

# Free Speech Monitor

P.O. BOX 332, STN. B, ETOBICOKE, ONTARIO M9W 5L3

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TELEPHONE: (905) 274-3868

FAX: (905) 278-2431

Webpage: <http://cafe.canadafirst.net>

e-mail: [cafe@canadafirst.net](mailto:cafe@canadafirst.net)

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\* it is clear that the trial judge's findings of malice were correct.

## Free Speech Setback: Appeals Court Upholds Warman Libel Decision Against Fromm & CAFE

TORONTO. Tuesday, December 9 was a grim day for free speech and dissent in Canada, especially when it comes to criticizing those actively involved in trying to limit political discussion by dissidents. A three man panel of the **Ontario Court of Appeal** upheld the 2007 decision by **Madam Justice Monique Metivier** finding **Paul Fromm** and the **Canadian Association for Free Expression** guilty of defamation for nine **Internet** postings in 2003 calling then **Canadian Human Rights Commission** employee **Richard Warman** a "censor." The Appeals Court upheld the judge's findings and added \$10,000 in costs for the appeal to the original \$30,000 award. **Paul Fromm**, a long-time free speech activist and a founder of **CAFE** back in 1981 called the decision "very disappointing. Have our courts become politicized allowing almost unlimited vilification of the so-called 'right' but shielding the left from even the most mild of criticism?" he asked.

The three judges had been snapping and confrontational with **Barbara Kulaszka**, Mr. Fromm's attorney. They ignored her reminder that the **Supreme Court of Canada** in the **Kari Simpson** case had broadened the definition of "fair comment," a key defence under Canadian libel law. In their June ruling, the **SCC** had held that fair comment need only be sincerely believed by the speaker and be a view that a reasonable person could hold based on the facts. It need not, in the normal sense of the word, be fair, or balanced or even just. In her eloquent address to the Court, Miss Kulaszka argued that **Sec. 13**, the **Internet** censorship provision of the **Canadian Human Rights Act** had been denounced as censorship by newspapers and columnists across Canada. "Newspapers across this country have called for repeal of **Sec. 13** before they get hit by it. Mr. Fromm was the first to sound the alarm. He should be rewarded."

"The issues of free speech on the Internet are huge," she warned. "Mr. Fromm was responding to Mr. Warman's actions." In a chilling exchange, one of the Appeals Court judges suggested that if "suppressing 'hate speech' was in the public interest, wouldn't strong criticisms of people like Mr. Warman, who was making war on what he called **Internet** 'hate', be contrary to the public interest?" In appeals, the arguments (or *Factum*), books of authorities, transcripts and exhibits are filed months before and presumably read by the judges before the hearing. At the hearing, each side highlights its arguments and the judges ask questions and probe the arguments. Sensing strong hostility to her argument, Miss Kulaszka warned the judges: "**Your ruling will set the standard. The Kari Simpson case shows you can say incredibly bad things about the Right and it's 'fair comment.' Does the same thing apply to Mr. Fromm and CAFE?**" she asked. "Can you say critical things about the Left and it's 'fair comment'?" The judges adjourned just before noon. They returned at 2:15. They did not even ask to hear **Richard Warman's** lawyer **Pam MacEachern** but immediately delivered their decision dismissing the appeal. Ignoring most of Miss Kulaszka's arguments, they stated:

Miss Kulaszka was flabbergasted. Most of the nine impugned postings were newspaper reports. Above each was a signed "Dear Free Speech Supporter" commentary by Mr. Fromm. The distinction between statements of fact and opinion or commentary was vivid.

**Alan Shanoff**, a retired lawyer who specialized in libel, wonders whether the Simpson decision would have applied to criticism of the left. Are our courts hopelessly politicized? "The Supreme Court decision involved a radio editorial by **Rafe Mair**, a well-known British Columbia talk show host. He lambasted a social activist, **Kari Simpson**, for the position she took opposing any positive portrayal of gay lifestyle in public schools. Mair called Simpson a bigot and said she had 'placed herself alongside skinheads and the **Ku Klux Klan**.' He also made references to Hitler when he said: 'I'm not suggesting that Kari was proposing or supporting any kind of holocaust or violence but neither really -- in the speeches, when you think about it and look back -- neither did Hitler.' Simpson sued Mair and the radio station for defamation, the lowering of her reputation. The Supreme Court's ruling also clarified the defence of fair comment. Fair comment is the defence that allows defamatory expressions of opinion to be published. I've always had a problem with the name of this defence, because of the use of the word "fair." Many courts have wrongly stated a comment must be fair or a comment must be one a 'fair-minded' person could express. I'm sure jurors have also been befuddled by the word 'fair.' First, one might wonder if the Mair decision might have differed had Mair not attacked an easy target. It's easy to assail someone like Simpson whose anti-gay views are not popular or politically correct. Suppose Mair had attacked a gay supporter? The result should be the same but would it?"

You have to wonder. Mr. Warman would now seem safe from public criticism -- a problem facing **Ezra Levant**, the **National Post**, **National Post** editor **Jonathan Kay**, and a number of conservative bloggers who face libel suits. Mark and **Connie Fournier** face no fewer than three libel actions launched by Mr. Warman for comments on the **freedominon.ca** website.

So, the court protects Warman from criticisms like "censor."

What about "perverted monster"? In 1985, after Toronto publisher **Ernst Zundel's** first "false news" trial, Vancouver talk show host **Gary Bannerman** directed a furious commentary tirade at **Doug Christie**, Mr. Zundel's lawyer and, among other things, called him a "perverted monster." That was okay. That was fair comment said a B.C. Court and the judgement was upheld on November 26, 1990 by the **B.C. Court of Appeals**. (*Christie v. Westcom Radio Group Ltd.*)

What about a cartoon depicting a minister sadistically clipping the wings off a fly? **Robert Bierman**, a freelance cartoonist depicted then **Human Resources Minister Bill Vander Zalm** doing just that in a June 22, 1978 cartoon, published in the **Victoria Times-Colonist**. Vander Zalm had advocated cutting benefits to some unemployed recipients in B.C. Then **Premier Vander Zalm** won in the lower court, but, in February 15, 1980, judgement the **B.C. Court of Appeals** overturned the decision, thus ruling that suggesting **Vander Zalm** was a cruel sadist was "fair comment." (*Vander Zalm v Times Publishers*)

\* the statements complained of (by Mr. Warman) were capable of being defamatory;

\* they agreed that the trial judge found it impossible to distinguish statements of fact from opinion (in **CAFE's** postings);

**What about calling a Christian author and teacher, Malcolm Ross, who has written religious books critical of Jews, a Nazi, Josef Goebbels and an author of "hate literature?"** All of these smears were contained in cartoons by New Brunswick cartoonist **Josh Beutel**. In a May 31, 2001 judgement, the **New Brunswick Court of Appeal** found these lies to be "fair comment." (*Ross v. New Brunswick Teachers' Association*)

"I am presently consulting with our lawyers about an appeal to the **Supreme Court of Canada**," **Paul Fromm** concludes.

### **Inside the Belly of the Beast: The Fourniers Visit the CHRC**

**Mark and Connie Fournier**, the moving forces behind the website **freedominion.ca**, we now know were spied on by **CHRC's** blind investigator -- don't ask us how he can do his job -- **Dean Steacy** before any formal complaint had been made against them! This was just part of ongoing **CHRC** spying on Canadian dissidents. A complaint was filed against them in the spring of 2007 and then withdrawn when they raised a considerable storm in the media. The complaint involved postings critical of homosexuals, one of politically correct Canada's most privileged minorities. When the Fourniers published criticism of former **CHRC** investigator and **Sec. 13** complaint filing champion **Richard Warman**, they found themselves the victims of no fewer than three defamation suits by the thin skinned "anti-racist" now ensconced in the bowels of the **Department of National Defence**.

The Fourniers have been pursuing a frustrating access to information request with the **CHRC**. They drove recently to Ottawa to file some further material in their so-far fruitless quest for their right to access information about themselves. The **CHRC** is a hotbed of self-glorifying paranoia. In Warman's defamation suit against me, he testified that, when **CAFE** and about 30 free speech supporters picketed the offices of the **CHRC** one rainy late October afternoon in 2003, the **CHRC** was subject to "a full security lockdown." To protect them from 30 peaceful protesters! Since the *Warman v. Terry Tremaine* tribunal in August, 2006, Warman, when he makes his brief appearance to testify, and the Commission lawyers all through the hearings, are accompanied by anywhere from 2 to 5 (in the **Melissa Guille** case) government-paid bodyguards. Yes, they even accompany Warman and the Commission lawyers to the washroom. No, I won't offer any humorous speculation on that topic. Here is the Fourniers' account of their visit to human rights central, which seems more like what it is, the sordid heart of darkness of Canada's **Internet** political police. Not just **Sec. 13**, but the entire **CHRC** must go!

"Yesterday Mark and I drove all the way to Ottawa to take some paperwork to the **CHRC**. They have been stonewalling us since April on our **Access to Information** request for the files on **Free Dominion** and I had a document that I wanted to give them in person that would clear the way for them to fulfil our request. We got to the building on 344 Slater St. and took the elevator to the 8th floor. When we walked in, we did not encounter a receptionist as we expected. There was a security guard behind glass, instead. When I wanted to hand him the letter with my case number on it, I had to slip it through a little slot in the glass. He directed us to sit in two chairs across from his station and he disappeared into the back. He came back out in a couple of minutes and told us that he had given the letter to someone who would pass it along until they found someone who could 'give us an answer.' I thought that was rather strange since I had already said that I just wanted to talk to **Heather Throop** and give her a document. As we were waiting, we heard a

A guy came barrelling down the hall with a cart loaded with files, grabbed an elevator, and disappeared. I turned to Mark and whispered, 'There go our files.' A few moments later, a young, timid-looking girl came out and handed something to the security guard, whispered something to him, and then retreated quickly from our sight. I honestly thought the poor girl suspected we were wired with bombs!

The security guard then told us that **Heather Throop** wasn't in, but asked if we would like to talk to **Deborah Cansick**. I said that that would be fine because I have talked to her by e-mail several times. Mark and I stood waiting as the security guard walked out the back door of his booth and we prepared to go in to see **Deborah Cansick**. To my utter astonishment, he, instead, picked up a phone in the waiting room, dialled a number, and handed it to me. I wasn't even allowed to see **Deborah Cansick**... I had to speak to her on a phone while she hid in another room!! Well, to make a long story short, Cansick told me there was no point in giving her the paperwork I brought because they weren't planning on fulfilling my request. I hung up the phone, took my letter back through the little hole in the window, and Mark and I left the office for the elevator. As we were waiting, an older woman and a guy with a bunch of earphones attached to him came and waited with us and got on the elevator as we rode down. I said to Mark later that it seemed like they appeared out of nowhere to make sure we actually left the building!

Both Mark and I were spooked by our experience at the **CHRC**. It was unlike any other government office we have ever seen. Talk about 'faceless bureaucracy'! It is absolutely frightening that these people, who spend their days hidden behind a security guard and bullet-proof glass, have the power to utterly destroy the lives of Canadians, and they don't even have to look their victims in the eyes. **George Orwell** must be spinning in his grave."-- **Connie Fournier**  
<http://www.freedominion.com>

### **Human Rights Commission Wimps Out & Rejects Complaint Against Moslem Radicals**

The **Canadian Human Rights Commission** saw the glint of the bayonets, gulped, messed their pants and fled from the field of battle, uh, censorship. In April, Montreal writer **Marc Lebuis** filed a complaint about **Internet** postings by a local **Imam Hammaad Abu Sulaiman Al-Dameus Hayit**. His writings disparage women, non-Moslems and homosexuals.

The Human Rights Commission's **Stephane Brisson**, in a December 5 letter, indicated that the Commission would not proceed with the complaint as the comments were not really promoting hatred or contempt: According to the Moslem holy man, non-Moslems or *kaffirs* or infidels [us, in other words], just to take an example, "live like animals"; "they are evil people, who love perversity", and "they are our enemies." Doesn't sound like a group hug or warm fuzzy to me. Far milder comments have had Whites issued a lifetime gag order and be slapped with a heavy fine. As a free speech supporter, I feel the obnoxious *imam* should be able to preach or post whatever he wants, short of advocating violence. However, fair is fair. Why are White writers on the **Internet** the exclusive target of the **Canadian Human Rights Commission**? The reason is we have as yet been less effective in mobilizing public opinion. The gutless wonders at the **CHRC** don't want to vex the politically active 700,000 Moslems in Canada. The rejection of the Lebuis complaint proves once again that **Sec. 13** is political censorship, aimed at politically incorrect White opinion. It is not really about banning **Internet** "hate." -- itself a foolish and presumptuous idea. -- **Paul Fromm**