

Complaint No. 4885

BRITISH COLUMBIA
HUMAN RIGHTS TRIBUNAL

BETWEEN:

Mohamed Elmasry on behalf of Muslim residents of the province of British Columbia
Complainants

- and -

Roger's Publishing Ltd. and Ken Macqueen

Respondents

Complaint No. 4887

BRITISH COLUMBIA
HUMAN RIGHTS TRIBUNAL

BETWEEN:

Naiyer Habib

Complainant

- and -

Roger's Publishing Ltd. and Ken Macqueen

Respondents

CLOSING SUBMISSIONS OF THE COMPLAINANT
(Hearing scheduled JUNE 2 – JUNE 6)

1. This Complaint is brought under section 7(1)(b), alleging that the content of the article “The Future Belongs to Islam” (Mark Steyn, Oct. 20, 2006), hereinafter “the Article” is likely to expose Muslim persons to hatred or contempt on the basis of their race, religion or ancestry.

Reference: June 19th Complaint, Exhibit 1

2. Section 7 of the British Columbia Human Rights Code (“the BCHRC”) states as follows:

Discriminatory publication

7. (1) A person must not publish, issue or display, or cause to be published, issued or displayed, any statement, publication, notice, sign, symbol, emblem or other representation that

(a) Indicates discrimination or an intention to discriminate against a person or a group or class of persons, or

(b) Is likely to expose a person or a group or class of persons to hatred or contempt because of the race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation or age of that person or that group or class of persons.

(2) Subsection (1) does not apply to a private communication, a communication intended to be private or a communication related to an activity otherwise permitted by this Code.

1. There is no denying that this case and the interpretation of this section involves the complicated intersection of two important values in our Canadian society – that of freedom of expression, and the freedom to be free from discrimination and hatred on the basis of religion or race. As both of these are Charter values, neither one nor the other takes any precedence over the other – there is no effective “trumping” of the freedom of discrimination, for example, by the freedom of expression. Rather, these two important values must be balanced, requiring the

Tribunal to carefully weigh any infringement in these circumstances on the Respondents' freedom of expression against any infringement on the Complainants' right to be free from discrimination.

Reference: *Canadian Jewish Congress v North Shore Press*, 30 CHRRD/5 (CJC) at 90

2. While the Respondents' might suggest that any application of section 7(1)(b), or at least its application in this case, would constitute a gross and unjustifiable violation of the right to freedom of expression, this is simply false.
3. Firstly, it ought to be noted that by Canadian law, freedom of expression is not absolute. The Supreme Court has recognized three core values of freedom of expression; the search for truth, the protection of individual autonomy and self development and the promotion of public participation in the democratic process. Not all speech is afforded the same protection in Canadian law. Speech that is not closely tied to the core values underlying freedom of expression is not deserving of the same protection as speech that is. Expression that is likely to expose a group to hatred or contempt on the basis of their religion does not further any of these three goals; first, it does not advance truth seeking because it silences the targeted group by undermining the principle that their views deserve equal protection, secondly, it hinders the autonomy and self-development of the targeted group by inciting hatred and prejudice against individuals within that group and thirdly, it impedes that group from meaningful participation in social and political decision making, thus being out of line with democratic values. The eradicating of this type

of hateful speech is a goal that justifies some infringement on the freedom to express those ideas.

4. Secondly, there are inherent limitations on the application of the section within its wording. “Offensive” speech, for example, is not caught. Hateful or contemptuous speech is. Further, only expression which targets a group on the basis of an enumerated ground is caught under the section. Expression which is likely to expose, for example, politicians or academics, to hatred or contempt because of their political affiliations or their jobs is not prohibited in the least.

Reference: CJC at 190

5. Finally, any violation of the Respondents freedom of expression is greatly minimized by the adoption of the analytical structure that [the British Columbian Human Rights Tribunal \(“the Tribunal”\)](#) has enunciated in several of its decisions, including [Canadian Jewish Congress v North Shore Free Press](#), [Abrams v North Shore Free Press](#), and [Khanna v Common Ground Publishing Corp](#), a two-part test in analyzing complaints under section 7(1)(b).

Reference: CJC at 138

Reference: [Abrams v North Shore Free Press \(Abrams\)](#) at 44

Reference: [Khanna v Common Ground Publishing Corp, \(Khanna\)](#) at 38

6. The test requires that the Tribunal first ask itself: does the communication itself express hatred or contempt of a person or group on the basis of one or more of the listed grounds?

Reference: CJC at 138

7. The case law indicates three non-exhaustive considerations that will be relevant to the assessment of whether a particular expression is hateful or contemptuous. These are; (1) the content of the expression (what is said), (2) the tone of the expression (how it is said) and (3) the vulnerability of the target group. It was stated that “In any one particular case, one factor might predominate” and that, for example, in one article the content alone might be so extreme as to constitute hatred or contempt irrespective of tone or vulnerability, whereas in other cases the “tone and/or the vulnerability of the group can turn offensive and harmful content that would not otherwise amount to “unusually strong and deep-felt emotions of detestation, calumny and vilification” into an expression of hatred or contempt”. The more venomous or vitriolic the tone, and the more vulnerable the group, the more likely it is that the overall meaning conveyed by the expression will be hateful or contemptuous.”

Reference: CJC at 142

8. The second question that the Tribunal must ask itself is whether, assessed in its context, the likely effect of the communication to legitimize the hatred and thus make it more acceptable for others to manifest hatred or contempt against the person or group concerned? In making this determination, the case of *Canadian Jewish Congress v. North Shore Press*, supra, has indicated some factors to consider. These include the vulnerability of the targeted group, the expressive context of the message (for example, whether it is part of a published debate in which alternate points of view are expressed), and whether it is presented as opinion or fact, the context of the message, in particular, the degree to which it

reinforces existing negative stereotypes of the group, and the method of dissemination: for example, a more “mainstream” form of communication may tend to legitimize the expression or manifestation of hatred by others more than a marginal vehicle.

Reference: CJC at 145

THE APPROPRIATENESS OF THE TEST IN BALANCING INTEREST OF FREEDOM OF EXPRESSION

9. This above two part test is the product of a careful analysis of Member Iyer, in the case of *Canadian Jewish Congress v North Shore News*, supra, and his desire to who design an interpretation of the provision that was both faithful to its text and in line with the value of freedom of expression by ensuring that it would not be used so broadly as to hinder the free exchange of ideas that is vital to our society. The test therefore includes certain checks to ensure that the proper balance is being maintained. These protections for the freedom of expression include:

(a) The requirement that the communication in question pass two parts of the test – that is, that the communication itself expresses hatred or contempt against a group and that as a result of this, others are more likely to express their own feelings of hatred and contempt against that group. This limits the expression that we are dealing with. Expression which expresses hatred but which would not likely cause anyone reading it to express hatred is not caught under this section. Neither is expression that is neutral but still has the effect of inciting the expression of hatred among those who read it.

Reference: CJC at 142

(b) The test is to be interpreted by reference to the objective “reasonable person” and therefore requires us to ask whether a reasonable person would view the publication as expressing hatred, and then whether it is more likely than not that this reasonable person would, in light of the social context, find that the article makes it more acceptable for the expression of hatred. This is an explicitly higher standard than is required under a similar provision of the federal Human Rights Code, where the test looks at whether there is anyone who might be inspired to treat the targets with hatred or contempt.

Reference: CJC at 136
Reference: Abrams at 59

10. The application of this test ensures that the application of section 7(1)(b) of the Code suppresses only the speech that is appropriately silenced; hateful expression which is likely to expose target vulnerable groups to further risk of hatred or contempt. In the context of our multicultural society, there is obvious importance in removing or minimizing such types of publication, as they represent a significant barrier to creating a social climate free of discrimination and intolerance.

Reference: CJC at 252

11. The application of the test further ensures that there is no widespread “chilling” of expression whereby expression, which is not in contravention of the provision, remains unexpressed due to the fear that it might. As mentioned above, the application of the section is narrow in the types of expression it prohibits. The following statements in *Canadian Jewish Congress v North Shore News*, supra,

are particularly helpful in understanding how the application of the two part test limits the effect of repressing discussion on important, even very sensitive, topics:

“The tone and type of the reporting, the difference between news reports and editorial opinion, the public interest and importance of the topic are all relevant aspects of the context in which the s. 7(1)(b) assessment must be made in such a case, as is the fact that the communication appears in a newspaper. When these factors are taken into account along with the content of the expression in issue, I find it hard to conceive of a realistic example of a case where s. 7(1)(b) of the Code would preclude reporting on the news. What it does preclude, in my view, is reporting which exploits and sensationalizes hateful or contemptuous views.”

And further:

“It is reasonable to assume that the expression that would be chilled by s. 7(1)(b) would be expression that “close to the line”...Expression of this kind would include speech that is hateful or contemptuous but which is not likely to expose targets to further risk of hatred or contempt; speech which is not in itself hateful or contemptuous but does not have the effect stipulated by s.7(1)(b). The chilling effect of s. 7(1)(b) is to cast a shadow around the expression that actually does contravene the provision. Within this shaded region, some expression will be deterred. But the way in which the law deters such expression is noteworthy. Given the narrow scope of the provision, its chilling effect on the speech it does not actually prohibit will not be so much to suppresses certain messages entirely, but to require authors of communications that might be close to the line think very carefully about how they say what they wish to say.”

Reference: CJC at 234, 232

12. Applying the two part test found in the case law as described below, it is respectfully submitted that in this case, the Article has fallen afoul of section 7(1)(b).

DOES THE COMMUNICATION EXPRESS HATRED OR CONTEMPT?

13. In determining whether communication expresses hatred or contempt, as required under section 7(1)(b), the Tribunal has expressly applied the definition of “hatred”

and “contempt” as found in the Supreme Court of Canada decision of *Human Rights Commission v Taylor*.

Reference: CJC at 129

Reference: Abrams at 15

Reference: Canada (Human Rights Commission) v. Taylor, [1990] 3 S.C.R. 892

14. The Court in *Taylor* established that the term “hatred”, as used in human rights legislation, refers to a feeling of extreme ill will and a perception that the targeted group possess no redeeming qualities. The term “contempt” requires that the targeted group be looked down upon. These are two distinct terms that are not conjoined.

Reference: Taylor, at. 61

15. As has been mentioned, in *Canadian Jewish Congress v North Shore Free Press*, supra, Member Iyer outlines three non-exhaustive considerations that will be relevant to the assessment of whether a particular expression is hateful or contemptuous. These are; (1) the content of the expression (what is said), (2) the tone of the expression (how it is said) and (3) the vulnerability of the target group.

Reference: CJC at 142

16. It bears note that the case law has made it clear that, in line with the Supreme Court decision in *Taylor*, supra, the first prong of the test under section 7(1)(b) requiring communication to express hatred or contempt is in no way meant to import inquiries into the intent of the author. In keeping with the general aims of anti-discrimination law, the focus of section 7(1)(b) is on the effects of the article in

question, so as to make reparations to the discriminated group, rather than on the subjective intention of the perpetrator.

Reference: CJC at 145
Reference: Taylor at 931

17. The standard to be applied when determining whether a form of communication constitutes hatred or contempt is that of how a reasonable person would view the communication, when that reasonable person is informed of the context “of this place and this time”. The context in which a communication appears is crucial in the reasonable person’s understanding of the meaning of the message of the communication. Context includes specifically the “social and historical” context. In the already cited case of *Abrams v North Shore Free Press Ltd*, for example, Member Patch specifically took into account the historical anti-Semitism that plagued the targeted Jewish community when determining whether articles alleging Jewish conspiracies in the media could be interpreted by a reasonable person to express hatred against Jewish peoples.

Reference: *Abrams*, at 65

18. In the case of the Article, therefore, the reasonable person must be informed of the context of the context of increased Islamophobia. A recent increase in Islamophobic events and hate crimes against Muslims has been documented. Secretary-General Kofi Annan told a December 7, 2004 UN conference on the emergence of Islamophobia that “(when) the world is compelled to coin a new term to take account of increasingly widespread bigotry — that is a sad and troubling development. Such is the case with 'Islamophobia'.”

Reference: United Nations Report, Exhibit 19

19. Many of the expert witnesses testified to a similar increase in hostile anti-Muslim and anti-Islamic sentiment, as will be described in more detail below.

1) Content: What is being said

20. In the first part of the two-prong test, we are to consider the content, or what is being expressed in the publication in question.
21. Dr. Mahmoud Ayoub, a scholar in comparative religion, testified that the Article's main message was that Muslims in the West are engaged in an "underground" conspiracy to "take over the World" by virtue of the authority of their religion. He testified that he recognized the same types of accusations which were levelled in the past against the Jewish community, as having conspiracy plans to "take over the world", repeated in the Article. This theme, in and of itself, creates fear.
22. The theme of the Article as portraying Muslims who live in the West as "the Other", poised to take over whole countries, ran throughout the evidence. Dr. Andrew Rippen, an eminently qualified expert in Quranic interpretation and Islam, testified that he viewed the Article as depicting Islam as an "unchanging single entity" which is characterized as the "Other." In the case of the Article, Dr. Rippen believed that the creation of the "Other" was used to rouse the Western world into action.
23. Khurram Awan and the Complainant, Dr. Naiyer Habib, testified as to an understanding of the Article as promoting an image of Western Muslims as unwilling or unable to integrate into Western society, therefore creating a sense of

Muslims as a population, which does not belong. Dr. Habib, specifically stated that he felt the message behind the Article is that “Muslims are not Westerners”, but rather that Muslims are foreigners, and not loyal citizens of this country. He stated that he felt that Muslims were working very hard to become good and productive citizens of their homelands in the West and expressed frustration at the attempt of the Article to depict Muslims as “isolated” from society.

24. The witnesses’ testimony as to the messages contained in the Article was consistent in that they read the Article as making no distinction with respect to the fringe elements of the Muslim world and the Muslim world in general. For example, Dr. Rippen testified with respect to the Article’s portrayal of the Muslim “entity” as driven by a single understanding of the Quran, as a text which must be believed and followed. Prof Rippen testified that this view of Muslims as an unchanging entity is a complete falsity and ignorant to the complexity and diversity of current Islamic faith, and a common stereotype of Islam which creates a sense of fear.
25. Similarly, Dr. Ayoub also testified as to the Article promoting a view of Islam as having a global, uniform population that was unable to form an identity outside of its religious affiliation. This misconception ignores the rich cultural diversity of Muslims and the Quranic emphasis on pluralism.
26. Dr. Hirji and the Complainant himself testified that the repeated use of the word “Islam” (i.e; Islam has global ambition) indicated that the Article was speaking to

the characteristics of all of those 1.4 billion Muslims who practice the religion, rather than any small fraction of Muslims.

27. The way in which the witnesses described the messages in the Article appear to be similar to the way in which they were interpreted by other members of the public. For example, the Article's main content was described as the following, on the Catholic Answers Forums blog:

Macleans, a Canadian newsweekly has a cover story this week on the fact that Islam is slowly taking over the world. It was very impressive because it stuck to simple demography as the basis for this line of thought. The writer basically said that it is a matter of time before the West is under the influence of Islam. He cites the fact that the West is pretty much "barren and aging" while Muslims are fruitful and young. The statistics are pretty eye-opening....

Reference: Catholic Answers blog, Exhibit 21

2) Tone: How it's being said

28. The Article advances much of its thesis by reference to what appear (at least on first blush) to be objective fact. The prejudicial remarks are thus made subtly, in the guise of seemingly intellectual commentary rather than through the use of extremely overtly racist statements and labels, except for the few references such as one to our Aboriginal citizens as "Injuns." It has been acknowledged by the body of case-law that purport to determine complaints under section 7(1)(b) that the section does not only capture "crude invective", "ranting and raving" or "uncontrolled diatribe." Rather, the case-law has clearly stated that the hatred or contempt in question may just as easily be uttered in a "polished tone", "with great sophistication, its venom clothed in language of reason."

Reference: CJC at 143

29. In the case of this Article, many of the witnesses testified as to their understanding that when read as a whole, it was clear the Article uses sarcasm to ridicule the notion that there is something such as moderate Muslims who are good and loyal citizens of Western society. Dr. Hirji testified as to the use of sarcasm in the words “obligatory of courses” to deliberately undercut the statement “not all Muslims are terrorists” by making it known that these were not the author’s views, but something that he does not believe and is rather forced to admit:

Time for the obligatory "of courses": of course, not all Muslims are terrorists -- though enough are hot for jihad to provide an impressive support network of mosques from Vienna to Stockholm to Toronto to Seattle. Of course, not all Muslims support terrorists -- though enough of them share their basic objectives (the wish to live under Islamic law in Europe and North America) to function wittingly or otherwise as the "good cop" end of an Islamic good cop/bad cop routine. But, at the very minimum, this fast-moving demographic transformation provides a huge comfort zone for the jihad to move around in.

30. Dr. Hirji also testified as to the use of sarcasm in this Article in the use of quotation marks around the word “moderate” when used in reference to Palestinian leaders, indicating the author’s doubt that such a person exists.
31. The Article also maintains a strong fear mongering and sensationalist tone in describing the “inevitable” take over of Western societies by Muslims. The fear that the Article wishes to create of Muslims is visually depicted in the image that is found on the cover of the issue of Maclean’s that carried the headline Article. The image is one of a young Muslim girl in burka (loose, black garment usually with veiled holes for the eyes, worn by a small percentage of Muslim women); it is the expression on her face that is quite astounding. She has an ominous expression

on her face that looks demonizing, as if taken from a horror cult movie as she is surrounded by a sea of women in burkas. According to Dr. Hirji, this image taps into the stereotype of Muslim woman as oppressed, and of Islam in general as threatening and foreign. Dr. Habib testified that he believed the cover made it absolutely clear how the author wished for the reader to interpret the Article and was afraid of the impact that such a scary image would have on his own family members who wear the hijab.

32. Furthermore, the tone of the Article is clearly one which conveys the author's view of the superiority of the Western non-Muslim culture, as compared to Islamic culture and values. Muslims and non-Muslim Westerners are consistently juxtaposed in the Article, and it is a consistent pattern that the individuals representing the West in the anecdotes that Mr. Steyn provides have strong virtue and are to be admired. The individuals representing Islam, by contrast, are described as having the exact opposite traits. One such example can be found in the Article's version of an incident on a local bus in Europe, where a Western man who wishes to maintain order heroically decides to protect the other passengers on the bus from the disruptive and violent presence of Muslim youths, who apparently threaten the entire Continent of Europe.

3) Vulnerability of Target Group

33. The Islamophobia that is felt in today's society is significant and colors the lives and choices of the Muslims who must bear it on a regular basis. The Complainant in this case, Dr. Naiyer Habib, indicated during his testimony that he felt compelled

to co-found a special initiative, an organization called Muslims for Peace and Justice, specifically to deal with the growing prejudice and negative stereotyping he and others felt on a daily basis after 9/11. Khurram Awan, another lay witness, stated that his motivation to enter law school was to confront the prevailing growing Islamophobia in society. Even Dr. Ayoub himself has testified as to the “slings and arrows” of racial profiling in the airports of North America.

34. Dr. Habib testified emotionally as to the Article in question putting “fuel on the fire” of existing Islamophobia that was a problem for him and others in his community in his local mosques in British Columbia as being very upset and disturbed by the hateful comments of the Article.
35. It is submitted that the vulnerability of the Muslim population in today’s social context is undisputed. Even Mr. Porter, during his cross examination of Dr. Habib, asked him to agree with him that “after the 9/11 attacks, the Muslim community had to deal with a lot of slings and arrows”. Dr. Habib, not surprisingly, instantaneously agreed.
36. In addition to the definitions of “hatred” and “contempt,” the CHRC, in its jurisprudence, has provided a list of “hallmarks of hate” that help to identify publications that promote hatred or contempt.

[Reference:](#) Warman v. Kouba, [2006] C.H.R.D. No. 50 (Warman)

37. The presence of these “hallmarks” increase the likelihood that the article expresses hatred. They hallmarks are as follows:

- (a) The targeted group is portrayed as a powerful menace that is taking control of major institutions:
 - (i) *The Muslim world has youth, numbers and global ambitions. The West is growing old and enfeebled and lacks the will to rebuff those who will supplant it.*
- (b) The targeted group is portrayed as preying upon children, the aged, and the vulnerable:
 - (i) *"There were some 40 passengers aboard. But the "youths" were youthful and the other passengers less so. Nonetheless, Mr. Demoor asked the lads to cut it out and so they turned on him, thumping and kicking him. Of those 40 other passengers, none intervened to help the man under attack. Instead, at the next stop, 30 of the 40 scrambled, leaving Mr. Demoor to be beaten to death. Three "youths" were arrested, and proved to be -- quelle surprise! -- of Moroccan origin*
- (c) The targeted group is portrayed as dangerous or violent by nature.
 - (i) *"...not all Muslims are terrorists -- though enough are hot for jihad to provide an impressive support network of mosques from Vienna to Stockholm to Toronto to Seattle. Of course, not all Muslims support terrorists -- though enough of them share their basic objectives"*
- (d) Muslims are dehumanized through comparisons to and associations with insects:
 - (i) *"Just look at the development within Europe, where the number of Muslims is expanding like mosquitoes. Every Western woman in the EU is producing an average of 1.4 children. Every Muslim woman in the same countries is producing 3.5 children"*

38. It is submitted that most, if not all of the article, can be fit into one or more of the categories mentioned above.

Conclusion: Article Expressing Hatred

39. It is submitted that in light of the vulnerability of the target group, the content of the Article and the tone, this is material which is no longer “merely alarmist” but one that expresses hatred and contempt against Muslims. The Article’s main message is understood as that the West ought to be concerned with respect to the growing number of Muslims in the West, as they represent what Dr. Rippen referred to as the “Other” engaged in an ongoing war against non-Muslims. This theme is coupled with the fear mongering tone that Mr. Steyn takes in the Article, and strong sarcasm towards any argument that the majority of Muslims may possess redeeming qualities and do not necessarily form a part of this “global conspiracy.” Not only does the Article portray that there are no redeeming qualities in Muslims, the Muslims are depicted as completely opposed to the redeeming qualities of the West (ie; the Muslims take advantage of the West’s tolerance).

2) IS IT LIKELY THAT THIS EXPRESSION WILL MAKE IT MORE LIKELY FOR OTHERS TO EXPRESS HATRED OR CONTEMPT AGAINST MUSLIMS?

40. The second prong of the test requires that the communication, assessed in its context, has the likely effect of making it more acceptable or legitimate for others to manifest hatred or contempt against the person or group concerned.

Reference: CJC at 140

41. This part of the analysis is focused on the effects of the publication in question.

Member Iyer explains:

“The expression of these hateful or contemptuous feelings can be legitimized, and the risk of exposure to such manifestations is thereby increased, by hateful or contemptuous communications which create an environment that suggests that the expression of such views is acceptable.”

If this happens, the risk of victimization of the vulnerable group - their experience of hatred and contempt - will increase. In my view, this is what s. 7(1)(b) seeks to prevent. To the extent that the expression in issue makes it more acceptable to express or manifest hateful or contemptuous beliefs against a person or group characterized by a listed ground, whether those beliefs are pre-existing or have been caused by the expression, it is "likely to expose" a person or group to hatred or contempt."

Reference: CJC, at 140

42. In making this determination, the case of *Canadian Jewish Congress v. North Shore Press*, supra, has indicated some factors to consider. These include the following:

- (a) vulnerability of the targeted group
- (b) the expressive context of the message, for example, whether it is part of a published debate in which alternate points of view are expressed
- (c) whether it is presented as opinion or fact
- (d) the context of the message, in particular, the degree to which it reinforces existing negative stereotypes of the group; and
- (e) the method of dissemination; for example, a more "mainstream" form of communication may tend to legitimize the expression or manifestation of hatred by others more than a marginal vehicle.'

Reference: CJC at 146

As the vulnerability of the group has already been discussed below, the following will be an analysis into other relevant factors.

Reinforcement of Negative Stereotypes

43. Dr. Hirji appeared as an expert in the area of racism and stereotyping in media, with the Muslim community being her speciality. In her testimony, Dr. Hirji noted that racism does exist in media and that there is a significant body of literature exploring this phenomenon.

44. Dr. Hirji identified Islamophobia in media as a specific targeting of Muslims and Islam, normally associated with generating fear and increasing stereotypes about Islam through associations with terrorism and violence for instance.
45. She noted that Islamophobia in the media manifests itself in a number of ways. She believes that in general, journalists fall back and rely upon popular symbols or “shorthand” images of Islam that consumers will readily recognize and understand. Often these “shorthands” are racist, thus creating a recurrent pattern of stereotypes. She identified many of the following stereotypes as being present in the Article, which are numbered below:

(a) Islam as a whole represented as a threat to Western Society:

Dr. Hirji notes that the Article depicts Islam in its entirety as posing a threat to Western society, based on its use of the word “Islam” in a number of areas as opposed to the use of words such as “Islamic Extremism” , clearly implying the involvement of the entire religion.

Islam, however, has serious global ambitions, and it forms the primal, core identity of most of its adherents -- in the Middle East, South Asia and elsewhere.

Islam has youth and will, Europe has age and welfare.

Wherever one's sympathies lie on Islam's multiple battle fronts the fact is the jihad has held out a long time against very tough enemies. If you're not shy about taking on the Israelis and Russians, why wouldn't you fancy your chances against the Belgians and Spaniards?

(b) Muslims as an internal threat and enemy:

Dr. Hirji notes that the Article in many areas represents Muslims, particularly Western Muslims, as an internal threat to Western societies.

The Western Muslim's pan-Islamic identity is merely the first great cause in a world where globalized pathologies are taking the place of old-school nationalism

The threat from Muslims is presented as being indigenous and therefore more urgent than before:

The difference between the old Indian territory and the new is this: no one had to worry about the Sioux riding down Fifth Avenue. Today, with a few hundred bucks on his ATM card, the fellow from the badlands can be in the heart of the metropolis within hours.

...

The basic demography explains, for example, the critical difference between the "war on terror" for Americans and Europeans: in the U.S., the war is something to be fought in the treacherous sands of the Sunni Triangle and the caves of the Hindu Kush; you go to faraway places and kill foreigners. But, in Europe, it's a civil war.

Young Muslims are depicted as being a particular threat, who are taking over western societies:

On the Continent and elsewhere in the West, native populations are aging and fading and being supplanted remorselessly by a young Muslim demographic.

(c) Depiction of Muslims as terrorists or being associated with Terrorism, that in turn poses an urgent threat to society

Dr. Hirji testified that Muslims are depicted as terrorists or being associated with terrorism in the Article; and that mosques are associated with terrorism:

Time for the obligatory "of courses": of course, not all Muslims are terrorists -- though enough are hot for jihad to provide an impressive support network of mosques from Vienna to Stockholm to Toronto to Seattle.

Even where a Muslim is not a terrorist, it is possible that he or she shares their goals:

Of course, not all Muslims support terrorists -- though enough of them share their basic objectives (the wish to live under Islamic law in Europe and North America)

(d) Distortion and Misuse of the concept of Jihad and associated negative connotations:

Dr. Hirji observed that it is well established that the word jihad has many different meanings. However, it has commonly come to be used as a shorthand for expressing an Islam-driven war that terrorists feel compelled to carry out. This tendency is manifested in a number of areas in the article:

Over on the other side of the equation, the modern multicultural state is too watery a concept to bind huge numbers of immigrants to the land of their nominal citizenship. So they look elsewhere and find the jihad.

(e) Islam as an oppressor of women and children

Dr. Hirji noted that the representation of Islam as an oppressor of women and children is a common stereotype. She noted that the Black burqa in which the figures on the Cover are clad is commonly used to depict Muslims as threatening and foreign.

(f) Muslims and Islam as antiquated / attacking modernity:

Dr. Hirji noted that Muslims and Islam are often represented as spelling the end of modernity and civilization itself. She noted that this theme has been documented as a

classic oriental stereotype of Islam, and is manifested in the Article when it asserts that “the larger forces at play in the developed world that have left Europe too enfeebled to resist its remorseless transformation into Eurabia”: Europe is depicted as being under siege from foreigners – Muslims who will bring the end of civilization.

Article’s Attempt to Appear as Neutral / Objective Fact :

46. The content of the Article is not a mere factual news report. It has been editorialized and sensationalized. The difference between news reports and editorial opinion is important to a determination under section 7(1)(b), pursuant to the case law, since although section 7 would not likely effect simple reporting on the news, it would preclude “reporting which exploits and sensationalizes hateful or contemptuous views without regard for the impact, not only of what is reported but also of the report itself, on vulnerable groups.”

Reference: CJC para 236

47. This Article tries to couch its expression of hatred of the Muslim population and sensationalism in the use of anecdotal "true stories," news reports, pictures and references from purportedly reputable sources, to make negative generalizations about the targeted group. The danger of this tactic has been identified in the case-law:

Messages that make use of allegedly true stories, news reports, pictures and references to apparently reputable sources in an attempt to lend an air of objectivity and truthfulness to negative characterizations of the targeted group are likely to expose members of the targeted group to hatred and contempt. They encourage

readers to accept, without question, gross generalizations and stereotypes about the targeted group.

Reference: Warman at 30.

48. For example, the Article provides an abundance of factual statistics for its assertion that the Muslim population is growing, creating a sense of intellectual commentary, but then jumps from these statistical facts to negative assertions about the characteristics of the Muslim population for which no proof is offered:

“Islam, however has serious global ambitions”

“The modern multi-culturalist state is too watery a concept to bind huge numbers of immigrants to the land of their nominal citizen. So they [Muslim immigrants] look elsewhere and find the jihad”

“enough [Muslims] are hot for jihad to provide an impressive support network of mosques from Vienna to Stockholm to Toronto to Seattle.”

Reference: The Future Belongs to Islam, Exhibit 9

49. As described by various witness testimony, the Article also attempts to prop up fringe elements of the Muslim society to a level of mainstream importance, in order to provide an air of objectivity or legitimacy to the views of the author. In the Article, for example, the quote of an obscure Norwegian Imam is used to support the author’s own view that Muslims are multiplying far too quickly in Europe.
50. This radical Imam is presented as a representative figure in the European Muslim community and his views are used to attribute to the entire European Muslim community an agenda of expanding “like mosquitoes” in order to takeover Western society and change its way of life. Similarly, an alleged quote of Libyan dictator Colonel Gadhaffi, is used to attribute to the entire European Muslim community an agenda to turn Europe into a Muslim continent.

51. The Article also offers anecdotal evidence, to lend an air of objectivity to the assertions that are implied in the stories, without providing the contextual details or background that might lessen the impact or weaken the inferences that are sought to be drawn. This is a tactic that the case law has identified will likely expose the targeted group to hatred or contempt, as the reader will be more likely to believe the legitimacy of the hate.

Reference: Taylor at 75

Reference: Warman at 46

52. Dr. Rippen testified as to a number of the incomplete or factually misleading anecdotes that the Article employed to create a false sense of fear. For example, the following “fact” is stated to lend proof to the idea that Muslims are drastically changing the West: *“The Church of England is considering removing St. George as the country’s patron saint on the grounds that, according to various Anglican clergy, he’s too “militaristic” and “offensive to Muslims.”*

53. Dr. Rippen testified that the anecdotal evidence ignores that the change was put forward by a Bishop in England, implying that it was in fact the Muslims that demanded and caused the Church of England to take this position, thereby causing hard feelings between Muslims and Christians. Mr. Steyn also conveniently neglected to mention that St. George is a well known character in the historically horrific Crusades.

54. Similarly, Dr. Rippen testified as to the misleading nature of the “fact” in the Article that “Muslims are demanding” that all teachers, “infidels” or otherwise, wear hijab. The way that the fact is provided does not provide the full context of the incident in

question, where in fact, it was only three Muslim individuals wrote a letter to this effect.

55. It is submitted that the Article uses the above-mentioned news stories and references to prominent figures in order to lend an “air of objectivity” to the author’s assertions contained within the Article. By doing so, the readers are more likely to believe these characterizations of the Muslim community as legitimate, which in turn makes the readers more likely to expose the targeted group to further hatred and contempt.
56. It is also important to note that each “true story” takes place in a continent that is not the home of the Article’s intended readership. Meanwhile, the Article makes use of these “true stories” for the purpose of defaming the Muslim community in its own jurisdiction, in this case Canada.

Expressive Content of the Article

57. The hatefulness of the Article is not mitigated because it is part of a published debate, as was the case in *Strikes With A Gun v Patel*, where a director of a documentary caused a very prejudicial audio recording by an anonymous party to be repeated, so that there could be a discussion of its racism and sexism against women from the Peigan Indian tribe. This Article was a stand-alone article, without counter response. In fact, according to Khurram Awan’s testimony, the Respondents actively resisted the suggestion that a counter view be published to the Article, so as to mitigate its harmful effects on the Muslim community by exposing Maclean’s readership to another perspective on the issue of Muslims and

their relationship to the West. Had such a counter article been published, readers would have been alerted to the facts that the allegations and messages contained within the Article were being contested, and thus deserving of critical analysis. To date, it is uncontradicted testimony at this hearing that Maclean's refused to publish any meaningful counter view and would rather "go bankrupt" than to do so. No evidence at any time was called by the Respondents and although it is their choice not to do so, they bear the devastating consequences of uncontradicted evidence from both lay witnesses and expert evidence.

Reference: *Strikes With A Gun v Patel*, at 6

58. This is not a situation where the hatefulness of the Article is mitigated by the fact that letters to the editor were published.
59. In fact an examination of these letters vindicates the Complainant's concerns that the article represents Muslims as a threat to society:
 - (a) The first letter advocates for a ban on Muslims immigrating to Canada: "[i]n Canada, we have been allowing far too many Muslims to immigrate much too quickly and that needs to be addressed before we become a mess like England, France, Spain, and other European countries".
 - (b) The third letter-writer is concerned that Muslims are about to takeover Europe, and convert it into a Muslim society, in which oppressive Shariah law will be imposed: "[Steyn] presents a good case for the danger of Muslims taking over Europe because of demography. A society based on Christian and democratic-secular values could then be a totally different

society based on different Muslim values, including cutting off hands and feet and other niceties of sharia law.”

Neither has the writer missed the solution the Maclean’s article seems to be advocating: “He makes it sound as if there should be a moratorium on accepting any more Muslims into Europe.”

- (c) The sixth letter indicates that the Steyn article has negatively affected the view of Muslims, even in other minority communities, as an Aboriginal Canadian expresses concern about having to resist Muslims in the future: “Extremist Islam taken that to a different level and I’ll tell you something else: ”
- (d) Pamela Coray of London Ontario is glad that she will not be alive when the Muslim takeover occurs: “Thank Mark Steyn for the heads up. Fortunately, I will be dead and buried.”
- (e) Colin Wills of Collingwood, Ontario, will be forwarding Mr. Steyn’s longer novel, *America Alone*, to all his friends so that they are also aware of the problem: “I read *America Alone* and am lending it to my friends and preaching from its pages to anyone who will listen.”
- (f) Nicole Crawford of Toronto, Ontario believes that employers need to promote greater work-life balance so that the non-Muslim birth rate can keep up with the Muslim birth rate: “The majority of Islamic women don’t work and have no rights; they are expected to procreate and raise children... If there was more effort from companies in truly promoting work-life balance, perhaps then we’d begin to see an increase in the birth rate.”

(g) A total of ten letters condemned the contents of the article, seven of these letters were made redundant by Maclean's editors pre-qualifying the letters to indicate that they were the result of a public media release by the Canadian Council on American Islamic Relation condemning Maclean's and calling on Canadians to write to Maclean's editors. Only three letters can be genuinely considered to be condemning hate.

(h) On the whole, the letters vindicate the complainants' position regarding the content of the Article and its messages: Muslims are multiplying far too quickly in Western society and among other measures a cap on their immigration to the West is required.

60. Further more, it must be remembered that in the case of *Canadian Jewish Congress v North Shore News*, supra, it was decided that:

"Letters to the editor are not a substitute for s. 7(1)(b) of the Code. Counter speech is an important and appropriate response to all kinds of offensive expression, but it does not provide a remedy for the harm to target group members of an increased risk of exposure to hate. It is not in any way a substitute for legislative restriction of hate speech."

Reference: CJC at 225

61. In the same case, the fact that the prominence and space given to a letter to the columnist's opinion does not outweigh a regular columnist's opinion was recognized.

Reference: CJC at 225

Dissemination by Maclean's:

62. The Article in question was published in Maclean's magazine, by all accounts a well recognized mainstream publication. The following commentary is taken from their online website: Maclean's is Canada's only national weekly current affairs magazine. Maclean's enlightens, engages and entertains 2.8 million readers with strong investigative reporting and exclusive stories from leading journalists in the fields of international affairs, social issues, national politics, business and culture. Mark Steyn, the author of the Article, is a weekly columnist for Maclean's and is described by Maclean's as one of "the world's best writers" in their advertisement. Credibility of a magazine and its author make it more likely that a hateful message will be legitimized, exposing a vulnerable group to hatred and contempt.

Reference: CJC at 268

63. In *Canadian Jewish Congress v North Shore Free Press*, supra, Member Iyer noted several important features of the media, including how powerful it is in shaping public views. It was noted that the media had been used in the past to frame negative thinking about ethnic minorities such as the Chinese, Japanese and Jews, which led to systemic institutional discrimination.

Reference: CJC at 53

64. It was also noted how reporters and the media have an "enormous amount of control over very influential forums for the dissemination of expression" and how the ability to influence the public through the media is not equally shared by all members of the society. Dr. Habib himself testified that he was worried that the contents of the Article were being viewed by "millions".

Reference: CJC at 236

65. It was further noted that columnists, such as the author of the Article in question, in particular have far greater access to the forum of influence provided by the media than do ordinary members of the public and even reporters, and how the primary means of the ordinary citizen to access the media remains a letter to the editor, which provides little space and prominence as compared to an editor or regular columnist.

Reference: CJC at 106

66. Given the power of media, Member Iyer refused to exempt the press either explicitly or implicitly from the ambit of section 7(1)(b), noting that to do so would presume that the media and reporting was always neutral and never hateful or contemptuous.

Reference: CJC at 236

67. In *Abrams v North Shore Free Press*, supra, expert evidence was tendered and accepted with respect to the role of print media in today's society, as a "major transmitter of society's cultural standards, myths, values, roles and images" since "it may be used to reinforce or and reproduce racism through negative stereotyping, ethnocentric judgments, marginalization of minority groups and the radicalization of issues such as crime and immigration. As one of the most influential institutions in society, the media molds the opinion of large segments of the population and help create the public agenda and public discourse." Member Patch concluded that publication of negative stereotypes in a "credible newspaper"

increase the likelihood that others would manifest the hateful and contemptuous views in a more directly harmful manner.

Reference: Abram, at 79 and 85

68. In *Re: Cane*, Rooke J. of the Alberta Queen's Bench was asked to consider a complaint against a media organization under the near identical Alberta provision that forbids "publications" which "are likely to expose a person to hatred or contempt" on the basis of an enumerated ground. The Calgary Herald argued, as an intervenor, among other things, that the section could not be interpreted as against "mainstream" media outlets. In considering this argument, Rooke J. noted that while free press was important to a democratic society, the freedom must be exercised responsibly, especially "in light of the enormous influence that the media enjoys". Excluding the media would "be tantamount to presuming that the media is always neutral in its reporting", an assumption that Rooke J. was unable to make, especially since the media has, in the past, played a role in reinforcing attitudes of discrimination. Essentially, it was determined that the media must remain responsible for how they report what may be sensitive subject matter. It was further noted that "the impact of such irresponsible reporting is arguably more damaging when it is distributed by mainstream media as it may serve to bolster the credibility of the statement and widen its circulation."

Re: Kane, at 93, 94 and 95

69. The media has been linked to the increase in Islamophobia. In January 2003 the United Nations Special Rapporteur on contemporary forms of racism, racial

discrimination, xenophobia and related intolerance, published a report entitled “Situation of Muslim and Arab peoples in various parts of the world in the aftermath of the events of 11 September 2001”, pursuant to the UN Commission on Human Rights. A copy of the report is enclosed and the Tribunal’s attention is directed to the section titled: “Promotion of Intolerance by the Media and Intellectuals.”

Reference: UN Report exhibit 19

70. The report notes that the way in which news providers treated the events of 9/11 had a significant negative effect on the image of Arabs and Muslims. Parts of the media were found to have played considerably on “the supposed feelings of the general public, reawakening old fears based either on ignorance or on a repressed crusading mentality that still persists, or quite simply on anxieties about life in general.” North American media was found to persistently confuse “Arab” with “Muslim” and make “outrageous categorizations and generalizations while neglecting differences” with respect to Muslims. At the same time, the report found that errors made by the media in the days following the [9/11] attacks made it more difficult for people in the West to make a distinction between Islam and terrorism. Citing a specific example of this contention, the report noted that some television stations broadcast non-stop pictures of demonstrations of joy of small Palestinian crowds after the 9/11 attacks. The pictures gave the general public in the West the impression that crowds of Arabs and Muslims all over the world welcomed the terrorist attacks and consequently that Islam encouraged terrorism. In fact, the demonstration filmed in Gaza consisted only of small crowds of youths and was an isolated incident in the Palestinian territories. In general, the report found that the

coverage of events by the media after the 9/11 attacks contributed to a sharp increase in Islamophobia or its acceptance as normal in the West, “not only among the common people, but also, and more openly, among certain elites, who at times seemed to adopt it as an ideological or even esthetic position.”

Reference: UN Report Exhibit 19

Evidence of Actual Hate

71. Evidence of actual hatred against a Complainant is unnecessary to find in favour of a Complainant under section 7(1)(b). The above analysis is undertaken to identify whether the publication in question is likely to result in the increased expression of hatred or contempt against the group that the publication targets. In the case of the Article that is the subject matter of this Complaint, real evidence of the increase in the expression of hatred against Muslims.
72. Most conspicuous among this evidence was a “blog” discussion published by the Western Standard, an Alberta-based publication. Directly related to the Article, this blog called for the mass killings, deportation, and conversion of Muslim Canadians. The comments included the following:

Muslims scare me. They threaten to kill me or my relatives if I dare say Mohamad was an evil and wicked man; or if I drew his likeness on a doll's head; or if I dropped the Koran thing in the mud; or if I am a Christian; or if am a Jew. Hmmm....

It makes me think that Ann Coulter was right - Muslims have to be converted to Christianity or killed if we are to survive.

It's extreme to defend oneself by avowed killers who seek your destruction? You probably want to negotiate your existence. These killers will only negotiate if you are to die this week or next week - unless you are willing to convert to their cult, of course. Until you Leftoids recognize who the enemy is and their ultimate goal, you will sleepwalk through what's left of your life.

The Koran calls for never ending jihad and the killing of infidels. When Islam chooses to undergo a Reformation, setting aside these precepts of their "religion", I would be open to accepting them into our country.

There is no such thing as INNOCENT muslims. They are all islamic-facists whether they know it or not. They must all be KILLED. ALL OF THEM.

<http://boycottmuslims.com/>

"They must all be KILLED. ALL OF THEM." I'd start with deportation from Western countries. If they don't behave back there - and threaten us with missiles and nuclear weapons - then I'd be in favour of their eradication.

"The number of Muslims is expanding like mosquitoes." . . . and what do we do with disease-laden mosquitoes?

Reference: Western Standards Blogs Exhibit 20

73. The Tribunal's attention is directed to the fact that the last comment in particular, contains a direct extract from the Article in referring to Muslims as "mosquitoes".

Reference: Western Standards Blogs Exhibit 20

74. The following remarks were found on an online site called Catholic Answers Forums the same day as the publication of the Article and immediately following the discussion of it in Maclean's.

Lance: The gates of hell will not prevail against God's Church! Neither will Islam.

Rascal One: ... And another: "So we have a global terrorist movement insulated within a global political project insulated within a severely self-segregating religion whose adherents are the fastest-growing demographic in the developed world. The jihad thus has a very potent brand inside a highly dispersed and very decentralized network much more efficient than anything the CIA can muster."

Melanie01: Over my dead Catholic body! Did it truly occur to you without irony that that might be the price required?

RPP: Islam is not a centralized religion. The Coptic, Chaldean and the Maronite, churches survived in tiny numbers because a few individuals were able to afford the heavy "infidel tax" and a couple of individual sheiks thought they could get more out of them as tax payers than dead. Part of the tax included "payment" of the eldest son. This son was taken from the family, raised as a moslem and sold

into slavery. This is an important part of "dhimmitude". This is something every generation had to do until early in the 20th century.

Do not forget that since it is permissible in the Moslem religion to commit an evil act if it has a good intention, they have never hesitated to lie about history. Or to kill an infidel. Or kill someone who has converted to Christianity. Look at what the people wanted to do to that poor man a months ago in Afghanistan. Each year a dozen or more people are eceuted in Irna for the capital offence of converting to Christianity. Is that the religion of peace, love and tolerance you are talking about?

We must stop lying to ourselves about Islam. From the point of view of Islam, we are most definitely their enemy. "Convert or die" has been their call for 1600 years. It is still their call

Reference: Catholic Answers Blog Exhibit 21

75. An article titled, "Why the Future May Not Belong to Islam" was published on November 21st 2006, purporting to review Mark Steyn's Article. The Article is used as proof to demonstrate why the immigration of Muslims into the West should be halted all together. The following are extracts:

It is stupidity to waste hundreds of billions of dollars on Muslims while Islamization continues apace in the West.

Islamic countries are parasitical. Even the massive population growth is only an advantage as long as Muslims are allowed to export it to infidel lands.

The best way to deal with the Islamic world is to have as little to do with it as possible. We should completely stop Muslim immigration. This could be done in indirect ways, such as banning immigration from nations known to be engaged in terrorism. All Muslim non-citizens in the West should be removed. We should also change our laws to ensure that Muslim citizens who advocate sharia, preach Jihad, the inequality of "infidels" etc should have their citizenship revoked and be deported back to their country of origin.

76. The following remarks were found on an online site called The freerepublic.com:

To: kiriath_jeirim
All your 7th century belong to us.

posted on Sunday, October 29, 2006 4:59:46 PM by MrBambaLaMamba ([Buy 'Allah' brand urinal cakes - If you can't kill the enemy at least you can piss on their god](#))

[[Post Reply](#) | [Private Reply](#) | [To 1](#) | [View Replies](#)]

To: ChurtleDawg

"where the number of Muslims is expanding like mosquitoes."

What is the muslim eradicating DDT equivalent?

posted on Sunday, October 29, 2006 5:23:17 PM by kalee

[[Post Reply](#) | [Private Reply](#) | [To 2](#) | [View Replies](#)]

Hell, they got their place. We have our place. But they are here to turn our place into their place.

Ain't gonna happen.

posted on Sunday, October 29, 2006 5:54:56 PM by djf (I'm not ISLAMOPHOBIC, just BOMBOPHOBIC!! Whether that's the same is up to Islam!!!)

[[Post Reply](#) | [Private Reply](#) | [To 35](#) | [View Replies](#)]

To: kalee

Well aimed, precisely delivered neutron bombs. Several dozen of them. Let the world howl. Get rid of the population, keep the oil production systems in place...throughout the middle east. At some point, it may very well be them or us.

I prefer the idea of instigating a genocidal war between them, that is the Sunnis and the Shiites, so they mutually destruct, in total. But they'd need atomic weapons to do that, oh wait, they're working on that. Never mind.

posted on Sunday, October 29, 2006 5:58:16 PM by john drake (Roman military maxim; "oderint dum metuant," i.e., "let them hate, as long as they fear.")

[[Post Reply](#) | [Private Reply](#) | [To 25](#) | [View Replies](#)]

To: jocon307

BUMP! I still think this problem can be turned around, but only by Westerners having more children.

Another solution would be to conduct a great missionary effort to convert Muslims to Christianity.

Before that could happen, the West would have to experience a re-awakening of religious faith. And that would naturally make your solution easier.

posted on Sunday, October 29, 2006 5:59:30 PM by Logophile

Reference: Free Republic Blog Exhibit 31

77. Dr. Habib provided direct evidence as to the effect that these blogs had on his life – he was shocked and appalled and believed that they humiliated him and subjected him and his family to threat of physical violence.
78. In the infamous words of Martin Luther King Junior, who fought against hatred his entire life,

It may be true that the law cannot make a man love me”..... but, “Like an unchecked cancer, hate corrodes the personality and eats away its vital unity. Hate destroys a man's sense of values and his objectivity. It causes him to describe the beautiful as ugly and the ugly as beautiful, and to confuse the true with the false and the false with the true.

- 78,. The Complainants seek, under s. 37(1)(2)(b) of the British Columbia Human Rights Code, a declaration that the publication of the Article exposed the Muslim residents of British Columbia and Dr. Naiyer Habib to hatred and contempt on the basis of their religion.
79. The Complainants seek, under s. 37(1)(2)(c)(i) of the British Columbia Human Rights Code an order directing Roger’s Publishing Inc. to publish a counterview article to the article “The Future Belongs to Islam”, or in the alternative, that Maclean’s publish a summary of the Tribunal’s judgment in this matter.

