



CANADIAN
HUMAN RIGHTS
COMMISSION

COMMISSION
CANADIENNE DES
DROITS DE LA PERSONNE

Section 40/41 Analysis Report

Complainant: Andrew Guille

Respondent(s): Canadian Anti-racist Education and Research Society - CAERS
(www.recomnetwork.org)

File Number(s): 20060367

Date Accepted: April 7, 2006

Section(s) of the Act: 13(1)

Relevant Ground(s): Race, colour, national or ethnic origin, religion, sexual orientation

Recommendation

It is recommended, pursuant to paragraph 41(1)(c) of the *Canadian Human Rights Act*, that the Commission not deal with the complaint.

Dean Steacy

Investigator: Dean Steacy

October 17, 2006

Date

The Complaint

1. Andrew Guille alleges that CAERS, via its website www.recomnetwork.org, is communicating or causing to be communicated hate messages that would likely expose homosexuals, non-Whites, non-Christians, and others to hatred and/or contempt on the basis of race, national or ethnic origin, colour, religion, and sexual orientation.
2. CAERS indicates that as part of its anti-racist awareness project, it hosts the website www.recomnetwork.org. It denies that it has communicated or caused to be communicated material that could be considered hate messaging on the Internet. Moreover, it believes that this complaint is trivial, frivolous, vexatious and/or made in bad faith, and therefore should be dismissed.

Background to Complaint

3. CAERS is a registered charity with the Canada Revenue Agency (CRA) and one of its stated purposes is to promote anti-racist education and research. It receives funding from both the federal and provincial governments and it has a long history of opposing racism. One of its projects is the operation of www.recomnetwork.org whose purpose is to track and monitor hate crime and provide solutions to racism.
4. The sources of the postings being complained of fall under two categories. The first source concerns individuals who are opposed to the work of CAERS posting offensive material to Recomnetwork.org. The second source relates to the fact that several of Richard Warman's complaints have been posted verbatim on Recomnetwork.org. These complaints contain excerpts of hate material found on hate websites that Mr. Warman is alleging to have contravened section 13. As well, when the complaints were posted to Recomnetwork.org, the website links within the complaints became active in that it enabled the viewer to directly access alleged hate websites.

Trivial, frivolous, vexatious or in bad faith

5. CAERS believes that this complaint has been made in a trivial, frivolous, vexatious, and/or bad faith manner. It states that its website's main purpose is to educate the public about racism and how to combat it. At times, individuals who are opposed to the work of CAERS post material that could be considered offensive and hateful on the website's message forum. The postings mentioned in this complaint fall within this category. CAERS states that it is vigilant in trying to ensure that these types of postings are removed; however, in this case, it would appear that these postings were missed.
6. CAERS maintains that the reason for posting Richard Warman's hate messaging complaints is for purely educational purposes as it allows individuals to see the different types of hate that appears on the Internet. Mr. Warman has provided permission for his complaints to be posted.
7. CAERS states that this kind of vexatious complaint "is a device which has received explicit recognition in neo-nazi circles." It provided the following posting from Stormfront.org, a well known American white supremacist website:
<http://www.stormfront.org/forum/showthread.php?t=281967&page=4> posted by user "Fenrisson":

For the rest of us we can use the CHRC to our advantage. As it costs no more than the price of an envelope you can file a claim against someone without fear of legal retaliation as you are protected by the CHRC from such. Should someone who comes after our own say or do something that even remotely contravenes the

rules of the commission...they may find they are suddenly swamped with dozens of claims against them. If nothing else it bogs down an already stressed system designed to destroy us, all for the price of a letter.

8. Mr. Guille states that he did not make the complaint in a trivial, frivolous, vexatious, and/or bad faith manner. Rather, he states, "My complaint is a *bona fide* effort to confront the communication of hate messages which plagues our country and threatens our community." Mr. Guille states that intent is not a defence for posting hate messages under section 13 of the *Act* as it is more focussed on the impact of hate messaging.
9. Moreover, while he states that he is the sibling of both Melissa and Chris Guille, he denies that he is a member of and/or affiliated with any neo-Nazi, white supremacist, fascist, racist, or hateful organization. He exerts that any statement to the contrary is hurtful and defamatory. He also stated that at the time of filing the complaint, he was not aware of the posting by *Ferrisson* as indicated above nor is he aware of any individual by that name.

Note: Melissa Guille is known to law enforcement as a leader of the Canadian Heritage Alliance (CHA), a white supremacist organization.

10. On July 13, 2006, the investigator interviewed Sgt. Don McKinnon of the London Police Force. He indicated that Mr. Guille's contention that he is not a member of any white supremacist or neo-Nazi organization is technically correct because none of these organizations compile membership lists. However, he advised that Mr. Guille is known by the police to be closely associated with white supremacist organizations in the southwestern Ontario region. He indicated that he also has pictures of Mr. Guille partying with white supremacists at several different rallies that they have held in southwestern Ontario.
11. On September 13, 2006, the investigator interviewed Matthew Lauder, an anti-racist activist who infiltrated the white supremacist movement in Southwestern Ontario from 1999 to 2001. He wrote several articles, books, and reports detailing the white supremacist organizations. Of particular note is a report called "The Far Right Movement in Southwest Ontario: An Exploration of Issues, Themes and Variations." Contained within this report are several references to Andrew Guille. The following is taken from the report on page 90:

In December 2000, Melissa [Guille] admitted to me that Andrew was given a free membership in exchange for writing articles (under the pseudonym of White Fire) for the group [CHA]. Melissa and Chris [Guille] even contemplated buying Andrew a fax machine in order to get him more involved. As of 1 May 2001, Andrew Guille has written three articles for the CHA, they are: "The problem with political movements in Canada," "The leftist conspiracy," and "Immigration and labour."

12. As well, Mr. Lauder stated that on several occasions when he attended neo-Nazi gatherings, individuals such as Paul Fromm, Marc Lemire, and the Guille family (including Andrew) were present.
13. Mr. Guille maintains that he has not filed this complaint in a trivial, frivolous, vexatious, and/or bad faith manner. Rather, he filed it to rectify a situation where he believed that CAERS through its website *Recomnetwork.org* was allowing hate messages to be posted on its website. As well, it was allowing hate websites to be accessed through *Recomnetwork.org*. He further states that the fact that CAERS stated that it did not intend to allow postings that contain hatred and/or contempt and/or active links to websites is not a defence under the *Act*. Moreover, Mr. Guille states that "an organization

purportedly dedicated to the opposition of racism should be more aware and more sensitive to the discriminatory effects of hate messages regardless of the reasons for their communication." He maintains that section 13 does not define or exclude intent as it focusses on the impact of hate and not the intent.

14. As stated above, the main goal of CAERS's website, Recomnetwork.org, is to educate the general public about racism. In pursuing this goal, CAERS stated that its website Recomnetwork.org has become the object of hatemongers who are intent on trying to embarrass and harass it by posting hate messages on its bulletin board. As indicated above, it believes that Mr. Guille has made this complaint in order to embarrass and harass Recomnetwork.org. Moreover, CAERS stated that when it became aware of the potential violations of section 13(1), it took the appropriate steps to immediately rectify the situation.
15. Mr. Guille maintains that he did not make this complaint in a vexatious and/or bad faith manner for the same reasons as outlined above.
16. CAERS states that "it is self-evident that CAERS has no interest in promoting the ideas which are expressed in the material which is the subject of this complaint. Its objectives are, of course, wholly antithetical to the expression of such ideas."
17. On September 14, 2006, the investigator reviewed CAERS' website to determine if it had removed the active hyperlinks and the offensive postings. The evidence shows that CAERS has taken steps to ensure that any link to a potential hate website has been made inactive so that hate websites are no longer accessible to the public through CAERS' website.

Section 41(1)(d) Analysis

18. CAERS believes that this complaint should be dealt with as trivial, frivolous, vexatious, and/or in bad faith. For the Commission to consider a complaint to be trivial or frivolous, the issues must be unimportant, petty, silly or insignificant enough to be a waste of the Tribunal's time. In addition, a complaint completely without factual or legal basis might be considered trivial or frivolous. There are two aspects to this definition: one is that the complaint is insignificant even if it involves a technical violation of the *Act* and secondly, that the complaint has no reasonable factual or legal foundation.
19. For the Commission to consider a complaint to be vexatious, it must decide that it is one with no legal or factual merit or basis involving an ulterior motive such as to harass, annoy or harm. If a complaint is deemed to be brought in bad faith, it is done for an improper purpose and is clearly lacking in merit. If the intent of the complaint is to harass or embarrass the respondent, it may be considered vexatious or in bad faith.
20. On July 6, 2006, the investigator reviewed Recomnetwork.org and found that the website appears to be principally set up to educate the public about racism. Within the website, there's an area which allows visitors to post their comments concerning hate on the Internet. As well, the site has examples of complaints concerning hate on the Internet filed by Mr. Richard Warman.
21. In this context, CAERS appears to have technically violated section 13 of the *Act* by allowing postings containing hatred to appear on its website. As well, CAERS allowed many of the links to neo-Nazi and white supremacist organizations contained within Mr. Warman's complaints to remain active, thereby allowing Internet users to directly access the potential hate websites. During the course of investigation, Alan Dutton, Director of CAERS, stated in an interview with the investigator that he was not aware that the

hyperlinks were active. He also stated that as for the postings, these were being placed on Recomnetwork.org in order to embarrass CAERS and prevent them from carrying out their anti-racist work. He then stated that Recomnetwork.org was taking steps to install filters that would prevent these harassing postings.

Summary

22. The evidence shows that while there may have been a technical violation of section 13 by allowing postings and active links to exist on its website, CAERS has taken steps to prevent individuals from posting material that could be considered offensive and/or hateful. As well, CAERS has reorganized its website so that postings cannot occur without being monitored.
23. The investigator reviewed the material on CAERS' website and it would appear that the documents are the actual complaint forms made by Richard Warman. As such, the reproduction of the said material has been used for educational purposes and not to elicit hatred and/or contempt within the ambit of section 13 of the *Act*.

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

24. CAERS states that it has installed filters to prevent harassing postings on its website's message forum. As well, CAERS has made hyperlinks to potential hate websites inactive so that individuals cannot directly access hate websites through Recomnetwork.org.

What are the positions of the parties with respect to an appropriate remedy to the complaint?

25. Mr. Guille would like CAERS to remove the hate messages from its website and an undertaking by CAERS to prevent future publication of hate messages on its website. He would also like CAERS to issue a public apology and is seeking \$5,000 in damages.
26. CAERS would like the complaint to be dismissed as trivial, frivolous, vexatious and/or in bad faith.

Recommendation

27. It is recommended, pursuant to paragraph 41(1)(d) of the *Canadian Human Rights Act*, that the Commission not deal with the complaint because:
- The complaint is trivial, frivolous, vexatious, and/or made in bad faith and;
 - The matter has been redressed