

T-1309-05

2005 FC 1493

Canadian Human Rights Commission (*Applicant*)

v.

Tomasz Winnicki (*Respondent*)

INDEXED AS: CANADA (HUMAN RIGHTS COMMISSION) v. WINNICKI (F.C.)

Federal Court, de Montigny J.—Ottawa, August 4 and November 28, 2005.

Human Rights — Motion for interlocutory injunction to restrain respondent from communicating by means of Internet messages likely to expose persons to hatred or contempt by reason of race, national, ethnic origin, colour or religion contrary to Canadian Human Rights Act, s. 13(1) pending Canadian Human Rights Tribunal's (CHRT) final order — Elements required to establish violation of Act, s. 13(1) proven — Respondent admitting caused communication of material subject of complaint — Materials communicated through Internet explicitly within ambit of s. 13(2) — Likely to expose people of Jewish religion, ethnicity, people of black race to hatred, contempt — Motion allowed.

Federal Court Jurisdiction — Whether Federal Court had jurisdiction to grant interim, interlocutory injunction restraining respondent from communicating, by means of Internet, messages likely to expose persons of Jewish faith to hatred, contempt pending Canadian Human Rights Tribunal's (CHRT) final order — Preconditions to support finding of jurisdiction set out by Supreme Court of Canada (S.C.C.), met herein — Federal Courts Act, s. 44 source of jurisdiction to issue injunction — Canadian Human Rights Act, s. 13(1) nourishing statutory grant found in Federal Courts Act, s. 44 — S.C.C. decision in *Canada (Human Rights Commission) v. Canadian Liberty Net* applied — Court having jurisdiction to grant interlocutory injunction requested by applicant.

Injunctions — Test for granting interlocutory injunction in context of Canadian Human Rights Act (CHRA) — Defamation actions, complaints of hate speech distinguished — Injunctions to be granted only in clearest of cases as both actions seeking to limit right of freedom of expression — Hate messages more damaging than defamatory statements as affecting much larger group of persons — Truth, fair comment not defence in cases of hate messages — Focus of human rights inquiries on effects, not on intent — Interim injunction should issue only where words complained of manifestly contrary to CHRA, s. 13.

Constitutional Law — Charter of Rights — Fundamental Freedoms — Motion for interlocutory injunction to restrain respondent from communicating messages likely to expose persons of Jewish faith to hatred, contempt contrary to Canadian Human Rights Act (CHRA), s. 13 pending Canadian Human Rights Tribunal (CHRT) final order — Defamation actions, complaints of hate speech seeking to limit right to freedom of expression — Activity described by CHRA, s. 13(1) clearly protected by Charter, s. 2(b) — Values underpinning hate propaganda fundamentally inimical to rationale underlying protection of freedom of expression, contradicting other values equally vindicated by Charter — Impugned messages likely to expose persons of Jewish faith to hatred, contempt — Motion allowed despite importance accorded to freedom of expression.

This was a motion brought by the Canadian Human Rights Commission for an interlocutory injunction to restrain the respondent from communicating by means of the Internet messages that are likely to expose persons to hatred or contempt by reason of race, national or ethnic origin, colour or religion, contrary to subsection 13(1) of the *Canadian Human Rights Act* (CHRA) pending a final order of the Canadian Human Rights Tribunal. According to the affidavit of Mr. Richard Warman, who filed a complaint with the Commission, the respondent stated that black people were intellectually inferior and dangerous and that the Jewish-controlled government was to blame; that European girls were murdered by Jewish people because the latter hate European beauty and nobility; that persons of

the black race are subhuman and inherently criminal, etc. In answer to Mr. Warman's complaint, the respondent did not deny communicating these messages and stated that the reason for doing so was to protect the White European civilization and the people who built it. Three issues were raised: (1) whether the Federal Court has jurisdiction to grant an interim or interlocutory injunction restraining the respondent from communicating, by means of the Internet, the impugned messages, until the Canadian Human Rights Tribunal renders the final order in the proceedings; (2) what is the proper test for granting such an interlocutory injunction? and (3) has this test been met in the present circumstances?

Held, the motion should be allowed.

(1) The Federal Court must meet three requirements before it can exercise jurisdiction on any given matter. First, there must be a statutory grant of jurisdiction by the federal Parliament. In *Canada (Human Rights Commission) v. Canadian Liberty Net*, the Supreme Court of Canada held that section 44 of the *Federal Court Act*, read in the context of other sections of that Act and of the CHRA, could be considered as a source of jurisdiction to issue an injunction. The second and third requirements provide that there must be an existing body of federal law which is essential to the disposition of the case and which nourishes the statutory grant of jurisdiction, and that the law on which the case is based must be "a law of Canada". In *Canadian Liberty Net*, the Supreme Court found that subsection 13(1) of the CHRA nourished the statutory grant found in section 44 of the *Federal Court Act*, and that it was validly enacted since it is confined in its application to the "facilities of a telecommunication undertaking within the legislative authority of Parliament". Since the present case is not materially different from the situation examined by the Supreme Court in *Canadian Liberty Net*, the Court was bound to apply it and to rule that it did have jurisdiction to grant the interlocutory injunction requested by the applicant.

(2) The test enunciated by the Supreme Court of Canada for granting an interlocutory injunction is ill suited in the context of a dispute involving fundamental rights and freedoms such as in the present case. It was suggested that the test applied in granting injunctions against dissemination of defamatory statements might be more appropriate. In determining the necessary modifications to the test for injunctions in defamation cases in order to formulate a test for discriminatory hate speech, the similarities and differences between the two types of cases, as well as the nature of the fundamental rights involved were examined. Since both defamation actions and complaints of hate speech seek to limit the right to freedom of expression, injunctions should be granted only in the clearest of cases. A restriction on hate propaganda and hate mongering should not be assessed with the same stringent standards as limitations on defamatory speech. The values underpinning hate propaganda are fundamentally inimical, even antithetical, to the rationale underlying the protection of freedom of expression, and directly contradict other values equally vindicated by the Charter. For those reasons, hate propaganda and defamatory comments should not be looked at from the same perspective when it comes to determining the prior restraints that can legitimately be placed on these two forms of expression. The damage caused by hate messages to the groups targeted is very often difficult to repair. It insidiously reinforces the prejudice that some people may have towards minorities identified by race, colour and religion, thus prompting and justifying discriminatory practices and even violence against these groups. Hate messages are much more reprehensible and devoid of any redeeming value than any other type of expression. These messages are much more damaging than defamatory statements in that they affect a much larger group of persons. Additionally, truth or fair comment is not a defence in cases of hate messages. The focus of human rights inquiries is on the effects and not on the intent. Accordingly, there is no exception for truthful statements in the context of subsection 13(1) of the CHRA. Finally, the party seeking an injunction to restrain expression of the kind proscribed by section 13 of the CHRA will seldom, if ever, have any tangible, easily measurable interest, just as a speaker expressing his views. There is no commercial interest at stake, as is often the case when defamatory comments are being made, so that the cards are not stacked against the person professing the heinous views. It is also important that the test devised for granting an interim injunction not tie the hands of the Tribunal called upon to assess the complaint lodged by the Commission. Therefore, an interim injunction should issue only where the words complained of are so manifestly contrary to section 13 of the CHRA that any finding to the contrary would be considered highly suspect by a reviewing court. It should not issue where it is impossible to say that reasonable members of the Tribunal will most likely find the words to be in breach of section 13.

(3) Three elements must be proven on a balance of probabilities to establish a violation of section 13 of the CHRA. First, the respondent must have communicated or caused to be communicated the material which was the subject of the complaint. He did not deny that. Moreover, it was clearly established by the complainant that all of the material

which formed the subject of this complaint was authored and signed by the respondent, either as himself or as his pseudonym. Second, whether material communicated through the Internet falls within the ambit of section 13 of the CHRA is no longer an issue. As a result of the amendment effected by the proclamation of the *Anti-terrorism Act* on December 24, 2001, subsection 13(2) was amended to deal explicitly and clearly with Internet communications. Third, the materials which were posted on the Web sites were likely to expose people of Jewish religion and ethnicity as well as people of the black race to hatred or contempt. There were several messages in the respondent's postings that discriminated against persons of the Jewish faith and were in fact threatening. The themes that permeated the impugned messages were the same as those found in most anti-Semitic propaganda: Jews are criminals, thugs and liars; they seek a disproportionate degree of power and control in the media and government and they are a menace to the Aryan race. The words complained of are so manifestly contrary to the letter and the spirit of section 13 of the CHRA that any finding to the contrary would be considered highly suspect. A reasonable panel of the Tribunal will most likely find the words to be in breach of section 13. The second and third leg of the test for granting an interim injunction (irreparable harm and balance of convenience) were met in the circumstances. Considering the abject nature of the messages and their likely impact on individuals and groups that are in a minority situation and that have historically suffered from precisely the kind of bias underpinning these vile attacks, it could be assumed that the harm suffered will have a long-term impact and may be extremely difficult to repair. As for the balance of convenience, a delay of a few months before being able to utter such nonsense, in the event the Tribunal was to find otherwise, would be a small price to pay compared to the dramatic consequences that these messages could have on the dignity and self-esteem of those being targeted. Despite the cardinal importance to be accorded to freedom of expression in our democracy, the interlocutory injunction restraining the respondent from communicating the impugned messages was granted.

statutes and regulations judicially
considered

Anti-terrorism Act, S.C. 2001, c. 41.

Canadian Charter of Rights and Freedoms, being Part I of the *Constitution Act, 1982*, Schedule B, *Canada Act 1982*, 1982, c. 11 (U.K.) [R.S.C., 1985, Appendix II, No. 44], s. 2(b).

Canadian Human Rights Act, R.S.C., 1985, c. H-6, ss. 2 (as am. by S.C. 1998, c. 9, s. 9), 13 (as am. by S.C. 2001, c. 41, s. 88), 14, 14.1 (as enacted by S.C. 1998, c. 9, s. 14), 44(3)(a) (as am. *idem*, s. 24), 57, 58(1).

Constitution Act, 1867, 30 & 31 Vict., c. 3 (U.K.) (as am. by *Canada Act 1982*, 1982, c. 11 (U.K.), Schedule to the *Constitution Act, 1982*, Item 1) [R.S.C., 1985, Appendix II, No. 5], s. 101.

Federal Court Act, R.S.C., 1985, c. F-7, ss. 3 (as am. by S.C. 1993, c. 34, s. 68(F)), 17 (as am. by S.C. 1990, c. 8, s. 3), 18 (as am. *idem*, s. 4), 18.1 (as enacted *idem*, s. 5), 44.

Federal Courts Act, R.S.C., 1985, c. F-7, ss. 1 (as am. by S.C. 2002, c. 8, s. 14), 18 (as am. by S.C. 1990, c. 8, s. 4; 2002, c. 8, s. 26), 44 (as am. *idem*, s. 41).

cases judicially considered

applied:

ITO—International Terminal Operators Ltd. v. Miida Electronics Inc. et al., [1986] 1 S.C.R. 752; (1986), 28 D.L.R. (4th) 641; 34 B.L.R. 251; 68 N.R. 241; *Canada (Human Rights Commission) v. Canadian Liberty Net*, [1998] 1 S.C.R. 626; (1998), 157 D.L.R. (4th) 385; 6 Admin. L.R. (3d) 1; 22 C.P.C. (4th) 1; 224 N.R. 241; *RJR—MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311; (1994), 111 D.L.R. (4th) 385; 164 N.R. 1; *Canada (Human Rights Commission) v. Taylor*, [1990] 3 S.C.R. 892; (1990), 75 D.L.R. (4th) 577; 13 C.H.R.R. D/435; 3 C.R.R. (2d) 116.

considered:

Rapp v. McLelland & Stewart Ltd. (1981), 34 O.R. (2d) 452; 128 D.L.R. (3d) 650; 19 C.C.L.T. 68 (H.C.J.); *Canada (Human Rights Commission) v. Canadian Liberty Net*, [1992] 3 F.C. 155; (1992), 90 D.L.R. (4th) 190; 14 Admin. L.R. (2d) 294; 9 C.R.R. (2d) 330; 48 F.T.R. 285 (T.D.).

referred to:

Quebec North Shore Paper Co. et al. v. Canadian Pacific Ltd. et al., [1977] 2 S.C.R. 1054; (1976), 9 N.R. 471; *McNamara Construction (Western) Ltd. et al. v. The Queen*, [1977] 2 S.C.R. 654; (1977), 75 D.L.R. (3d) 273; 13 N.R. 181; *Roberts v. Canada*, [1989] 1 S.C.R. 322; (1989), 57 D.L.R. (4th) 197; [1989] 3 W.W.R. 117; 35 B.C.L.R. (2d) 1; [1989] 2 C.N.L.R. 146; 25 F.T.R. 161; 92 N.R. 241; 3 R.P.R. (2d) 1; *Manitoba (Attorney General) v. Metropolitan Stores Ltd.*, [1987] 1 S.C.R. 110; (1987), 38 D.L.R. (4th) 321; [1987] 3 W.W.R. 1; 46 Man. R. (2d) 241; 25 Admin. L.R. 20; 87 CLLC 14,015; 18 C.P.C. (2d) 273; 73 N.R. 341; *American Cyanamid Co. v. Ethicon Ltd.*, [1975] A.C. 396 (H.L.); *R. v. Keegstra*, [1990] 3 S.C.R. 697; (1990), 114 A.R. 81; [1991] 2 W.W.R. 1; 77 Alta. L.R. (2d) 193; 61 C.C.C. (3d) 1; 3 C.P.R. (2d) 193; 1 C.R. (4th) 129; 117 N.R. 284; *Barrick Gold Corp. v. Lophandia* (2004), 71 O.R. (3d) 416; 239 D.L.R. (4th) 577; 187 O.A.C. 238; 23 C.C.L.T. (3d) 273 (C.A.); *Ontario Human Rights Commission and O'Malley v. Simpsons-Sears Ltd. et al.*, [1985] 2 S.C.R. 536; (1985), 52 O.R. (2d) 799; 23 D.L.R. (4th) 321; 17 Admin. L.R. 89; 9 C.C.E.L. 185; 7 C.H.R.R. D/3102; 64 N.R. 161; 12 O.A.C. 241; *Bhinder et al. v. Canadian National Railway Co. et al.*, [1985] 2 S.C.R. 561; (1985), 23 D.L.R. (4th) 481; 17 Admin. L.R. 111; 9 C.C.E.L. 135; 86 CLLC 17,003; 63 N.R. 185; *Payzant v. Tony McAleer, Canadian Liberty Net and Harry Voccaro* (1994), 26 C.H.R.R. D/271 (C.H.R.T.); *affd sub. nom McAleer v. Canada (Human Rights Commission)*, [1996] 2 F.C. 345; (1996), 132 D.L.R. (4th) 672; 67 C.R.R. (2d) 44; 108 F.T.R. 256 (T.D.); *Nealy v. Johnston* (1989), 10 C.H.R.R. D/6450 (C.H.R.T.).

authors cited

Canada. Special Committee on Hate Propaganda in Canada. *Report of the Special Committee on Hate Propaganda in Canada*. Ottawa: Queen's Printer, 1966.

Lidsky, Lyrisa Barnett. "Silencing John Doe: Defamation & Discourse in Cyberspace" (2000), 49 *Duke L.J.* 855.

MOTION for an interlocutory injunction to restrain the respondent from communicating by means of the Internet messages that are likely to expose persons to hatred or contempt by reason of race, national or ethnic origin, colour or religion, contrary to subsection 13(1) of the *Canadian Human Rights Act*. Motion allowed.

appearances:

Monette Maillet and *Ikram Warsame* for applicant.

Tomasz Winnicki on his own behalf.

solicitors of record:

Canadian Human Rights Commission, Ottawa, for applicant.

The following are the amended reasons for order rendered in English by

[1] DE MONTIGNY J.: This motion, made on behalf of the Canadian Human Rights Commission, is most interesting in its object as it raises especially difficult issues going to the heart of our democratic values and, more particularly, to the difficult reconciliation between freedom of expression on the one hand, and equality rights as well as the inherent dignity of all human beings on the other hand. While the courts, including the Supreme Court of Canada, have had to deal with these issues on a number of occasions, the particular context in which these values clash and the remedy being sought in the present case bring us into uncharted territory.

[2] The applicant, the Canadian Human Rights Commission, brought a motion for an interlocutory injunction to restrain the respondent, Tomasz Winnicki, pending a final order by the Canadian Human Rights Tribunal in proceedings now before it, from communicating by means of the Internet messages that are likely to expose persons to hatred or contempt by reason of race, national or ethnic origin, colour or religion, contrary to subsection 13(1) of the *Canadian Human Rights Act* [R.S.C., 1985, c. H-6] (CHRA). Despite having been duly served with the notice of motion, the respondent did not appear at the hearing of this motion.

[3] Just as was the case in *Canada (Human Rights Commission) v. Canadian Liberty Net*, [1992] 3 F.C. 155 (T.D.), this is a free-standing motion for an interlocutory injunction, there being no other relief sought in this Court by the applicant against the respondent. Indeed, it is my understanding that this complaint was heard by the Canadian Human Rights Tribunal in the week of August 8, 2005.

[4] It was represented to this Court that, at the two most recent hearings under section 13 [s. 13(2) (as am. by S.C. 2001, c. 41, s. 88)] of the CHRA before the Canadian Human Rights Tribunal, the Commission and the complainant, Mr. Warman, were advised each time that a decision of the Tribunal would likely take five or six months to be rendered. Hence this application for an interlocutory injunction.

BACKGROUND

[5] On September 7, 2003, Mr. Richard Warman filed a complaint with the Canadian Human Rights Commission alleging that Tomasz Winnicki and Bell Canada were discriminating against persons or groups of persons on the basis of religion, by repeatedly communicating messages through an Internet Web site, that would likely expose persons of the Jewish faith to hatred and/or contempt, contrary to subsection 13(1) of the CHRA.

[6] In his affidavit, Mr. Richard Warman reproduced some of the worst examples of the messages that he found on the Internet. Mr. Winnicki apparently stated that black people were intellectually inferior and dangerous and that the Jewish-controlled government was to blame; that European girls were murdered by Jewish people because the latter hate European beauty and nobility; that persons of the black race are subhuman and inherently criminal; and so on.

[7] While the language used is quite offensive and debasing, to say the least, it may be relevant for the issues to be resolved to quote from some of the messages found on the Internet, as appended to Mr. Warman's affidavit:

- Jews hate European [*sic*] beauty and nobility. All these girls were brutally murdered by savage commie Jews. We're coming for you, you Jew bastards, and there will be hell to pay.
- Does a Negro really need a well based motive to shoot you? I mean, a Nigger will try to kill you just for a slice of pizza...or a piece of chicken. (...) by Aryan standards, Negroes are dangerous animals and don't belong in White civilization. SEGREGATION NOW!!!
- Message to all you coloreds: Get out (if you're already here), stay out and never come back to my city. Don't even come near it, you civilization wrecking muds. Go to multi-culti Toronto . . . better yet, go back to Africa.
- NIGGERS AND EAST INDIANS ARE SHIT!!! GET OUT OF OUR CIVILIZATION YOU FUCKING MUDS!!! Any young White Torontonians reading this? You MUST band together on racial grounds Band together or DIE. Those attacks will only get worse and more of them as Canadian ZOG floods in more niggers and muds. Not to mention the fact that ZOG is giving the muds all the incentives (welfare, subsidized housing, employment equity=affirmative action if you're white you don't get the job...) to breed us out of existence while taxing us to death to support those savage races.
- '18 year old Mwangi Gethiga—known as Kuggy to his friends [Yeah, a.k.a. FUCKING SUBHUMAN, a.k.a. FUCKING MUD, a.k.a. FUCKING COCKROACH, a.k.a. FUCKING COON, a.k.a. FUCKING NIGGER]—was charged yesterday with second-degree murder.' . . .when it comes to negroes I think presumption of guilt is more appropriate than the presumption of innocence.
- While I still can. . .FUCK YOU JEWS! YOU FUCKING HEEBES YOU FUCKING KIKES YOU FUCKING YIDS YOU FUCKING ZHIDS YOU FUCKING SHEENIES YOU FUCKING (what's the best word for jews?) JEWS!!!

[8] This is obviously more than enough to get a flavour of the messages found on the Internet and apparently authored by the respondent. Most of these messages were found on the following two Web sites: www.northernalliance.ca and www.vanguardnewsnetwork.com. Some of the messages are signed under a pseudonym, but it appears that the respondent has used his own name in more recent postings.

[9] On June 1, 2004, Mr. Richard Warman filed a retaliation complaint against Mr. Winnicki with the Canadian Human Rights Commission alleging a breach of section 14.1 [as enacted by S.C. 1998, c. 9, s. 14] of the CHRA, as a result of messages targeting Mr. Warman which were posted after the filing of the human rights complaint. This is borne out by the exhibits appended to the affidavit of Mr. Richard Warman in support of the present application.

[10] After considering the complaint at its division meeting of December 20, 2004, the Commission decided, pursuant to paragraph 44(3)(a) [as am. *idem*, s. 24] of the CHRA, to request the Chairperson of the Canadian Human Rights Tribunal to inquire into the complaints. The hearing took place the week after the hearing of this application, during the week of August 8 to August 12, 2005.

[11] In answer to the complaint of Mr. Warman, in his statement of particulars, Mr. Winnicki does not deny communicating these messages and states that at the hearing, he intends to explain why he is communicating them and that “in brief, the reason is simple, to protect the White European civilization and the people who built it”. Another topic he states he will address is the connection between the government’s plan to “replace and/or mix Canada’s White European ancestry population with an enormous number of 3rd world immigrants, the growing crime rate, the growing national, provincial and local deficits/debts, the growing disenfranchisement of Canadians of White European ancestry, the declining national morals, etc.” He also wishes to address the continued persecution and demonization of political dissidents by the government, the Canadian Human Rights Commission, etc. As well, he will address “The constant meddling of Jewish groups and individuals in Canadian affairs and their quest to destroy our European culture, values and freedoms, . . . the great peril that non-White immigration poses to White societies and why it’s right and moral for Canadians to oppose it.”

[12] In his statement of particulars, he also states: “In my opinion Jews are not a race nor a religion but rather a special interests Zionist political group, many of them atheists. It is well known that Jews intermarry into wealthy European families in order to blend in and improve their political and financial standing. For one example, the president of Poland, Mr. Kwasniewski’s real surname is Stolzman. . . . The deep concern many Canadians, especially of White European ancestry have with the above issues and why the only way I see of rectifying the racial tensions (which I believe were specifically engineered by the government) is by peaceful and willing segregation. I’ll state right now that it is immoral and out right criminal to force two or more incompatible groups of people, without their consent, to live together.”

[13] Also in answer to the complaint, Mr. Winnicki states that “Mr. Richard Warman and CHRC investigators ‘handpicked’ only a few of my VNN [vanguardnewsnetwork] forum postings to try to prove my discrimination against protected minority groups. Given all of my VNN posts I will prove that my goal is not to incite hatred toward minorities but rather awaken Whites as to what is happening and why and also why Whites should band together on racial grounds to protect their group interests.”

[14] Finally, although Mr. Winnicki is a respondent in the matter before the Tribunal, he seeks the following remedy as outlined in his statement of particulars: “Pursuant to section 16 of the Canadian Human Rights Act I demand that Canadians of White European Ancestry who hold White Nationalist views be granted special reserves, much like Indian reserves all accross [*sic*] Canada, where they can live and govern themselves as they see fit, with total autonomy and without government or outsider groups interference.”

[15] At the conclusion of the hearing, I took the matter under reserve. After having carefully considered the applicant’s submissions and the record, I came to the conclusion that an interlocutory injunction should be granted in the present case and ordered accordingly on October 4, 2005. The following are my reasons for that order.

ISSUES

[16] The questions to be decided in the context of the present application are as follows:

(a) Does the Federal Court have the jurisdiction to grant an interim or interlocutory injunction restraining the respondent and others having knowledge of the order from communicating, by means of the Internet, messages of the kind described in Exhibits “A”, “B”, and “E” to “O” of Mr. Richard Warman’s affidavit, until the Tribunal renders the final order in the proceedings?

(b) What is the proper test for granting such an interlocutory injunction?

(c) Has this test been met in the present circumstances?

RELEVANT LEGISLATIVE PROVISIONS

Federal Courts Act [R.S.C., 1985, c. F-7, ss. 1 (as am. by S.C. 2002, c. 8, s. 14), 18 (as am. by S.C. 1990, c. 8, s. 4; 2002, c. 8, s. 26), 44 (as am. *idem*, s. 41)]

18. (1) Subject to section 28, the Federal Court has exclusive original jurisdiction

(a) to issue an injunction, writ of *certiorari*, writ of prohibition, writ of *mandamus* or writ of *quo warranto*, or grant declaratory relief, against any federal board, commission or other tribunal; and

(b) to hear and determine any application or other proceeding for relief in the nature of relief contemplated by paragraph (a), including any proceeding brought against the Attorney General of Canada, to obtain relief against a federal board, commission or other tribunal.

(2) The Federal Court has exclusive original jurisdiction to hear and determine every application for a writ of *habeas corpus ad subjiciendum*, writ of *certiorari*, writ of prohibition or writ of *mandamus* in relation to any member of the Canadian Forces serving outside Canada.

(3) The remedies provided for in subsections (1) and (2) may be obtained only on an application for judicial review made under section 18.1.

...

44. In addition to any other relief that the Federal Court of Appeal or the Federal Court may grant or award, a *mandamus*, an injunction or an order for specific performance may be granted or a receiver appointed by that court in all cases in which it appears to the court to be just or convenient to do so. The order may be made either unconditionally or on any terms and conditions that the court considers just.

Canadian Human Rights Act [s. 2 (as am. by S.C. 1998, c. 9, s. 9)]

2. The purpose of this Act is to extend the laws in Canada to give effect, within the purview of matters coming within the legislative authority of Parliament, to the principle that all individuals should have an opportunity equal with other individuals to make for themselves the lives that they are able and wish to have and to have their needs accommodated, consistent with their duties and obligations as members 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, sexual orientation, marital status, family status, disability or conviction for an offence for which a pardon has been granted.

...

13. (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.

14. (1) It is a discriminatory practice,

(a) in the provision of goods, services, facilities or accommodation customarily available to the general public,

(b) in the provision of commercial premises or residential accommodation, or

(c) in matters related to employment,

to harass an individual on a prohibited ground of discrimination.

(2) Without limiting the generality of subsection (1), sexual harassment shall, for the purposes of that subsection, be deemed to be harassment on a prohibited ground of discrimination.

ANALYSIS

(A) Jurisdiction of the Federal Court to issue an interlocutory injunction

[17] The Federal Court having been established under the authority of section 101 of the *Constitution Act, 1867* [30 & 31 Vict., c. 3 (U.K.) (as am. by *Canada Act 1982, 1982, c. 11 (U.K.)*, Schedule to the *Constitution Act, 1982*, Item 1) [R.S.C., 1985, Appendix II, No. 5]], a certain number of requirements have to be met before it can exercise jurisdiction on any given matter. These requirements are now well established, as a result of a number of authoritative decisions emanating from the Supreme Court of Canada. Drawing from its previous decisions in *Quebec North Shore Paper Co. et al. v. Canadian Pacific Ltd. et al.*, [1977] 2 S.C.R. 1054 and *McNamara Constuction (Western) Ltd. et al. v. The Queen*, [1977] 2 S.C.R. 654, the Court in *ITO—International Terminal Operators Ltd. v. Miida Electronics Inc. et al.*, [1986] 1 S.C.R. 752, at page 766, summarized the preconditions to support a finding of jurisdiction in the following way:

1. There must be a statutory grant of jurisdiction by the federal Parliament.

2. There must be an existing body of federal law which is essential to the disposition of the case and which nourishes the statutory grant of jurisdiction.

3. The law on which the case is based must be “a law of Canada” as the phrase is used in s. 101 of the *Constitution Act, 1867*.

(See also, to the same effect, *Roberts v. Canada*, [1989] 1 S.C.R. 322.)

[18] I am somewhat relieved of undertaking a thorough analysis of the first question, as the Supreme Court of Canada ruled on that very same issue in *Canada (Human Rights Commission) v. Canadian Liberty Net*, [1998] 1 S.C.R. 626. The issue in that case was whether the Federal Court could grant an interlocutory injunction prohibiting the respondents from offering telephone messages constituting discriminatory practice under subsection 13(1) of the CHRA until the Tribunal had made a final ruling on the complaints. As in this case, the relief sought was a free-standing injunction, to the extent that there was no action pending before the Court as to the final resolution of the merits of the claim. Equally of significance was the fact that the injunction granted by this Court had the effect of stifling the freedom of expression of the respondent.

[19] Applying the three requirements set out in the *ITO* case, Mr. Justice Bastarache (writing for the majority of the Court), came to the conclusion that section 44 of the *Federal Court Act* [R.S.C., 1985, c. F-7], read in the context of other sections of the same Act (sections 3 [as am. by S.C. 1993, c. 34, s. 68(F)], 17 [as am. by S.C. 1990, c. 8, s. 3], 18 [as am. *idem*, s. 4] and 18.1 [as enacted *idem*, s. 5]) and of the CHRA (section 2, subsection 13(1), section 57

and subsection 58(1)), could be considered as a source of jurisdiction to issue an injunction.

[20] Contrary to what the respondent had argued, he found that the words “in addition to” in section 44 of the *Federal Court Act* were not to be read as a clause of limitation, creating an injunctive power that is purely ancillary to other remedies which the Court could award (and none can be issued by the Court at the interlocutory stage), but had to be interpreted as meaning “separate and apart from” any other relief which the Court could grant. He was driven to this conclusion by a liberal reading of section 44, as interpreted in the context of the various sections of the CHRA granting the Federal Court a high degree of supervision of the Human Rights Tribunal (judicial review over decisions of the Tribunal, power to issue injunctions against the Tribunal, jurisdiction to order disclosure of information required in the course of an investigation or Tribunal hearing, filing of an order of the Tribunal to transform it into an order of the Federal Court: *Federal Court Act*, section 18.1, subsection 18(1); CHRA, subsection 58(1), section 57). In his view, the inherent jurisdiction of provincial superior courts was no reason to narrowly construe federal legislation which confers jurisdiction on the Federal Court.

[21] The gist of Mr. Justice Bastarache’s reasoning transpires from paragraphs 36 and 37 of his reasons:

As is clear from the face of the *Federal Court Act*, and confirmed by the additional role conferred on it in other federal Acts, in this case the *Human Rights Act*, Parliament intended to grant a general administrative jurisdiction over federal tribunals to the Federal Court. Within the sphere of control and exercise of powers over administrative decision-makers, the powers conferred on the Federal Court by statute should not be interpreted in a narrow fashion. This means that where an issue is clearly related to the control and exercise of powers of an administrative agency, which includes the interim measures to regulate disputes whose final disposition is left to an administrative decision-maker, the Federal Court can be considered to have a plenary jurisdiction.

In this case, I believe it is within the obvious intendment of the *Federal Court Act* and the *Human Rights Act* that s. 44 grant jurisdiction to issue an injunction in support of the latter. I reach this conclusion on the basis that the Federal Court does have the power to grant “other relief” in matters before the Human Rights Tribunal, and that fact is not altered merely because Parliament has conferred determination of the merits to an expert administrative decision-maker. As I have noted above, the decisions and operation of the Tribunal are subject to the close scrutiny and control of the Federal Court, including the transformation of the order of the Tribunal into an order of the Federal Court. These powers amount to “other relief” for the purposes of s. 44.

[22] As to the second and third requirements, which go hand in hand, Mr. Justice Bastarache had no difficulty finding that subsection 13(1) of the CHRA nourished the statutory grant found in section 44 of the *Federal Court Act*, and that it was validly enacted since it is confined in its application to the “facilities of a telecommunication undertaking within the legislative authority of Parliament” [at paragraph 52]. As a result, he concluded that the Federal Court clearly had concurrent jurisdiction with the provincial superior courts to grant the interlocutory injunction that was being sought by the Commission. Since the present case is not materially different from the situation examined by the Supreme Court in *Canadian Liberty Net*, I am bound to apply it and to rule that this Court does have jurisdiction to grant the interlocutory injunction requested by the applicant.

(B) What is the test for granting an interlocutory injunction in the context of the CHRA?

[23] Having established the jurisdiction of the Federal Court to grant an interlocutory injunction to ensure compliance with section 13 of the CHRA while the Tribunal is seized of the complaint by the Commission, the more difficult question that remains to be solved has to do with the test to be applied in the exercise of the Court’s discretion. The approach generally followed by a court faced with a request for such a remedy is well established, as a result of two decisions emanating from the Supreme Court of Canada, *Manitoba (Attorney General) v. Metropolitan Stores Ltd.*, [1987] 1 S.C.R. 110 and *RJR—MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311. In the latter decision, the Court summarized the test to be applied in the following way [at page 334]:

First, a preliminary assessment must be made of the merits of the case to ensure that there is a serious question to be tried. Secondly, it must be determined whether the applicant would suffer irreparable harm if the application were refused. Finally, an assessment must be made as to which of the parties would suffer greater harm from the granting or refusal of the remedy pending a decision on the merits.

[24] This test, which can be traced back to the decision reached by the House of Lords in *American Cyanamid Co. v. Ethicon Ltd.*, [1975] A.C. 396 (H.L.), is manifestly ill suited in the context of a dispute involving fundamental rights and freedoms such as in the present case. In a commercial context, the “balance of convenience” and the “irreparable harm” are easily ascertainable to the extent that they are measurable. This is obviously not the case when the interest asserted by the speaker has nothing to do with any commercial purpose and has no value beyond the message he wishes to convey. Not only is it difficult to ascribe any monetary value to such a message, but it will also have the effect of undermining the fundamental nature of freedom of expression if the party requesting the injunction does have a commercial interest at stake. This was readily accepted by Mr. Justice Bastarache in *Canadian Liberty Net*, at paragraph 47 of his reasons.

[25] For that reason, it was suggested that the test applied in granting injunctions against dissemination of defamatory statements might be more appropriate. As an illustration of this test, Mr. Justice Bastarache quoted the following excerpt from the decision of Griffiths J. in *Rapp v. McLelland & Stewart Ltd.* (1981), 34 O.R. (2d) 452 (H.C.J.), at pages 455-456:

The guiding principle then is, that the injunction should only issue where the words complained of are so manifestly defamatory that any jury verdict to the contrary would be considered perverse by the Court of Appeal. To put it another way where it is impossible to say that a reasonable jury must inevitably find the words defamatory the injunction should not be issued.

. . . American Cyanamid . . . had not affected the well established principle in cases of libel that an interim injunction should not be granted unless the jury would inevitably come to the conclusion that the words were defamatory.

[26] This question being moot when the case reached the Supreme Court (the Tribunal having by then rendered its decision), Mr. Justice Bastarache stopped short of endorsing this test for the purposes of delineating the circumstances where the granting of an interlocutory injunction could be appropriate to restrain a violation of section 13 of the CHRA. But he nevertheless went so far as to say that “[t]he same tests discussed here with respect to restraining potentially defamatory speech should be applied in cases of restraint of potential hate-speech, subject to modification which may prove necessary given the particular nature of bigotry as opposed to defamation” (*Canadian Liberty Net*, paragraph 49). There has been no further decision by the courts which has attempted to formulate such a test.

[27] In determining the necessary modifications to the test for injunctions in defamation cases in order to formulate a test for discriminatory hate speech, we must examine the similarities and differences between the two types of cases, as well as the nature of the fundamental rights involved.

[28] Both defamation actions and complaints of hate speech seek to limit the right to freedom of expression and therefore injunctions should only be granted in the clearest of cases. Having said that, and despite the fact that the activity described by subsection 13(1) of the CHRA is clearly protected by paragraph 2(b) of the Charter [*Canadian Charter of Rights and Freedoms*, being Part I of the *Constitution Act, 1982*, Schedule B, *Canada Act 1982*, 1982, c. 11 (U.K.) [R.S.C., 1985, Appendix II, No. 44]] as an activity that conveys or attempts to convey a meaning, it must also be recognized that this type of expression lies at the outer margins of the values that are at the core of this fundamental freedom. As a result, expression of this nature can more easily be restrained by the state, as acknowledged by the Supreme Court both in *R. v. Keegstra*, [1990] 3 S.C.R. 697 and in *Canada (Human Rights Commission) v. Taylor*, [1990] 3 S.C.R. 892. In this latter case, Chief Justice Dickson said, for the majority, at pages 916-917, 922-923:

In applying the *Oakes* approach to legislation restricting hate propaganda, a meaningful consideration of the principles central to a free and democratic society requires reference to the international community’s acceptance of the need to protect minority groups from the intolerance and psychological pain caused by such expression. Such a consideration should also give full recognition to other provisions of the *Charter*, in particular ss. 15 and 27 (dealing with equality rights and multiculturalism). Finally, the nature of the association between the expression at stake in the appeal and the rationales underlying s. 2(b) will be instrumental in assessing whether a particular legislative effort to eradicate hate propaganda is a reasonable limit justified in a free and democratic society.

... it is important to recognize that expressive activities advocating unpopular or discredited positions are not to be accorded reduced constitutional protection as a matter of routine: content-neutrality is still an influential part of free expression doctrine when weighing competing interests under s. 1 of the *Charter*. The unusually extreme extent to which the expression at stake in this appeal attacks the s. 2(b) rationale, however, requires that the proportionality analysis be carried out with the recognition that the suppression of hate propaganda does not severely abridge free expression values.

[29] As a result, I am inclined to think that a restriction on hate propaganda and hate mongering should not be assessed with the same stringent standards as limitations on defamatory speech. Even if both of these kinds of expression deserve, *prima facie*, the same kind of protection as any other message, the values underpinning hate propaganda are fundamentally inimical, even antithetical, to the rationale underlying the protection of freedom of expression, and directly contradict other values equally vindicated by the Charter. For those reasons, hate propaganda and defamatory comments should not be looked at from the same perspective when it comes to determining the prior restraints that can legitimately be placed on these two forms of expression.

[30] The damage caused by hate messages to the groups targeted is very often difficult to repair. It insidiously reinforces the prejudice that some people may have towards minorities identified by race, colour and religion, thus prompting and justifying discriminatory practices and even violence against these groups. At the same time, these messages are most likely to affect the perception and self-esteem of all members of these groups, thus precluding their full participation in Canadian society and the achievement of their full potential as human beings. This was most clearly and compellingly enunciated by the Cohen Committee in its report on hate propaganda [*Report of the Special Committee on Hate Propaganda in Canada*, 1966]. As noted by the Supreme Court in *Taylor*, (at pages 918-919):

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.

[31] In that respect, hate messages are much more reprehensible and devoid of any redeeming value than any other type of expression. Equally relevant is the fact that these messages are much more damaging than defamatory statements in that they affect a much larger group of persons. By their very nature, hate messages aim at debasing and undermining the self-worth of a whole group of people, whereas defamatory comments target a single individual. In *Canadian Liberty Net*, the Supreme Court nevertheless equated the two types of messages in terms of the urgency requirement by counterbalancing this finding with the fact that defamatory messages have a widespread circulation compared with "the slow, insidious effect of a relatively isolated bigoted commentary" (at paragraph 48).

[32] One must remember, however, that the hate messages considered in that case were communicated through telephone hot lines, and not by way of the Internet as in the present case. Consequently, the "relatively isolated bigoted commentary" has now changed and is able to have widespread circulation. This new form of communication is much more easily accessible and pervasive than any previous telecommunication medium. The content of a Web site can also easily be mirrored and replicated *ad infinitum*, with virtually no control by the originator. This potential of the Internet for wreaking havoc has been well captured by Lyriisa Barnett Lidsky in her article "Silencing John Doe: Defamation & Discourse in Cyberspace" (2000), 49 *Duke L.J.* 855, at pages 863-864:

Although Internet communications may have the ephemeral qualities of gossip with regard to accuracy, they are communicated through a medium more pervasive than print, and for this reason they have tremendous power to harm reputation. Once a message enters cyberspace, millions of people worldwide can gain access to it. Even if the message is posted in a discussion forum frequented by only a handful of people, any one of them can republish the message by printing it or, as is more likely, by forwarding it instantly to a different discussion forum. And if the message is sufficiently provocative, it may be republished again and again. The extraordinary capacity of the Internet to replicate almost endlessly any defamatory message lends credence to the notion that “the truth rarely catches up with a lie”.

(Quoted with approbation in *Barrick Gold Corp. v. Lopehandia* (2004), 71 O.R. (3d) 416 (C.A.), at paragraph 32.)

[33] Another factor to be taken into consideration is the fact that truth or fair comment is not a defence in cases of hate messages. It is now well established that the focus of human rights inquiries is on the effects and not on the intent (*Ontario Human Rights Commission and O'Malley v. Simpson Sears Ltd. et al.*, [1985] 2 S.C.R. 536; *Bhinder et al. v. Canadian National Railway Co. et al.*, [1985] 2 S.C.R. 561). Accordingly, there is no exception for truthful statements in the context of subsection 13(1) of the CHRA, as found by Chief Justice Dickson in *Taylor* (at page 935). This is obviously another factor to be taken into account in framing an appropriate test for granting an interim injunction to restrain hate messages.

[34] Two last points need be made before suggesting such a test. First, the party seeking an injunction to restrain expression of the kind proscribed by section 13 of the CHRA will seldom, if ever, have any tangible, easily measurable interest, just as a speaker expressing his views. There is no commercial interest at stake, as is often the case when defamatory comments are being made, so that the cards are not stacked against the person professing the heinous views. Secondly, one must be cautious not to devise a test for granting an interim injunction that would for all intent and purposes tie the hands of the Tribunal called upon to assess the complaint lodged by the Commission. If the test puts the bar too high, and requires the party seeking the interim injunction to establish almost with absolute certainty an infringement of section 13 of the CHRA, this Court would find itself in the position of pre-empting, practically speaking, the jurisdiction vested in the specialized tribunal to enforce the CHRA.

[35] It is with all these considerations in mind that an appropriate test has to be developed. Having carefully weighed these factors, I am of the view that the threshold defined in *Rapp*, for the granting of an injunction in the context of defamatory comments must be calibrated to accommodate the special nature of hate speech. Therefore, an interim injunction should issue only where the words complained of are so manifestly contrary to section 13 of the CHRA that any finding to the contrary would be considered highly suspect by a reviewing court. In other words, and to adapt what was said in *Rapp*, where it is impossible to say that reasonable members of the Tribunal will most likely find the words to be in breach of section 13, the injunction should not issue.

(C) Has this test been met in the circumstances of the present case?

[36] Three elements must be proven on a balance of probabilities to establish a violation of section 13 of the CHRA: (1) Did the respondent, as a person acting alone or in concert with others, communicate or cause to be communicated, the material which is the subject of this complaint? (2) Was the material communicated telephonically or by Internet? (3) Is the material likely to expose persons to hatred, based on those persons being identifiable on a prohibited ground? (*Payzant v. Tony McAleer, Canadian Liberty Net and Harry Voccaro* (1994), 26 C.H.R.R. D/271 (C.H.R.T.); affd [*sub. nom McAleer v. Canada (Human Rights Commission)*] [1996] 2 F.C. 345 (T.D.).)

[37] I must say from the outset that I fundamentally agree with the applicant, for the reasons spelled out in its written and oral arguments. First of all, the respondent does not deny that he communicated the material which is the subject of this complaint. In fact, in his statement of particulars, he indicates that he will explain why he does so. It is also clearly established by Mr. Warman, the complainant, that all of the material which forms the subject of this complaint is authored and signed by Mr. Winnicki, either as himself, or as his pseudonym (see affidavit of Richard Warman and Exhibit “H” appended to it).

[38] If it may have been debated at some point whether material communicated through the Internet fell within the

ambit of section 13 of the CHRA, this is no longer an issue. As a result of the amendment effected by the proclamation of the *Anti-terrorism Act* on December 24, 2001 (S.C. 2001, c. 41, s. 88), subsection 13(2) was amended to deal explicitly and clearly with Internet communications.

[39] As to the third element to be proven, I think it is fair to say that the materials which were posted on the Web sites referred to earlier, and of which I have reproduced only a sample earlier on in these reasons, are likely to expose people of Jewish religion and ethnicity as well as people of the black race to hatred or contempt. The operative words of section 13 were defined in the following way in *Nealy v. Johnston* (1989), 10 C.H.R.R. D/6450 (C.H.R.T.), at page D/6469, cited with approval by the Supreme Court of Canada in *Taylor* [at pages 927-928]:

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 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.

[40] There are several messages in Mr. Winnicki’s postings that discriminate against persons of the Jewish faith, and are in fact threatening. He states that Jewish people hate European beauty and nobility and are murderers. He uses large letters to print part of his messages, thus conveying an impression of anger in his communication. His messages reinforce the myth that persons of the Jewish faith control the government and all of our important institutions. His messages also insinuate that Jews have a disproportionate degree of power and control in the media, and that Jews pose a menace to the civilized world by allowing blacks to be here. He repeatedly states that Jewish groups and individuals aim to destroy European culture, values and freedoms. The choice of vocabulary, in and of itself, is quite offensive and leaves no doubt as to the author’s belief that people of Jewish religion have no redeeming value and are a threat to Western civilization. In summary, the themes that permeate the impugned messages are the same as those found in most anti-Semitic propaganda: Jews are criminals, thugs and liars; and they seek a disproportionate degree of power and control in the media and government; they are a menace to the Aryan race.

[41] Having looked at these messages in their entirety and in context, I have no doubt that they are likely to expose persons of the Jewish faith to hatred or contempt, as these concepts have been defined in *Nealy*, and approved in *Taylor*. And the same can be said of the messages which target persons of the black race. They are undoubtedly as vile as one can imagine and are not only discriminatory but threatening to the victims they target. An underlying theme of Mr. Winnicki’s messages is that blacks and other non-whites are destroying the country and that they should be segregated. They are a threat to our civilization and are not welcome in a white society. They are animals, criminals, and subhuman. They are also intellectually inferior and dangerous.

[42] In conclusion, I have no hesitation in holding that the words complained of are so manifestly contrary to the letter and the spirit of section 13 of the CHRA that any finding to the contrary would be considered highly suspect. Clearly, this is not a case where it is impossible to say that reasonable members of the Tribunal will most likely find the words to be in breach of section 13. Indeed, I am prepared to affirm that a reasonable panel of the Tribunal will most likely find the words to be in breach of section 13.

[43] I venture to add, before putting an end to these reasons, that the second and third leg of the test for granting an interim injunction (irreparable harm and balance of convenience) are not worth much of a discussion as they are easily met in the circumstances. Considering the abject nature of the messages and their likely impact on individuals and groups that are in a minority situation and that have historically suffered from precisely the kind of bias underpinning these vile attacks, it can safely be assumed that the harm suffered will have a long-term impact and may be extremely difficult to repair. As for the balance of convenience, a delay of a few months before being able to utter such nonsense, in the event the Tribunal was to find otherwise, would be a small price to pay compared to the dramatic consequences that these messages could have on the dignity and self-esteem of those being targeted. As Muldoon J. said in his reasons for granting the interlocutory injunction in *Canada (Human Rights Commission) v. Canadian Liberty Net*, at pages 189-190, “It is surely more terrible than a mere inconvenience to be disparaged and

ridiculed just for drawing breath, but it is not terrible at all for the respondents to be silenced for a time.”

[44] These are the reasons why, despite the cardinal importance to be accorded to freedom of expression in our democracy, I have decided to grant the interlocutory injunction restraining the respondent from communicating, by means of the Internet, messages of the kind found in the material filed in support of this application.