

Clause embodied in Report No. 4 of the Administration Committee, as adopted by the Council of the City of Toronto at its meeting held on April 16, 17 and 18, 2002.

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### **Citron et al. v. Zündel - Summary of Canadian Human Rights Tribunal Decision**

*(City Council on April 16, 17 and 18, 2002, adopted this Clause, without amendment.)*

**The Administration Committee recommends the adoption of the following report (February 18, 2002) from the Acting City Solicitor:**

Purpose:

This report has been prepared to provide City Council with a summary of the recent decision (dated January 18, 2002) of the Canadian Human Rights Tribunal, in response to complaints by the Toronto Mayor's Committee on Community and Race Relations of the former City of Toronto and Ms. Sabina Citron, requiring that Ernst Zundel cease the communication of discriminatory messages on the internet.

Financial Implications and Impact Statement:

This report has no financial implications.

Recommendation:

It is recommended that City Council express its thanks and appreciation to the Canadian Human Rights Commission, the Canadian Holocaust Remembrance Association, the League for Human Rights of B'nai Brith, the Simon Wiesenthal Centre and the Canadian Jewish Congress, and their legal counsel, for the significant time and resources which these organizations, and the private law firms representing them, have dedicated to the successful pursuit and resolution of the City's complaint against Ernst Zündel.

Background:

In 1996, the Toronto Mayor's Committee on Community and Race Relations for the former City of Toronto and a holocaust survivor, Ms. Sabina Citron, made two complaints (dated July 18, 1996 and September 25, 1996 respectively) to the Canadian Human Rights Commission (the "Commission") against Ernst Zündel, a former resident of the City of Toronto, with respect to the allegation that Zündel was:

“discriminating against persons on the grounds of race, religion, national or ethnic origin, by placing on the World Wide Web (W.W.W.) messages which are likely to expose a person or persons to hatred or contempt by reason of the fact that that person or those persons are identifiable on the basis of a prohibited ground of discrimination contrary to section 13(1) of the *Canadian Human Rights Act*.”

The subject matter of the complaints was holocaust denial material posted by Zündel on the U.S.-based Internet website known as the “Zundelsite”.

The complaints were made under subsection 13(1) of the *Canadian Human Rights Act*, which provides as follows:

“It is a discriminatory practice for a person or a group of persons acting in concert to communicate telephonically or to cause to be so communicated, repeatedly, in whole or in part by means of the facilities of a telecommunication undertaking within the legislative authority of Parliament, any matter that is likely to expose a person or persons to hatred or contempt by reason of the fact that that person or those persons are identifiable on the basis of a prohibited ground of discrimination.”

On November 29, 1996, a Human Rights Tribunal (the "Tribunal") was appointed by the Commission to inquire into the complaints and a hearing before the Tribunal was commenced in May, 1997. The hearing was concluded in February, 2001. The inordinate length of the hearing was due to the complexity of the issues raised and the fact that it was interrupted for approximately a year and a half as a result of Zündel's various attempts throughout the course of the hearing to have the proceedings stayed or declared invalid by the Federal Court. In the meantime, Mr. Zündel left the country and is now reportedly living in the State of Tennessee in the United States.

In addition to the Commission, and the City of Toronto and Ms. Citron as complainants, the following organizations were granted interested party status to participate in the Tribunal hearing:

- (i) The Canadian Holocaust Remembrance Association;
- (ii) The League for Human Rights of B'nai Brith;
- (iii) The Simon Wiesenthal Centre; and
- (iv) The Canadian Jewish Congress.

An organization known as the Canadian Association for Free Expression (CAFE), represented by Paul Fromm, also intervened in support of Mr. Zündel.

On January 18, 2002, the Tribunal issued its lengthy decision, which has been summarized below for the information of City Council. A copy of the decision has been filed in electronic form with the City Clerk.

Comments:

In its decision, the Tribunal addresses four basic issues as follows:

- (1) Did Mr. Zündel communicate or cause to be communicated the material found on the Zundelsite?

The Tribunal found on the basis of the evidence that Zündel controlled the Zundelsite and that it was he who caused the materials found on the website to be communicated.

- (2) Was the material on the Zundelsite communicated telephonically, repeatedly, in whole or in part by means of the facilities of a telecommunication undertaking within the legislative authority of Parliament?

The Tribunal's finding on this issue is precedent-setting. Originally, subsection 13(1) was enacted to deal with the problem of telephone answering machines playing pre-recorded hate messages. After hearing technical evidence as to how the internet works and how computers communicate "telephonically" (i.e. using telephone lines and infrastructure within the legislative authority of Parliament), the Tribunal determined that the scope of the section could now be interpreted as including advances in technology such as communication over the internet by computers.

- (3) Are the materials contained on the Zundelsite likely to expose a person or persons to hatred or contempt by reason of the fact that that person or those persons are identifiable on the basis of a prohibited ground of discrimination?

The Zundelsite operates by questioning the validity of certain generally held beliefs concerning the holocaust (e.g. "Did Six Million Really Die?") and then suggesting that such "lies" are indicative of the Jewish character and proof of a Jewish criminal conspiracy. The Tribunal agreed with the views of the complainants that the content of the material found on the web-site was anti-semitic and likely to expose Jewish persons to hatred and contempt. In particular, the Tribunal notes as follows:

"The messages conveyed in these documents carry very specific assertions regarding the character and behaviour of Jews, none of it good. Jews are vilified in the most rabid and extreme manner, permitting, in our view, of "no redeeming qualities". Given our reading of the material communicated via the Zundelsite, we are satisfied that the test set out in *Nealy*, and approved in *Taylor*, has been met. In our judgment, these messages create an environment in which it is likely that Jews will be exposed to extreme emotions of detestation and vilification. Based on our view that the Zundelsite materials characterize Jews as 'liars, cheats, criminals and thugs' who have deliberately engaged in a monumental fraud designed to extort funds, we regard it as highly likely that readers of these materials will, at a minimum, hold Jews in very low regard, viewing them either with contempt, scorn and disdain, or hatred, loathing and revulsion. . . .

If this truly were a neutrally worded, “academic” debate, our analysis might be quite different. The tone and extreme denigration of Jews, however, separates these documents from those that might be permissible. We have found that it is the linkage between the author’s view of these events and the extreme vilification of Jews as a consequence: it is their denunciation as liars, racketeers, extortionists and frauds that is likely to expose them to hatred and contempt.”

- (4) If s. 13 (1) applies to the Internet, does it violate s.2 (a), 2 (b), or s.7 of the Canadian Charter of Rights and Freedoms?

Subsection 13(1) has been previously upheld by the Supreme Court of Canada with respect to pre-recorded telephone messages on the basis that any infringement of the Charter of Rights and Freedoms (e.g. freedom of expression) was reasonable and justified in a free and democratic society in light of the important values inherent in anti-hate legislation. The Tribunal found no basis, even where the application of the subsection was expanded to include the internet, to differ from this previous conclusion.

In finding that Zündel violated the *Canadian Human Rights Act*, the Tribunal ordered that:

“ . . . [T]he Respondent, Ernst Zündel, and any other individuals who act in the name of, or in concert with Ernst Zündel cease the discriminatory practice of communicating telephonically or causing to be communicated telephonically by means of the facilities of a telecommunication undertaking within the legislative authority of Parliament, matters of the type contained in Exhibit HR-2 and found on the Zundelsite, or any other messages of a substantially similar form or content that are likely to expose a person or persons to hatred or contempt by reason of the fact that that person or persons are identifiable on the basis of a prohibited ground of discrimination, contrary to s. 13(1) of the *Canadian Human Rights Act*.”

Under the *Federal Court Act*, a decision of a Canadian Human Rights Tribunal can be appealed within thirty days of the issuance of the decision. As of the date of this report, I am unaware of any appeal of the Tribunal’s decision having been filed.

#### Conclusions:

In response to complaints made by the Toronto Mayor’s Community and Race Relations Committee of the former City of Toronto and Ms. Sabina Citron, the Canadian Human Rights Tribunal has found that Ernst Zündel violated subsection 13(1) of the *Canadian Human Rights Act* by communicating hate messages on the internet. This ruling is precedent-setting in that it is the first time that this section of the *Act* has been found to be applicable to internet communication.

#### Contact:

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(A copy of the recent decision dated January 18, 2002, of the Canadian Human Rights Tribunal, in response to complaints by the Toronto Mayor's Committee on Community and Race Relations of the former City of Toronto and Ms. Sabina Citron, referred to in the foregoing report was forwarded to all Members of Council with the March 26, 2002, agenda of the Administration Committee and a copy thereof is also on file in the office of the City Clerk, City Hall).