the London Tube bombings, the French riots, Dutch murders of nationalist politicians. The perpetrators are their own citizens – British subjects, citoyens de la Republique francaise. In Linz, Austria, Muslims are demanding that all female teachers, believers or infidels, wear headscarves in class. The Muslim Council of Britain wants Holocaust Day abolished because it focuses “only” on the Nazis’ (alleged) Holocaust of the Jews and not the Israelis ongoing Holocaust of the Palestinians.*
- *...not all Muslims are terrorists – though enough are hot for jihad to provide an impressive support network of mosques from Vienna to Stockholm to Toronto to Seattle. Of course, not all Muslims support terrorists – though enough of them share their basic objectives.*

24. The complainant submits that the following example from the article associating Muslims with mosquitoes implies many “sub-human”¹¹ and degrading connotations including that Muslims are spreading rapidly and carry with them disease (malaria) that is infecting Western societies:

- *Just look at the development within Europe, where the number of Muslims is expanding like mosquitoes. Every Western woman in the EU is producing an average of 1.4 children. Every Muslim woman in the same countries is producing 3.5 children.*

25. The complainant alleges that since the article was published, many internet discussions have evidenced hatred and contempt towards the Muslim community directly linked to the article which shows that not only are they likely to be exposed to hatred or contempt but that they have been so exposed. It submits that these discussions are evidence of extreme ill-will and of an inferior treatment and view of Muslims. It can be noted that the owner of one of these forums apologized to the Muslim community for the content of this blog, which was removed on or about December 22, 2007.

Respondent’s Position

26. The respondent has not made any specific comments on the above allegations but has instead stated its general position. The position, as provided during the investigation, is as follows:

The most monumental issue today is how varied creeds relate and clash. Wars sometimes result.

The basis for a free society is for free and reasoned debate to occur. Disagreement is the price of liberty and the base of freedom of thought, belief, opinion and expression, including freedom of the press and other media of communications (s.2 Charter of Rights).

This is an opinion piece which allows a forceful stand to be taken. An opinion piece cannot, in our society, be sifted to see that it is pure and full of happy, comfortable thoughts.

*A reading of the piece in its context cannot possibly satisfy the strict definition of “hatred” defined in the cases. The “hatred”, as revealed in *Citron v. Zundel* (2002), 41 C.H.R.R. D/274 and *Canada (Human Rights Commission) v. Taylor* [1990] 3 S.C.R. 892 cases, reflects the spittle of a ranting tirade. Also Mr. Steyn never suggests a universal application of his arguments to all Muslims.*

The 19 points raised ... constitute a debating trick of parsing and wrenching parts out of context. The article must be read and considered in its entirety.

¹¹ Ibid., para. 64.

In the second last column of the article Mr. Steyn quotes Colonel Gadhafi, "There are signs that Allah will grant Islam victory in Europe – without swords, without guns, without conquests. The fifty million Muslims of Europe will turn it into a Muslim continent within a few decades".

Mr. Steyn's last quote from his article "We're the ones who will change you." the Norwegian imam Mullah Krekar told the Oslo newspaper Dagbladet in 2006. "Just look at the development within Europe, where the number of Muslims is expanding like mosquitoes. Every Western woman in the EU is producing an average of 1.4 children. Every Muslim woman in the same countries is producing 3.5 children." As he summed it up: "Our way of thinking will prove more powerful than yours."

These two paragraphs set a framework of debate.

ii) Context of the material

27. The material that forms the basis of this complaint comes from an article which is an excerpt of Mark Steyn's book *America Alone* entitled "The future belongs to Islam". The New York Times bestselling book was published in 2006. Wikipedia states that "*America Alone* covers topics surrounding the Global War on Terror and centers on issues of demographics in Muslim vs. non-Muslim population centers. It makes the case that both demographics and will-power are on the side of the Islamist, with many Western populations reproducing at or below sub-replacement fertility levels, and Muslim countries/Muslim peoples within Western countries reproducing at a drastically higher level." The article was published in Macleans Magazine and on www.macleans.ca on 20 October 2006. Macleans is a news magazine of wide and general circulation in Canada and prints news and opinion items on a wide variety of subjects. Macleans has published a number of letters in response to the article in its subsequent editions, including letters critical of the article. The complainants met with the editors or managers of Macleans and requested that Macleans publish an article by a mutually acceptable author but Macleans refused. Persons affiliated with the complaint have publicly stated that they filed this complaint because of Maclean's refusal to publish an article by a mutually acceptable author.
28. The complainant further alleges that the article that forms the subject matter of this complaint is not an isolated publication. It alleges that the respondent has developed a "modus operandi of publishing flagrantly anti-Muslim content" in which it identifies eighteen articles published by Maclean's between January 2005 and July 2007.

Analysis

29. At issue in this complaint is whether the material posted on the website is likely to expose the target group to hatred or contempt. The complainant's position is that the material which forms the basis of this complaint meets both the hatred and contempt definitions. The respondent's position is that, in its context, the article does not satisfy the strict definition of hatred defined in the cases. Further, it states that Mr. Steyn never suggests a universal application of his argument to all Muslims.

Content

30. The key operative terms of subsection 13(1) have been interpreted by the Tribunal and the courts. In determining whether or not material is likely to expose persons to hatred or contempt, the Canadian Human Rights Tribunal decision in *Nealy v. Johnson*¹² stated that 'expose' means "to leave a person unprotected; to leave without shelter or defence; to lay open (to danger, ridicule, censure etc.)". The Tribunal further held that material is determined to be 'likely to expose' persons to hatred or contempt on a balance of probabilities, that is, if "the matter in the message is more likely than not to spark a

¹² *Nealy v. Johnson* [1989], 10 C.H.R.R. D/6450.

positive reaction amongst some of the listeners to it which will likely in turn manifest itself in 'hatred' or 'contempt' towards the targets of the messages".

31. In the *Taylor* case, the Supreme Court of Canada affirmed that 'hatred' refers to a feeling of extreme ill-will that allows for no redeeming qualities in the person towards whom it is directed, while 'contempt' encompasses looking down upon or treating as inferior the object of one's feelings. The Supreme Court of Canada also indicated in *Taylor* that section 13 "...extends only to that expression giving rise to the evil sought to be eradicated and provides a standard of conduct sufficiently precise to prevent the unacceptable chilling of expressive activity."
32. In *Warman v. Kouba* (2006), the Tribunal has identified a number of 'hallmarks' of material that is likely to expose persons to hatred or contempt, based on the emerging body of section 13 jurisprudence. It is explained that these hallmarks are what distinguish them from legitimate speech that is not subject to sanction under s. 13 of the Act. In the decision, it states that these hallmarks involve an "attack on inherent self-worth and dignity of the members of the targeted group." and also states "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)."
33. The material which was considered by the Tribunal in *Kouba*¹³ was described by the Tribunal as follows:
- The messages in the present case....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.*
34. Chief Justice Dickson stated that "as long as the Human Rights Tribunal continues to be well aware of the purpose of s. 13(1) and pays heed to the ardent and extreme nature of feeling described in the phrase "hatred or contempt", there is little danger that subjective opinion as to offensiveness will supplant the proper meaning of the section."
35. Based on the excerpts cited by the complainant, it appears that the article may bear some of the characteristics identified by the Tribunal in *Kouba* as being 'hallmarks' of material that is likely to expose persons to hatred or contempt. Muslims appear to be portrayed, for example, as a 'powerful menace' (in this case, a demographic menace), and as being dangerous or violent by nature.
36. On the other hand, the article does not contain other hallmarks that have been common features of hate messages in section 13 jurisprudence, such as highly derogatory language regarding Muslims or calls for their segregation or eradication. As well, the material in this complaint does not appear to be of the same extreme nature as that considered by the Courts and Tribunals to date.

Context

37. It appears that the context of the present complaint is markedly different in important respects from that normally seen in hate message complaints received by the Commission. In particular, the material alleged to have violated section 13 was not communicated in a forum which espouses extreme views of hatred, such as white supremacist or neo-Nazi ideology.

¹³*Warman v. Kouba* [2006] CHRT 50, para[83].

38. Apart from the content of the material alleged to have violated section 13, the purpose of this provision is arguably a relevant factor to be considered in assessing hate message complaints brought before the Commission. Neither the Parliamentary debates surrounding the enactment of section 13, nor the jurisprudence to date, have included or considered a situation similar to that which gives rise to this complaint.

Overview

39. This complaint raises interesting new issues regarding hate on the internet. In particular, it raises the question of whether or not the factual situation which gives rise to this complaint, which is undoubtedly upsetting to some, was what Parliament intended to address by section 13.
40. An argument could be made that given the nature of the respondent's business and the medium of publication involved in this case, *i.e.*, a news magazine, and given that the article in question is not of the same extreme nature as Parliament and the Courts have dealt with to date, that this complaint should be dismissed as it is not what section 13 was meant to address.
41. Alternatively, an argument could be made that the material in the complaint bears some of the hallmarks of hate as identified in the *Kouba* decision, that it does portray persons of the Muslim faith in a negative light based upon broad generalizations, and therefore may expose persons of the Muslim faith to hatred or contempt.

Findings: Based on the totality of the information gathered, it is unclear whether or not a Tribunal would determine the material, considered as a whole and in context, to be of such a nature that it is likely to expose persons of the Muslim faith to hatred or contempt.

Summary of Findings

42. The evidence shows that the material which forms the basis of this complaint was observed on the internet, communication has taken place in Canada, and that the respondent communicated or caused to be communicated the material which forms the basis of the complaint.
43. Further, based on the totality of the information gathered, it is unclear whether or not a Tribunal would determine the material, considered as a whole and in context, to be of such a nature that it is likely to expose persons of the Muslim faith to hatred or contempt.

What measures have been taken by the parties to rectify the circumstances giving rise to the complaint?

44. The complainant met with the respondent and proposed a solution which was rejected by the respondent.

What are the positions of the parties with respect to an appropriate remedy to the complaint and if the parties do take a position, what are the comments of the investigator with respect to these positions?

45. The complainant seeks a cease and desist order. Should this complaint be found to be a breach of section 13 at a hearing by the Tribunal, a cease and desist order could be issued by the Tribunal under section 53(2)(a).
46. The complainant is also seeking a declaration from the CHRC that this material is in violation of s. 13 of the Act and wants the opportunity to rebut publicly the factual assertions in the article. It should be noted that the CHRC does not determine if material violates s. 13 of the Act. Rather, it is a screening body which determines if further inquiry by a Tribunal is warranted. The Tribunal is a separate, independent body from the

Commission, and only the Tribunal is mandated to determine whether material is likely to expose a group to hatred or contempt.

47. The respondent would like this complaint to be dismissed stating the material cannot possibly satisfy the definition of “hatred” in case law.

<i>Recommendation</i>

48. It is recommended, pursuant to paragraph 44(3)(b) of the *Canadian Human Rights Act* that the Commission dismiss the complaint if it is of the view that:

- the content and context of the material which forms the basis of the complaint is not what section 13 was intended to prohibit.

Alternatively,

49. It is recommended, pursuant to paragraph 44(3)(a) of the *Canadian Human Rights Act* to request that the Chairperson of the Canadian Human Rights Tribunal institute an inquiry into the complaint if the Commission is of the view that:

- the material does appear to meet some of the hallmarks of hate and is of such a nature that it may likely expose persons of the Muslim faith to hatred and contempt;
- a decision by the Tribunal addressing the fact situation in this case may be in the public interest as it raises new considerations regarding the relationship between section 13 and the right of freedom of the press, an aspect of the *Charter* guarantee of freedom of expression.