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Neo-Nazi fined; free speech weakened, says critic

FREE SPEECH / Blurry decision leaves net admins liable for content

Marcus McCann / Xtra.ca / Friday, July 13, 2007

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Richard Warman's longstanding efforts to muzzle Canadian Nazis were rewarded again on Jul 10 when the Canadian Human Rights Tribunal ruled against Canadian Nazi Party organizer Bobby Wilkinson, but one legal expert says the decision will have a chilling effect on the freedom of political speech.



FREE SPEECH? Michael Vonn of the BC Civil Liberties Association says the material on the neo-Nazi website was "egregious" but the BC CLA is opposed to laws which limit public discussion. (Xtra.ca file photo)

Since 2000, Warman has filed 15 human rights complaints against Nazi websites operating out of Canada. He's won nine of them, with two being settled through arbitration and the remainder not yet resolved.

Warman says that the most recent decision will send "a strong message" to haters that "calls for the genocide of homosexuals and other groups will not be tolerated."

Warman, an Egale Canada member and a federal civil servant, files these complaints in his spare time.

Wilkinson faces a \$4,000 fine after his website was found to be inciting hatred against gays, blacks, Jews and other minorities. Wilkinson, who failed to show up to the tribunal, has been ordered to desist. The decision is filed federally and becomes a court order; failure to comply carries a maximum penalty of five years in jail.

"Political speech has open and robust in this country, but when you start calling for the killing of your neighbors — these kinds of cases have gone up to the Supreme Court and they have decided consistently that these are reasonable limits on free speech," says Warman.

Michael Vonn is the policy director of the BC Civil Liberties Association. She says that the material is "egregious" but the BC CLA is opposed to laws which limit public discussion.

"As far as we're concerned, you fight speech with speech," she says.

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But the case raises additional concerns, Vonn says.

In the Tribunal's decision, Wilkinson is found to be liable for not just the comments posted by Wilkinson himself

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but also comments posted by others on his website's forum section.

"Mr Wilkinson willfully caused to be communicated repeatedly all of the impugned hate messages by establishing and administering the CNP [Canadian Nazi Party] Forum on which the messages were placed," writes decision author Athanasios D Hadjis.

The adjudicator "blurs" the distinction between forum owner and user, says Vonn.

"If you are the administrator of a website and if you have the liability for making the distinction between what is intellectually honest and what [is hate speech], logistically, it becomes problematic," says Vonn.

Most lawyers would tell an forum administrator to take down anything that might fall into "a grey area", says Vonn.

"Believe me, the administrators of websites aren't human rights tribunal trained experts on hate speech laws," she says.

Typically, forum administrators, librarians and others responsible for large quantities of content follow the legal notice principle; they make large the information available — and only consider removing material if there is a complaint.

Otherwise, decisions like the Jul 10 Human Rights Tribunal's are going to lead to a "chilling effect" on unmoderated forums on the Internet, she says.

As for Warman, he's going to keep on taking website owners to tribunals. He's got several outstanding complaints — so it's doubtful we've seen the last of him.

Read the full text of the decision at

http://www.chrt-tcdp.gc.ca/search/files/t1095_7605ed10july07.pdf

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Tom Smith

Vancouver, BC

07/30/07 12:59 AM EST

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