A SERIOUS THREAT

Opening Address: Hate on the Internet Conference December 15-16, 2005, Ottawa

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Mary Gusella retired as Chief Commissioner of the Canadian Human Rights Commission on May 30, 2006.

Ladies and Gentlemen,

Good morning and welcome to these two days of exchange, discussion and learning about hate on the Internet. On behalf of the Commission, I thank you all for agreeing to participate.

I know I need not explain to this audience that the propagation of hate is not a modern invention. But a curious thing happened in Canada in the 1970s. A new and powerful technology became available: the telephone answering machine. For the first time since the invention of the telephone you didn't have to worry about missing important calls.

It didn't take long for people to divert the new possibilities of the technology to nefarious aims.

A new telephone listing appeared in the Toronto telephone directory: it read "White Power Message—967-7777." Postcards were passed out on street corners. They had a maple leaf on them and the same phone number. Thus was born a new chapter in the propagation of hate: the telephone hate message.

The organization behind the hate message line was the Western Guard Party, a white-supremacist Neo-Nazi group based in Toronto and led by John Ross Taylor. Taylor was a dyed-in-the-wool hate-monger who had been imprisoned during World War II due to his Nazi sympathies. The messages that could be heard by dialing 967-7777 were pretty similar to the hate messages of today.

Coincidentally, when these messages first began to appear, Parliament was in the process of enacting the *Canadian Human Rights Act*. This concurrence of events resulted in the enactment, with all party support, of a unique legislative provision: section 13 of the *Canadian Human Rights Act*. Section 13 made the telephonic transmission of hate a prohibited form of discrimination under the CHRA.

Soon after the Commission opened its doors in 1978, it received a complaint against Mr. Taylor and his hate line. This became the first case to be heard by the Canadian Human Rights Tribunal. The complainants alleged that Taylor and the Western Guard Party had engaged in a discriminatory practice by communicating telephonically, repeatedly, matter that was likely to expose persons identifiable on the basis of race and religion to hatred or contempt.

I will not go into the judicial history of the Taylor case. Tomorrow morning we will have the pleasure of hearing from Mr. Justice Russell Juriansz, who was the Commission's lead counsel in the Taylor case throughout the judicial process. Suffice it to say that on July 20, 1979, the Canadian Human Rights Tribunal found that Mr. Taylor had contravened section 13 of the CHRA and ordered him to cease his activities.

It was not until 11 years later, however, in 1990, that the case was finally determined by the Supreme Court of Canada. In the intervening years, the *Canadian Charter of Rights and Freedoms* had been entrenched in the *Constitution Act*, 1982. It was from the Charter that Taylor sought refuge.

He argued that section 13 of the CHRA was inconsistent with the freedom of speech guarantees in the Charter. This was the first opportunity for the court to address the issue of how to balance freedom from hate with freedom of speech under the *Charter*.

This was a controversial issue then, as it is now, and the Court split four to three in favour of upholding section 13 as demonstrably justified in a free and democratic society.

The title of this conference, "A Serious Threat," comes from the landmark decision rendered by then Chief Justice Dickson. In explaining why hate propaganda should not be considered to be permissible, the Chief Justice emphasized the harm caused by hate:

> *...hate propaganda presents a serious threat to society..... 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 open-mindedness that must flourish in a multicultural society which is committed to the idea of equality.*

With this decision, the Court drew a line in the sand. Great latitude must be given to freedom of speech. In a democratic and free society, citizens have the right to say things that others may strongly disagree with or even find offensive and distasteful.

But there are limits: free speech is not a license to promote hatred against particular groups or individuals because of their race, religion, sexual orientation or other personal characteristics.

With the constitutional validity of section 13 established, the Commission referred several other telephone hate line cases to the Tribunal, resulting in cease-and-desist orders against several well-known hate groups.

Then, in the late 1980s, another new technology started to emerge: the Internet. True to form, the intellectual heirs of John Ross Taylor did not take long to adopt this new technology. Ernst Zundel was already a well-known hate propagandist. He ran a publishing house that issued such pamphlets as *The Hitler We Loved and Why* and *Did Six Million Really Die*? Operating from his self-styled *Zundelbunker* in downtown Toronto, Zundel was one of the largest distributors of hate literature in the world. For Zundel and others of his ilk, the Internet opened new possibilities. The so-called *Zundelsite* quickly became an important source of revisionist propaganda.

The first Internet hate case filed with the Commission in June 1996, almost ten years ago, was the complaint against Mr. Zundel and his *Zundelsite*. After more than five years of protracted litigation, the Tribunal issued its decision in January 2002, finding Zundel to have contravened the CHRA.

By then, one of the most contentious issues in the case, whether the use of the Internet constituted "telephonic communications" in the meaning of the pre-Internet wording of section 13, had been resolved by Parliament. In fall 2001, following 9/11, Parliament amended the CHRA to make it clear that hate messages under section 13 included messages transmitted via the Internet.

As we all know, the *Zundelsite* was but one of many: today the number of hate sites around the world is estimated to be in the thousands. As for the content of these sites, suffice it to say that, although the medium may have changed, the message of hate and intolerance remains the same.

That brings us to today and to the reason why the Commission has convened this conference. Since the *Zundel* decision, the Commission has been very active with regard to section 13:

- 27 complaints have been accepted under section 13 since 2002. Of those,
- 21 have been referred to the Tribunal for further investigation;
- 3 are still under investigation, and
- 3 files were closed.

So far the Tribunal has issued four decisions, determining in all cases that the respondents had contravened section 13 of the Act and ordering them to cease and desist from their activities.

In order to facilitate the processing of section 13 complaints, the Commission has launched several new initiatives:

- A section 13 complaint team was established which includes investigative, legal and policy officers with specialized expertise in issues relating to section 13. I am pleased to report that the Team has had a real impact. In the last four months, 17 cases have been referred to the Canadian Human Rights Tribunal for hearing. The members of the Section 13 Team, which is headed by John Chamberlin, are with us today. I hope you will have a chance to meet them over the next day and half;
- Investigative procedures have been reviewed to ensure cases are dealt with expeditiously and thoroughly;

- Discussions have begun with Internet service providers and other stakeholders, many of whom are here today;
- We are developing a good working relationship with the Media Awareness Network, whose excellent educational work you will hear about this morning;
- We are pursuing innovative legal approaches at the Tribunal and in the Courts including, most recently, a successful application for an injunction ordering a respondent to cease his activities pending a Tribunal determination of the complaint against him.

Racial and religious hatred is, unfortunately, as old as humankind itself, and the Internet, by its nature, defies geographic boundaries and national laws. Put together, this creates a formidable challenge to those whose mandate it is to combat hate. Sometimes the task has been compared to trying to empty the sea with a spoon.

There is reason for frustration, but as we will discuss today and tomorrow, there are no reasons for despair. The fact is that the reach of section 13 is limited: either the originator of the website or the website itself must be in Canada for the Commission to take effective action or for a Tribunal order to be enforced. As a result, despite our efforts and a favourable Tribunal decision, the *Zundelsite* is still just a mouse click away.

Yet a decision under section 13 still has important symbolic and practical significance. It is a tangible sign of social solidarity with the targets of hatred and bigotry. It says that there is no place in Canada for hate or those who promote it. It says hate stops here. Despite its jurisdictional limitations, section 13 can have considerable power as a practical tool. Because it is human rights law, and not criminal law, the motivation of alleged hate promoters is not a factor. Human rights law is concerned with the impact of discrimination on citizens, not with the reasons that motivated the perpetrators.

This, in addition to the different burden of proof required in human rights cases, generally means that it is easier to proceed under the CHRA than the *Criminal Code* provisions dealing with hate promotion.

The Tribunal has the power to order a respondent to cease and desist from the spreading of hate messages and to not engage in similar activity in the future. Compensation of up to $20,000 can be awarded to individuals named on a hate site and civil penalties of up to $10,000 can be imposed. Most importantly, decisions of the Tribunal can be made orders of the Federal Court. Failure to comply with a Federal Court order can lead to a finding of contempt. On three occasions, twice with regard to Mr. Taylor, contempt-of-court proceedings have resulted in the imprisonment of a respondent.

The work of the Commission is one small part of a much broader fight against intolerance and hatred. That fight is not just the domain of the CHRC and other human rights commissions or of the police and the justice system. It is a fight that must be waged by civil society and government in all its facets if there is any hope of success. It also requires international cooperation and coordination with like-minded governments and organizations around the world.

And that brings us to the reason that the Commission has convened this conference.

Among the participants here today are representatives of federal departments and agencies, police hate crime units, Internet providers, academics, international organizations and staff of our Commission and other commissions. I am particularly pleased that my fellow Commissioners Professor Harish Chand Jain, Aimable Ndejuru and Carol MacDonald are here today.

The Commission has two objectives for this conference:

The first objective, and I hope this will not sound immodest, is to make section 13 and our record in enforcing it better known. It has been our experience that few citizens, sometimes even people who are involved in combating hate, are aware of the Commission's mandate under section 13. The Commission believes that section 13 is a unique and effective tool for combating hate on the Internet and we want people to know more about it.

Our second objective is to provide an opportunity for experts such as you to meet as well as network and exchange knowledge and views in order to advance our common goals.

But why does this all matter? After all, the people who promote hate on the Internet and elsewhere are, thankfully, relatively few and are operating on the margins of society. All they are doing is pounding out their dark words in their dark basements. Why not leave the hate geeks alone and get on with other more important things?

The answer is simple: words matter. And they matter a great deal.

I quote the Minister of Justice, the Honourable Irwin Cotler, when he addressed the House of Commons last spring on the occasion of Holocaust Memorial Day:

> *The enduring lesson of the Holocaust is that these genocidal murders succeeded not only because of the industry of death but because of the ideology of hate. ... As our Supreme Court has affirmed, the Holocaust did not begin in the gas chambers, it began with words. These are the catastrophic effects of racism. These are the chilling facts of history.*

Let us keep those chilling facts in mind as we deliberate over the next day and half.

Thank you.

