Federal Court of Appeal  Cour d'appel fédérale

Date: 20140909

Docket: A-493-12

Citation: 2014 FCA 192

CORAM: **DAWSON J.A.**
TRUDEL J.A.
WEBB J.A.

BETWEEN:

TERRY TREMAINE

Appellant

and

CANADIAN HUMAN RIGHTS COMMISSION
AND RICHARD WARMAN

Respondents

Heard at Regina, Saskatchewan, on May 28, 2014.

Judgment delivered at Ottawa, Ontario, on September 9, 2014.

REASONS FOR JUDGMENT BY: TRUDEL J.A.

CONCURRED IN BY: DAWSON J.A.
WEBB J.A.

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REASONS FOR JUDGMENT

TRUDEL J.A.

I. Introduction

[1] Mr. Terry Tremaine is appealing an order dated November 7, 2012, in which a Judge of the Federal Court (the Judge) sentenced him for being in contempt of court (2012 FC 1296, [2012] F.C.J. No. 1402) (Reasons).

[2] Mr. Tremaine argues that the Judge imposed an unfit sentence as he failed to consider and apply legal principles relating to sentencing and overlooked relevant mitigating factors. The appellant specifically asks that the 30-day prison sentence be set aside. He also requests that portions of the prohibited material (either posted on his website or posted by him on a third-party website) ordered removed that consist of publicly available books or pamphlets be severed from the order and thus be permitted to remain online (appellant's memorandum of fact and law at paragraph 69).

[3] For the reasons that follow, I am not persuaded that the Judge imposed an unfit sentence or that our Court ought to intervene to vary the Judge's order. I therefore propose to dismiss the appeal.

II. Background and Procedural History

[4] The history of this file dates back to 2004, when Mr. Richard Warman filed a complaint with the Canadian Human Rights Commission, alleging that Mr. Tremaine had violated section 13 of the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6 (the Act) by posting material on the Internet that constituted discrimination on the grounds of religion, national or ethnic origin, race or colour. Following an investigation, the Commission referred the complaint to the Canadian Human Rights Tribunal (Tribunal).

[5] In a decision dated February 2, 2007, the Tribunal concluded that the complaint was substantiated, as the messages posted by Mr. Tremaine were "likely to expose persons of the Jewish faith, Blacks or other non-white minorities to hatred or contempt" (2007 CHRT 2 at

paragraph 140). The Tribunal ordered Mr. Tremaine to cease and desist communicating the material that was found to violate section 13 of the Act, or any material of a similar nature, and ordered Mr. Tremaine to pay a penalty of $4,000. For the purpose of enforcement, the Tribunal's order was made an order of the Federal Court on February 13, 2007, pursuant to section 57 of the Act (appeal book originally filed in A-468-10, volume 4 at page 924).

[6] In September 2008, Mr. Tremaine applied for judicial review of the Tribunal's decision, which was denied (2008 FC 1032, [2008] F.C.J. No. 1265). He did not appeal this decision.

[7] Mr. Tremaine failed to remove from the Internet all of the messages that the Tribunal had found violated section 13 of the Act and continued to post additional material of a similar nature.

[8] As a result, in March 2009, the Commission moved for a show cause order pursuant to rule 467 of the *Federal Court Rules* (SOR/98-106), to require Mr. Tremaine to appear and answer allegations of contempt of court. On June 22, 2010, the Federal Court issued this order, as it was satisfied that there was "a *prima facie* case that contempt has been committed" (2010 FC 680, [2010] F.C.J. No. 1002 at paragraph 4).

[9] Nonetheless, in a decision dated November 29, 2010, the Federal Court held that Mr. Tremaine was not in contempt of court (2010 FC 1198, [2010] F.C.J. No. 1376). The Judge reasoned that Mr. Tremaine could not be held in contempt for the breach of an order of the Federal Court because the Commission had neglected to notify Mr. Tremaine that it had registered the Tribunal's order with the Federal Court. Thus, according to the Judge, Mr.

Tremaine could not be held in contempt of court for anything done prior to March 2009, because while he had knowledge of the Tribunal's order, the Tribunal's order alone could not give rise to a finding of contempt.

[10] On appeal, our Court reversed this decision. The majority held that knowledge of the Tribunal order, in itself, was sufficient to give rise to a finding of contempt. It thus found Mr. Tremaine in contempt and remitted the matter back to the Judge for sentencing (2011 FCA 297, [2013] 3 F.C.R. 109, leave to appeal to S.C.C. refused, 34542 (April 26, 2012)).

III. Federal Court Decisions

A. *2012 Sentencing Order*

[11] On November 7, 2012, the Judge issued an order sentencing Mr. Tremaine for being in contempt. The Judge explained that the materials that formed the basis of the show cause order and the finding of contempt were still on the Internet at the time of the date of the sentencing hearing on October 9 and 10, 2012. These materials were found on Stormfront.org, an American website over which Mr. Tremaine does not have control, and the National Socialist Party of Canada website, for which Mr. Tremaine is the webmaster.

[12] The Judge rejected Mr. Tremaine's attempts to explain why the material had remained online, as he found these explanations to be without merit. He also noted that on the morning of the sentencing hearing, Mr. Tremaine had attempted to sell his website to a potential expert witness called by him to advise the Court with respect to voice transmissions over the Internet

(Reasons at paragraphs 10, 19). The Judge found it "obvious that Mr. Tremaine was attempting to put his website out of [the Federal] Court's reach" (*ibidem* at paragraph 20). The Judge held that Mr. Tremaine had "clearly intended to flout the law, to demean the Tribunal and this Court, and has not apologized" (*ibidem* at paragraph 30). Thus the Judge proceeded to set out Mr. Tremaine's penalty for being in contempt.

[13] Rule 472 of the *Federal Court Rules* reads:

472. Where a person is found to be in contempt, a judge may order that	**472.** Lorsqu'une personne est reconnue coupable d'outrage au tribunal, le juge peut ordonner:
(*a*) the person be imprisoned for a period of less than five years or until the person complies with the order;	*a*) qu'elle soit incarcérée pour une période de moins de cinq ans ou jusqu'à ce qu'elle se conforme à l'ordonnance;
(*b*) the person be imprisoned for a period of less than five years if the person fails to comply with the order;	*b*) qu'elle soit incarcérée pour une période de moins de cinq ans si elle ne se conforme pas à l'ordonnance;
(*c*) the person pay a fine;	*c*) qu'elle paie une amende;
(*d*) the person do or refrain from doing any act;	*d*) qu'elle accomplisse un acte ou s'abstienne de l'accomplir;
(*e*) in respect of a person referred to in rule 429, the person's property be sequestered; and	*e*) que les biens de la personne soient mis sous séquestre, dans le cas visé à la règle 429;
(*f*) the person pay costs.	*f*) qu'elle soit condamnée aux dépens.

[14] The Judge ordered that Mr. Tremaine or his counsel approach Stormfront.org to request that "his postings thereon, as identified by the Tribunal in its decision, as well as those exhibited to the affidavits of Mr. Warman dated February 12, 2009 and March 19, 2010 be removed, as well as his posting of 22 July 2009 at 11:20 pm … a vicious untrue diatribe about [the Federal Court Judge who had denied the 2008 application for judicial review]" (*ibidem* at paragraph 32). He also ordered that "the material identified by the Tribunal and in Mr. Warman's affidavit, which are to be found on the National Socialist Party of Canada website be removed" (*ibidem* at paragraph 33) and that Mr. Tremaine "shall provide evidence that he has complied with this order within 15 days of service upon him" (*ibidem* at paragraph 34).

[15] The Judge sentenced Mr. Tremaine to 30 days imprisonment beginning 15 days after the Commission serves the order upon him, but also imposed a conditional sentence of imprisonment, if he does not obey the order, of "six months, or until he complies with the order, whichever is less" (*ibidem* at paragraph 36).

[16] The Judge also ordered Mr. Tremaine or any individuals acting in concert with him, to cease communicating material of the type, or substantially similar material as that found by the Tribunal to contravene section 13(1) of the Act (*ibidem* at paragraph 37).

[17] Mr. Tremaine subsequently appealed this decision to our Court in November 2012. In case the Judge issued a warrant of committal within the period provided for in his Reasons, Mr. Tremaine also obtained a stay from our Court preventing the execution of such warrant pending the final disposition of the appeal (appeal book at pages 365-367).

B. *2013 Warrant of Committal Order*

[18] On February 22, 2013, the Judge issued a further order stating that should Mr. Tremaine's appeal be dismissed by our Court, the Federal Court will issue a warrant of committal in the form appended to his reasons, ordering police officers in Saskatchewan to arrest Mr. Tremaine and deliver him to a provincial correctional institution where he would be detained for 30 days. This order also indicated that Mr. Tremaine had "provided evidence that he had complied with the said order so that the only part thereof still operative is his imprisonment for a period of thirty (30) days, subject to the outcome of his appeal before the Federal Court of Appeal" (*ibidem* at page 389; see also the letter of counsel for Mr. Tremaine to the Federal Court at pages 370-371).

IV. Analysis

A. *Principles of Sentencing and Standard of Review*

[19] In cases of civil contempt the usual principles of sentencing developed in relation to criminal contempt apply (*Canada (Canadian Human Rights Commission) v. Canadian Liberty Net*, [1996] 1 F.C. 787, [1996] F.C.J. No. 100 at page 801 (C.A.) [*Liberty Net*]; *9038-3746 Quebec Inc. v. Microsoft Corporation*, 2010 FCA 151, [2010] F.C.J. No. 758 at paragraph 5). Thus our Court may consider both criminal and civil law jurisprudence in determining the appropriate standard of appellate review and the factors that the Judge ought to have considered in sentencing Mr. Tremaine.

[20] Criminal law jurisprudence demonstrates that our Court owes considerable deference to the trial judge given the highly contextual nature of sentencing. In *R. v. M. (C.A.)*, [1996] 1 S.C.R. 500, [1996] S.C.J. No. 28, the Supreme Court of Canada clarified that "absent an error in principle, failure to consider a relevant factor, or an overemphasis of the appropriate factors, a court of appeal should only intervene to vary a sentence imposed at trial if the sentence is demonstrably unfit" (at paragraph 90). An appellate court therefore may not intervene simply because it would have ordered a different sentence, but rather may vary the sentence if it is convinced that it is "demonstrably unfit" or "clearly unreasonable" (*R. v. L.M.*, 2008 SCC 31, [2008] 2 S.C.R. 163 at paragraphs 14-15; *R. v. Shropshire*, [1995] 4 S.C.R. 227, [1995] S.C.J. No. 52 at paragraph 46).

[21] In order to determine what is a "fit" sentence in a particular case, the sentencing judge must consider the range of sentences for similar offences set out in prior jurisprudence and adjust the sentence depending on the objectives of sentencing and any aggravating and mitigating factors applicable to the case at hand (*R. v. Nasogaluak*, 2010 SCC 6, [2010] 1 S.C.R. 206 at paragraph 43; *Professional Institute of the Public Service of Canada v. Bremsak*, 2013 FCA 214, [2013] F.C.J. No. 1009 at paragraph 33 [*Bremsak*]).

[22] Courts also ought to consider the importance of specific and general deterrence for preserving public confidence in the administration of justice, while maintaining proportionality in sentencing (*Canada (Minister of National Revenue) v. Marshall*, 2006 FC 788, [2006] F.C.J. No. 1008 at paragraph 16 [*Marshall*]).

[23] Case law sets out a range of aggravating and mitigating factors that a judge may consider in imposing a fine and/or prison sentence for contempt. For instance, courts are instructed to consider the gravity of the contempt in the context of the case at hand, with regard to the administration of justice (see *Baxter Travenol Laboratories of Canada, Ltd. v. Cutter Canada, Ltd.*, [1987] 2 F.C. 557, [1987] F.C.J. No. 205 at page 562 (C.A.) [*Baxter*]; *Winnicki v. Canada (Human Rights Commission)*, 2007 FCA 52, [2007] F.C.J. No. 56 at paragraph 17 [*Winnicki*], citing with approval *Lyons Partnership, L.P. v. MacGregor*, 186 F.T.R. 241, [2000] F.C.J. No. 341). This includes both "the objective gravity of the contemptuous conduct [and] the subjective gravity of the conduct (*i.e.* whether the conduct was a technical breach or a flagrant act with full knowledge of its unlawfulness)" (see *Marshall* at paragraph 16; *Bremsak* at paragraph 35). Some jurisprudence has referred to the gravity of the offence as an "aggravating factor" (see *e.g. Marshall* at paragraph 16). However, in other cases courts have simply noted that the gravity of the offence must be considered, thus suggesting that if the gravity is on the lower end of the scale, this may also serve as a neutral or mitigating factor (see *e.g. Baxter* at page 562; *Canada (National Revenue) v. Ryder*, 2014 FC 519, [2014] F.C.J. No 561 at paragraph 8).

[24] Other mitigating factors to consider are whether this is a first offence (*e.g. Canada (Attorney General) v. De L'Isle*, [1994] F.C.J. No. 955, 56 C.P.R. (3d) 371 (C.A) at paragraph 10; *Winnicki* at paragraph 17) and whether the offender has apologized, accepted responsibility or made good faith attempts to comply (*Bremsak* at paragraph 35, citing with approval *Marshall* at paragraph 16).

[25] On the other hand, where the offender has repeatedly breached court orders or has refused to apologize or take steps to comply with the order, these may be considered aggravating factors (*ibidem* at paragraph 16).

[26] While these enumerated factors provide helpful guidance with regard to sentencing, they are not exhaustive. Rather, a judge has wide discretion to determine the appropriate sanction for civil contempt, based on the facts of the case before him (*Bremsak* at paragraph 36).

B. *Whether the Sentence is Unfit*

[27] The appellant argues that the Judge failed to adequately consider the aforementioned principles of sentencing, and, more specifically, ignored several mitigating factors in determining Mr. Tremaine's sentence. Thus, according to the appellant, the Judge imposed a sentence that is "manifestly harsh, excessive, and demonstrably unfit" in sentencing Mr. Tremaine to 30 days imprisonment and in requiring him to remove certain widely available materials or excerpts from books from the Internet.

[28] I agree with the appellant that the Judge could have provided a more thorough discussion of the principles of sentencing he applied when rendering the sentencing order. Although the Judge noted that Mr. Tremaine "clearly intended to flout the law, to demean the Tribunal and this Court, and has not apologized" (Reasons at paragraph 30) and that Mr. Tremaine "has done nothing to purge his contempt following the Court of Appeal's decision" (*ibidem* at paragraph 16), the Judge otherwise provided little explanation for the sentence he ordered. He did not point

to jurisprudence that establishes the range of sentences for similar offences. In addition, the terms "aggravating and mitigating factors" are completely absent from the sentencing order.

[29] However, after carefully considering the file before me in light of the aforementioned sentencing principles, I am unable to conclude that the 30-day sentence is unfit.

[30] Where Courts have been faced with similar factual scenarios to the case at hand, they have imposed a range of prison sentences for the parties found in contempt. For instance, in *Canada (Canadian Human Rights Commission) v. Taylor*, [1987] 3 F.C. 593, [1987] F.C.J. No. 347, (C.A.) aff'd [1990] 3 S.C.R. 892, [1990] S.C.J. No. 129 [*Taylor (SCC)*] an appeal was taken from a judgment of the Federal Court which found John Ross Taylor and The Western Guard Party in contempt of court and committed Mr. Taylor to prison for a term of one year;

[31] The Tribunal had ordered Mr. Taylor to cease and desist his practice of communicating anti-semitic messages over the telephone, as this was found to violate sections 3 and 13(1) of the *Canadian Human Rights* Act, S.C. 1976-1977, c. 33. Following various proceedings, Mr. Taylor served his sentence, with remission, between October 1981 and March 1982.

[32] In *Liberty Net*, Canadian Liberty Net and Mr. Tony McAleer failed to abide by an injunction order of the Federal Court to cease operating their "telephonic hate message system." The Federal Court found them in contempt of court and sentenced Mr. McAleer to two months in prison as well as a $2,500 fine, and sentenced Canadian Liberty Net to a $5,000 fine. On appeal, our Court reduced Mr. McAleer's prison sentence to the two days already served, as it found that

the interim injunction was invalid and thus this served as a strong mitigating factor that had not been considered by the Federal Court. Our Court also noted that the violation itself ceased very shortly after the contempt action was initiated. Importantly for our purposes, however, the Court noted that had the injunction been valid, the prison sentence of two months might have been appropriate (at paragraph 31).

[33] In turn, in *Canada (Human Rights Commission) v. Heritage Front*, [1994] F.C.J. No. 2010, 26 C.H.R.R. D/315 (F.C.T.D.) [*Heritage Front*], Mr. Wolfgang Droege, Mr. Gary Schipper and Mr. Kenneth Barker were found in contempt of court for breaching an injunction order to cease operating their "Equal Rights for Whites Hotline." In her sentencing reasons for order dated June 22, 1994, the Judge sentenced Mr. Droege to a period of 3 months imprisonment, Mr. Schipper to 2 months imprisonment, and Mr. Barker to 1 month, justifying these differences primarily on the basis of their involvement in Heritage Front. The Judge also noted that she considered as a mitigating factor that this was the first finding of contempt for all three respondents. She also gave consideration to the need for deterrence and to the fact that the parties had not demonstrated remorse (at paragraphs 7-9).

[34] Finally, in *Winnicki* the Federal Court had granted an interlocutory injunction which prohibited Mr. Winnicki from communicating through the Internet "messages that are likely to expose persons to hatred or contempt by reason of race, national or ethnic origin, colour or religion contrary to subsection 13(1) of the *Canadian Human Rights Act*" (*Winnicki* at paragraph 5). Mr. Winnicki continued to publish messages, was found in contempt of court and was sentenced to nine months imprisonment and ordered to pay the Human Rights Commission's

costs. On appeal, our Court reduced the sentence to the 83 days already served in jail; it found that because the appellant had failed to make submissions as to his sentence, the Judge, in turn, had failed to appreciate that the appellant was a first offender.

[35] Mr. Tremaine argues that the Judge erred in failing to consider and apply the principle of restraint – *i.e.* that "a sentencing court must consider all other sanctions that may be appropriate before considering imprisonment, especially in cases involving citizens with no prior criminal record" (appellant's memorandum of fact and law at paragraph 32) and that "if imprisonment must be imposed for an offence, the shortest amount of time possible in the circumstances should be given" (*ibidem* at paragraph 33). He maintains that the Judge overemphasized the need for deterrence and did not adequately consider that Mr. Tremaine is a first offender. He also suggests that the Judge imposed a sentence more appropriate for criminal contempt than for civil contempt and failed to consider the parity principle – *i.e.* whether the sentence is "consistent with sentences imposed on similar offenders in similar situations" (*ibidem* at paragraph 45).

[36] However, *Winnicki* and *Heritage Front*, demonstrate that a short prison sentence of 1 to 3 months may nonetheless be deemed appropriate for a first offender in very similar circumstances as the case at hand. This suggests that Mr. Tremaine's sentence of 30 days imprisonment is reasonable, even in light of the principle of restraint and the fact that this is Mr. Tremaine's first contempt offence. In turn, *Liberty Net* shows that a longer prison sentence might be deemed appropriate even in circumstances, unlike the case at hand, where the contemptuous conduct ceased shortly after the contempt action was initiated. This jurisprudence thus demonstrates that

not only is Mr. Tremaine's one-month prison sentence "fit" but it is also at the lower end of the spectrum of sentences imposed in similar cases.

[37] The appellant also argues that the Judge neglected to consider other relevant mitigating factors. Mr. Tremaine asserts that the Judge ought to have considered that he has already served 22 days in prison for a similar offence and that he was fired from his job and suffered from depression. The appellant also notes that in issuing his sentencing order, the Judge ought to have thought about the value of freedom of expression as set out in section 2(*b*) of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 [Charter] and reduced Mr. Tremaine's sentence because Parliament recently repealed section 13 of the Act. I am of the opinion, however, that none of these factors serve to mitigate Mr. Tremaine's sentence.

[38] With regard to the 22-day prison sentence, the time served was for a breach of bail conditions in relation to criminal charges pursuant to section 319 of the *Criminal Code*, R.S.C. 1985, c. C-46 for postings that were either the same or similar to the messages that form the basis of the contempt order in this case (Transcripts of the November 9, 2010 hearing, volume 2 at page 461). However, in the present case we are dealing with a sentence imposed in relation to a contempt order – not criminal charges. I therefore see no reason why Mr. Tremaine's prior time served in Saskatchewan ought to reduce the sentence imposed in this case. In fact, to do so would be inconsistent with recognizing Mr. Tremaine as a first offender with regard to the contempt charges. Mr. Tremaine cannot argue that he is a first offender and that he has already served a sentence for the same offence.

[39] I also find that Mr. Tremaine's loss of employment and subsequent depression in no way excuse his decision to continue communicating discriminatory messages after being enjoined by the Tribunal to stop. Mr. Tremaine elected to communicate hateful messages and his employer decided to fire him on account of this voluntary behaviour.

[40] Parliament's decision to repeal section 13 of the Act also does not justify Mr. Tremaine's decision not to remove his Internet postings. Section 13 was valid law at the time that the Tribunal issued its cease and desist order and Mr. Tremaine was found in contempt of court. The fact that this provision is no longer in force does not lessen the fact that Mr. Tremaine deliberately disobeyed a valid order and, as a result, was found in contempt.

[41] The fact that the Charter serves to protect freedom of expression does not serve as a mitigating factor in this case nor does it indicate that Mr. Tremaine's sentence is not proportional to the offence committed. The Supreme Court of Canada had previously held that section 13(1) of the Act was constitutional; although it infringed the right to freedom of expression under section 2(*b*) of the Charter, it was nonetheless saved under section 1 (*Taylor (SCC)*).

[42] In addition, upon judicial review of the Tribunal's decision, a Federal Court Judge determined that although Mr. Tremaine had attempted to argue that section 13(1) of the Act could not "constitutionally apply to Internet postings," he had "not presented a foundation upon which the Charter challenge can be argued and determined by this Court" (2008 FC 1032 at paragraphs 25-26). The Judge who heard the judicial review noted that Mr. Tremaine had neither served a Notice of Constitutional Question nor advanced this argument before the Tribunal.

[43] In my view, it was therefore not for the Judge, at the time of sentencing, to consider the balance between freedom of expression and the restrictions imposed by section 13; this issue was appropriately considered upon judicial review of the Tribunal's decision. Moreover, contempt of court is considered a grave offence, regardless of whether the law that is being disobeyed potentially curtails freedom of expression. Mr. Tremaine was required to obey the Tribunal's order.

[44] Upon further examination of the mitigating and aggravating factors applicable to Mr. Tremaine's case, I am satisfied that the sentence of one-month imprisonment is "fit" in the circumstances. As the Judge noted, Mr. Tremaine showed no remorse and made no sincere apology. Mr. Tremaine's "flagrant disregard" for the Federal Court's order demonstrates the substantial subjective gravity of the offence, while the objective gravity of the offence of contempt and Mr. Tremaine's disregard for the rule of law highlight the need for the sentence to be sufficiently severe to deter his conduct. The sentence should also convey a strong message to the public in general that courts will enforce their orders and not tolerate intentional acts which bring the administration of justice into disrepute.

[45] Mr. Tremaine also suggests that the Judge erred in not considering that some of the work he sought to disseminate are books that are widely available on the Internet, in libraries or sold online. He thus requests that these works be severed from the order:

1. Exhibit H – Posting by Mathdoktor99 on 30 August 2007 (posting no 9) in the thread entitled "Adolf Hitler – The Jews, from Mein Kampf I, XI" [http://www.stormfront.org/forum/t415937/#post4549201]

2. Exhibit M – Posting by Mathdoktor99 on 8 October 2007 (posting no 1) in the thread entitled "The Great Red Dragon (pdf download)" [http://www.stormfront.org/forum/t427421/#post4684739]

3. Exhibit AA – Protocols of the Elders of Zion [http://nspcanada.nfshost.com/index.php?page_id=74] [http://nspcanada.nfshost.com/PDFs/ProtocolsZion.pdf]

4. Exhibit BB – George Lincoln Rockwell, White Power [http://nspcanada.nfshost.com/index.php?page_id=74] [http://nspcanada.nfshost.com/PDFs/WhitePower.pdf]

5. Exhibit CC – Ernst Hiemer, The Poisonous Mushroom [http://nspcanada.nfshost.com/index.php?page_id=74] [http://nspcanada.nfshost.com/PDFs/PoisonousMushroom.pdf]

6. Exhibit DD – The Turner Diaries [http://nspcanada.nfshost.com/index.php?page_id=73]

[46] I am not persuaded that the Judge did not consider this matter or that he committed an error. A careful reading of the transcripts of the hearing in front of the Federal Court shows that the parties made submissions on this point. Taking support from a previous decision of the Tribunal in the matter of *Citron v. Zundel*, [2002] C.H.R.D. No. 1 [*Zundel*] Mr. Warman argued that Mr. Tremaine's personal views and the external material posted on Stormfront.org and the National Socialist Party of Canada website had to be read as a whole. Their combined effect was to expose particular groups to hatred and contempt. Quoting from paragraph 142 of *Zundel*, Mr. Warman stated that the information posted by Mr. Tremaine should not be parsed out: "The echoes of hatred that reverberate throughout the site infect and taint virtually all of the documents put before us" (transcripts originally filed in A-468-10, volume 3 at pages 666-667).

[47] For his part, counsel for Mr. Tremaine argued that his client should not be ordered to remove "that which is not prohibited", referring in particular to *The Turner Diaries* and *The Protocols of Zion* (appeal book at page 297).

[48] The Judge heard ample evidence regarding Mr. Tremaine's various Internet postings and their contents. Reading the impugned order, I simply conclude that the Judge exercised his discretion and accepted Mr. Warman's submissions on this point. Thus, I see no reason for our Court to intervene.

[49] Finally, in case the sentence were to be upheld, counsel for Mr. Tremaine informed the panel of his client's health issues and invited the Court to make specific recommendations to the provincial correctional services of Saskatchewan. We must decline this invitation. The Corrections and Policing Division under the Ministry of Justice of Saskatchewan is not within the province of this Court.

V. Proposed Disposition

[50] Consequently, I propose to dismiss the appeal without costs.

[51] As the appeal is now resolved, the stay ordered by this Court on November 28, 2012 temporarily suspending the execution of the Federal Court's committal order of February 22, 2013 in file T-293-07 is automatically lifted. The committal order is a matter for the Federal Court.

"Johanne Trudel"

J.A.

"I agree
Eleanor R. Dawson J.A."

"I agree
Wyman W. Webb J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-493-12
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CONCURRED IN BY:	DAWSON J.A. WEBB J.A.
DATED:	SEPTEMBER 9, 2014

APPEARANCES:

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