

**BEFORE THE CANADIAN RADIO-TELEVISION AND
TELECOMMUNICATIONS COMMISSION**

**IN THE MATTER OF AN APPLICATION BY
RICHARD WARMAN**

**PURSUANT TO PART VII OF THE
*CRTC TELECOMMUNICATIONS RULES OF PROCEDURE***

Regarding

**An ex parte application for interim approval under section 36 of the
Telecommunications Act to permit Canadian carriers to block the
content of certain hate websites and additional follow-up relief**

22 August 2006

1.0 Introduction

1.1 In this ex parte application filed pursuant to Part VII of the *CRTC Telecommunications rules of Procedure*, Richard Warman (the “Applicant”) seeks the following relief:

(a) Interim Commission approval under section 36 of the *Telecommunications Act* to allow Canadian carriers to block the content of the following two website URLs (hereinafter referred to as the “Subject Hate Sites”):

- <http://www.overthrow.com>
- <http://dossiernoir.blogspot.com/>

and

(b) Directions on procedure concerning the initiation of a show cause proceeding or other public proceeding whereby Canadian carriers and other interested parties can present their views as to whether the blocking of these URLs should be made a final order of the Commission and whether the blocking of these websites should be mandatory for all Canadian ISPs.

1.2 Richard Warman is a Canadian human rights lawyer who has been at the forefront of the battle against the dissemination of hate over the internet. He has been singled out by the authors of the Subject Hate Sites which advocate for his murder and go so far as to provide his home address.

1.3 The Subject Hate Sites are not hosted in Canada and therefore the Applicant does not have access to Canadian Association of Internet Providers (CAIP) self-governing policies that knock down websites that contain potentially illegal content, or content that contravenes the ISP's acceptable use policy. What is needed now is for those ISPs to block access to the site to protect the Applicant and the Canadian community at large from these Subject Hate Sites.

1.4 Unfortunately most of the large Canadian ISPs cannot act to block these Subject Hate Sites without the relief requested in paragraph 1.1(a) above because of section 36 of the *Telecommunications Act* which states:

[Content of messages]

36. Except where the Commission approves otherwise, a Canadian carrier shall not control the content or influence the meaning or purpose of telecommunications carried by it for the public.

- 1.5 Due to the need to prevent the ever increasing possibility of personal harm to the Applicant and the community at large as a result of the Subject Hate Sites, the relief requested has been divided into two parts. First, the Applicant is seeking the Commission's consent, on an interim and ex parte basis, to the blocking of the Subject Hate Sites by those carriers willing and technically able to do so. This interim relief is based on strong prima facie evidence set out herein that these sites violate the Criminal Code. The Applicant also believes that there is a likelihood that one or more larger ISPs are willing to block access to these sites once Commission consent is obtained thus ensuring the relief requested can result in some positive relief.
- 1.6 Directions on a second follow-up proceeding are requested where Canadian ISPs and any interested parties can provide submissions on whether the relief requested should be made final and whether or not the Commission's approval to block the Subject Hate Sites should be mandatory.

2.0 The Subject Hate Sites Constitute Hate Offences Under the Canadian Criminal Code

- 2.1 "Hate" is a crime under Canada's *Criminal Code*. As demonstrated on the face of the two Subject Hate Sites, these websites violate sections 318 and 319(2) of the Criminal Code and possibly other sections as well. Excerpts from the Subject Hate Sites have been reproduced in Appendix 1 to this application for easy reference. An affidavit by Bernie Farber, a court qualified expert on hate crimes has also provided an affidavit to assist the Commission and is included at Appendix 2.
- 2.2 Section 318: "Advocating Genocide" is defined as supporting or arguing for the killing of members of an "identifiable group" — persons distinguished by their colour, race, religion or ethnic origin. The intention or motivation would be the destruction of members of the targeted group. Any person who promotes genocide is guilty of an indictable offence, and liable to imprisonment for a term not exceeding five years.
- 2.3 Section 319(2) of the Criminal Code applies to the public distribution of hate propaganda. This section states that "everyone who, by communicating statements, other than in private conversation, wilfully promotes hatred against any identifiable group is guilty of" an indictable offence or an offence punishable on summary conviction.
- 2.4 The vitriolic language employed by Mr. White against Jews in general and Richard Warman in particular are a cause for deep concern and require a clear and immediate response.

3.0 The Subject Hate Sites Clearly Threatens Richard Warman

- 3.1 As set out in the affidavit of Richard Warman attached as Appendix 3, the Subject Hate Sites, in posting Richard Warman's home address along with repeated exhortations that Richard Warman (and all Jews) should be killed have caused him to fear for his personal safety. This is particularly the case given the long and notorious history of violence within the white supremacist and neo-Nazi movements.
- 3.2 Further, the Subject Hate Sites are a gross invasion of Richard Warman's privacy and defamatory in the extreme in that they impute false beliefs to him about the seriousness of sexual assault. This constitutes a vicious attack on his reputation not just as an individual, but also as a member of the bar.
- 3.3 Timely consent to the blocking of the Subject Hate Sites by Canadian carriers will assist in protecting Richard Warman from further harm caused by these websites.

4.0 Relief Requested

4.1 The Applicant seeks the following relief:

a) Interim Commission approval under section 36 of the *Telecommunications Act* to allow Canadian carriers to block the content of the following two website URLs:

- <http://www.overthrow.com>
- <http://dossiernoir.blogspot.com/>

and

b) Directions on procedure concerning the initiation of a show cause proceeding or other public proceeding whereby Canadian carriers and other interested parties can present their views as to whether the blocking of these URLs should be made a final order of the Commission and whether the blocking of these websites should be mandatory for all Canadian ISPs.

All of which is respectfully submitted this 22th day of August, 2006.

PAPAZIAN HEISEY MYERS

NOTICE

This ex parte application is made by Mr. J. Edward Antecol, Partner, PAPAZIAN HEISEY MYERS, Suite 510, 121 King St. W., P.O. Box 105, Toronto, ON, M5H 3T9 on behalf of Richard Warman.

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