

ALBERTA

HATE PROPAGANDA / GRAPHIC REPRESENTATIONS

Indexed as: Kane v. Church of Jesus Christ Christian-Aryan Nations (No. 3)
Cited: (1992), 18 C.H.R.R. D/268 (Alta. Bd.Inq.)

Paragraphs 1 – 383

**Harvey Kane, Keith Rutherford, Jack C. Downey, Hal Joffe, Nate Feldman, Nell
McKereghan and Paul Armstrong**

Complainants

v.

**Church of Jesus Christ Christian-Aryan Nations, Terry Long representing
members of the Church of Jesus Christ Christian-Aryan Nations, Terry Long and
Ray Bradley**

Respondents

Date of Decision:

February 28, 1992

Before:

Alberta Board of Inquiry, Timothy J. Christian, Cheryl L. Daniel and Knut E. Vik

Appearances by:

B.E. Mintz and D.J. Chow, Counsel for the Complainant Harvey Kane

J.A. Hustwick, J.A. Moffat and W.C. Olthuis, Counsel for the Human Rights Commission

N.C. Wittmann, Counsel for the Board of Inquiry

J.R. Taylor, Counsel for the Respondent Church of Jesus Christ Christian-Aryan Nations

T. Long, on his own behalf and for the Church of Jesus Christ Christian-Aryan Nations

A.P. Hnatiuk, Counsel for Elaine McCoy

R.S. Abells, L.S.R. Kanee and R.A. Sorokin, Counsel for the Intervener Canadian Jewish Congress

R.G. McBean, Counsel for the Intervener Sunwapta Broadcasting

A.H. Lefever, Counsel for the Intervener Southam Inc. and Rick McConnell

F.S. Kozak, Counsel for the Intervener Canadian Association of Journalists

K.E. Mahoney and P.J. Knoll, Counsel for the Intervener University of Calgary Group

M.L. Towns, C.L. Kenny and P.M. Paradis, Counsel for the Intervener Legal Education Action Fund and the Canadian Congress of Black Women

J.C. Robb and G. Vanness, Counsel for the Intervener Attorney General of Alberta

W.S. McKall, Counsel for Larry Ryckman

HATE PROPAGANDA — exposure to hatred on basis of race or religion — GRAPHIC REPRESENTATIONS — definition of notice, sign, symbol, emblem or other representation — RELIGION AND CREED — hate messages directed at Jews — RACE, COLOUR AND PLACE OR ORIGIN — discriminatory treatment using graphic representations — racial slurs and harassment (non-employment) — REMEDIES — order to cease discriminatory practice

INTERPRETATION OF STATUTES — definition of "before the public", "derogatory, offensive or otherwise improper", "display or cause to display", ". . . for any purpose", "free expression of opinion on any subject", "indicat[e] . . . an intention to discriminate", "notice, sign, symbol, emblem or other representation", "person", and "public"

FREEDOM OF EXPRESSION — freedom of speech and communication of hate message — human rights legislation provides for reasonable limits to freedom of expression — CANADIAN CHARTER OF RIGHTS AND FREEDOMS — s. 1 (reasonable limits) and application of Oakes test — PROCEDURE — notice of constitutional challenge — HUMAN RIGHTS — nature and purpose of human rights legislation — principles used to interpret Charter applied to human rights legislation

Summary: The Board of Inquiry finds that Terry Long, Ray Bradley and the Church of Jesus Christ Christian-Aryan Nations violated s. 2(1) of the Individual's Rights Protection Act by displaying signs and symbols before the public which indicated discrimination on the basis of race, religion and place of origin. Terry Long is the Canadian leader of the Church of Jesus Christ Christian-Aryan Nations. Ray Bradley is a member of the Church and the owner of the property where the Aryan Fest was held.

The complaints, filed by Harvey Kane and six others, allege that during the Aryan Fest held in Provost, Alberta on September 8 and 9, 1990, the respondents displayed a sign which read "KKK White Power" on the gate to the Bradley's property where the Fest took place and a Nazi flag with a swastika on the side of the barn. Also, a thirty-foot cross was set alight and burned in Bradley's field. The complaints allege that these acts violate s. 2(1) of the Individual's Rights Protections Act which provides that no person shall display before the public any notice, sign, symbol, emblem or other representation indicating discrimination or an intention to discriminate on the grounds of race, religious beliefs, colour, sex, physical disability, age, ancestry or place of origin.

The Board finds that the sign and symbols effectively communicated a message of discrimination against non-whites. The Nazi and Ku Klux Klan symbols tell blacks, Jews and other persons of colour that they are not wanted and warn them that their families and property are not safe. These discriminatory expressive acts divide the community; they warn off members of non-Aryan groups and call together members of the Aryan group to take action.

The Board of Inquiry finds that the Aryan Fest was a celebration of intolerance, and there was an atmosphere of violence. This climate was created by the wearing of Nazi uniforms and KKK hooded robes; by physical and verbal threats and assaults on the media and protestors; by chants of "Sieg Heil," "White Power," and "Death to the Jew;" by Doberman dogs, rifles discharged in the night; by masked gunmen, fixed bayonets, military-style assault weapons; by anti-Semitic abuse and racist taunts; and by paramilitary uniforms and White Power caps. The climate of the Aryan Fest enhanced the meaning of the signs and symbols.

The Board also finds that the purpose of the signs and symbols is to further the program of the Church which is to establish an Aryan state. The Church's policy is set out in the National State Platform which is a comprehensive code for discriminating against non-Aryans in many ways, including ways which would violate the Individual's Rights Protection Act. The Board concludes therefore that the sign and symbols displayed at the Aryan Fest indicated discrimination or an intention to discriminate.

Section 2(2) of the Individual's Rights Protection Act states that nothing in the section shall be deemed to interfere with the free expression of opinion on any subject. The Board of Inquiry finds that this requires it to balance the objective of eradicating discrimination against the objective of protecting free expression of opinion. The Board rules that s. 2(1) of the Individual's Rights Protection Act is of sufficient importance to warrant overriding freedom of expression in this case.

The Board concludes that the Aryan Fest was a shocking event in the history of Alberta. The blatant display of signs and symbols redolent of racial and religious hatred, bigotry and discrimination challenge the very foundations of our society. The respondents are seriously at odds with the fundamental goals of our free and democratic society. The program of the so-called "Church" is a crude and primitive design for a new, racially pure, white nation.

The Board finds that the complaints are justified, and makes the strongest order it is allowed to in the circumstances. It orders the respondents to refrain in future from the same or any similar public display of discriminatory signs and symbols, and reserves jurisdiction to deal with the issues of costs.

[Ed. Note: The official version includes photographs and exhibits not published here. It is available from the Alberta Human Rights Commission. See also preliminary decision at 18 C.H.R.R. D/259 and final decision at 18 C.H.R.R. D/266.]

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R. v. Byers Transport (1991), 63 C.C.C. (3d) 235: 361

R. v. Doman (1988), 12 M.V.R. (2d) 136 (Alta. Q.B.): 360

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R. v. Keegstra, [1991] 2 W.W.R. 1: 330, 339, 341

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Singer v. Iwasyk (November 5, 1976), (Sask. Bd.Inq.) [unreported]: 260, 265, 297

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Warren v. Chapman (1981), 11 D.L.R. (4th) 474 (Man. Q.B.): 242

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s. 1: 323

s. 15: 345, 356, 370

s. 27: 370

Canadian Human Rights Act, S.C. 1976–77, c. 33: 317, 334

s. 13(1): 342, 347

Criminal Code, R.S.C. 1985, c. C-46

s. 319: 330

s. 319(2): 335

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Alberta Rules of Court, Schedule E: 18

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s. 38(1)(h): 233

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Manitoba

Human Rights Act, S.M. 1974, c. 65, s. 2(2): 314

Nova Scotia

Human Rights Act, R.S.N.S. 1969, c. 11, s. 12(2): 313

Ontario

Racial Discrimination Act, S.O. 1944, c. 51: 311

Saskatchewan

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I. INTRODUCTION

A. The Complaints

[1] The complaints are about events which took place on September 8 and 9, 1990, at a farm near Provost, Alberta. Two of the complainants were present and saw some of the events. The five remaining complainants saw television or newspaper reports. Part of each of the complaints is identical. All complaints state:

I [here is set out the name of the individual complainant] complain against the Church of Jesus Christ Christian-Aryan Nations, . . . and Terry Long, . . . and Terry Long representing members of the Church of Jesus Christ Christian-Aryan Nations, . . . and Ray Bradley, . . . alleging that, on or about September 8th and 9th, 1990 at or near Provost, Alberta [they] did contravene section 2(1) of the Individual's Rights Protection Act on the grounds of race, religious beliefs, colour, ancestry, and place of origin in the areas of discriminatory public displays/publications/notices. I make this complaint on behalf of myself.

Each of the complainants gave the particulars of their complaints.

[2] Harvey Kane and Jack C. Downey were present in Provost on September 8, 1990. Their statements of particulars are identical and read as follows:

On September 8, 1990 I was personally at Provost, Alberta and in particular at a farm near Provost, Alberta. I saw Terry Long on the property along with a number of other men. I saw a Swastika flag displayed in full view on the barn and I saw a sign that said KKK White Power. Although I did not physically see the cross-burning on September 8, 1990, I did see the video footage on a CFCN-TV television broadcast on September 9, 1990 which showed the cross burning. I believe this footage is an accurate representation of the events that occurred at or near Provost, Alberta.

I believe that the Provost meeting and the activities referred to above were organized, sponsored, encouraged and performed in whole or in part, by members of the Church of Jesus Christ Christian-Aryan Nations, including Terry Long.

I believe that the above display took place on land owned and/or occupied by Ray Bradley with his knowledge and consent.

I allege that in displaying or causing to be displayed before the public and assembled media such representations as a burning cross, Swastika flag and KKK White Power the Respondents did violate Section 2 of the Individual's Rights Protection Act.

The complaint of Mr. Kane was dated December 18, 1990, and Mr. Downey's was dated January 7, 1991.

[3] Hal Joffe and Paul Armstrong stated in their particulars:

On September 9, 1990 I read the front page headline story of the *Calgary Herald*. The headline read "Cross Blazes in Shame." The story reported on an outdoor meeting held at or near Provost, Alberta on September 8th, 1990. The story was onset with a photograph showing several men standing behind a sign reading "KKK White Power."

Also on September 9, 1990 I viewed the evening television news broadcast of CFCN-TV Calgary, Alberta. The television broadcast included a story on the Provost gathering held on September 8th and 9th, 1990. It contained video footage of a burning cross and showed a Swastika flag being displayed on the site.

The remaining three paragraphs of Mr. Joffe's and Mr. Armstrong's particulars contain allegations similar to those found in the final three paragraphs of the Kane and Downey complaints set out above.

Mr. Joffe's complaint was dated December 18, 1990, and Mr. Armstrong's complaint was dated January 22, 1991.

[4] Nate Feldman and Nell McKereghan both saw the headline and report in the *Calgary Herald* on September 9, 1990. Their statements of particulars are, in this respect, similar to those contained in the complaints of Mr. Joffe and Mr. Armstrong. Mr. Feldman's complaint is dated December 21, 1990, and Ms. McKereghan's, January 17, 1991.

[5] Keith Rutherford provided the following particulars for his complaint dated January 9, 1991:

I viewed evening television broadcasts on CFRN, CBC and ITV on about September 10, 1990 and in addition viewed pictures and read newspaper articles in the Edmonton Journal, Edmonton Sun, Alberta Report and The Provost News following the September 8th and 9th, 1990 events at Provost which displayed a large "Swastika" flag, a sign bearing the Ku Klux Klan symbol KKK and the words "WHITE POWER." There was also footage of a burning cross and individuals whom I believe are members of the Church of Jesus Christ Christian-Aryan Nations wearing white shirts as shrouds and shouting "Death to Jews," "White Power," "Sieg Heil" and giving a salute commonly called a Nazi salute.

I believe that the above newspaper and television stories are accurate representations of events that occurred at or near Provost on those dates. I believe that the Provost meeting and the activities referred to above were organized, sponsored, encouraged and performed, in whole or in part, by members of the Church of Jesus Christ Christian-Aryan Nations, including Terry Long.

B. Appointment of the Board of Inquiry

[6] On June 12, 1991, the Honourable Elaine McCoy, Q.C. appointed this Board of Inquiry. The Minister's order is Appendix 1 [not published here] to this decision. The order directed the Board to inquire into the foregoing complaints of discrimination. As described above, the complainants alleged the public display of a "Swastika," "burning cross" and "KKK White Power" sign on September 8 and 9, 1990, during the respondents' "Aryan Fest," violated s. 2 of the *Individual's Rights Protection Act*, R.S.A. 1980, c. I-2, as amended (in this document referred to as *IRPA*). All of the complaints were made well within the six-month limitation period on s. 19(2) of the *IRPA*.

[7] The Board held an initial hearing on July 24, 1991, and heard final argument on December 10, 1991. Meanwhile the Board sat for sixteen days and heard from twenty-nine witnesses. All evidence was taken on oath or affirmation. A total of 112 documentary and videotape exhibits of the event were filed with the Board. An Exhibit list is Appendix 2 to this decision [not published here]. A number of "out-takes" or still photographic

reproductions were prepared from the video exhibits. Several of these are included in the decision [not produced here].

[8] At the outset, the Board appointed Neil C. Wittmann, Q.C. its as [*sic*] counsel. Mr. Wittmann played a more extensive role than originally anticipated because Mr. Long was not represented by legal counsel.

[9] During the course of the proceedings the Board made numerous rulings. We have included a few of the more important rulings as Appendices.* We have also provided references to the pages from the transcript of the proceedings where the other rulings may be found. The Alberta Human Rights Commission has copies of the transcript.

C. Powers of the Board

[10] The Board takes its powers from ss. 31(1) and 31(2) of the *IRPA*, and ss. 2, 3 and 4 of the *Public Inquiries Act*, R.S.A. 1980, c. P-29 as amended. We shall set out the relevant sections as necessary.

D. The Parties

1. The Complainants

[11] All of the complainants except Harvey Kane were represented by Mr. John Hustwick, Q.C., counsel for the Human Rights Commission. Mr. Kane chose to be represented by Mr. Bruce Mintz.

All of the complainants testified.

2. The Respondents

[12] The Board held an initial hearing at the Law Courts Building in Edmonton on July 24, 1991. Notices of the initial hearing were published July 6 and 15, 1991, in certain daily and weekly Alberta newspapers. The respondents failed to appear at the initial hearing. The Board instructed its counsel to continue his efforts to serve the respondents with personal notice that the next hearing would take place on August 12, 1991.

A. MR. RAY BRADLEY

[13] On August 12, 1991, Mr. Long appeared but Mr. Bradley did not. The Board considered affidavit evidence of the service of documents on Mr. Bradley and heard related submissions. The Board ruled Mr. Bradley had been served with reasonable notice of the complaints against him and the proceedings of the Board. The Board decided to proceed in his absence. This ruling of the Board is set out at p. 39 of the transcript of the proceedings.

B. MR. TERRY LONG

[14] Mr. Long described himself as the Canadian leader of the Church [of Jesus Christ Christian-Aryan Nations].

(1) Legal Counsel for Mr. Long

[15] Mr. Long appeared without legal counsel. He told the Board he had applied for and had been refused legal aid. He provided the Board with documents supporting his claim. He also explained he had not appealed the decision of Legal Aid because he did not wish to be represented by counsel. The Board was concerned Mr. Long was unrepresented and Judge Daniel told Mr. Long it was the Board's view he should appeal the Legal Aid ruling. This, Mr. Long declined to do.

[16] While a warrant for Mr. Long's arrest was outstanding, the Board received a letter from his wife advising she was appealing the decision of Legal Aid. The Board was later advised the appeal was denied.

(2) Payment of Mr. Long's Expenses

[17] Mr. Long applied for a change of venue of the proceedings from Edmonton to Red Deer. He said he was impecunious and could not afford to travel back and forth from his home in Caroline to Edmonton, nor could he afford to stay at hotels in Edmonton. After hearing submissions, the Board decided it would be inappropriate to change the venue of the proceedings.

[18] With Mr. Long's consent, the Board issued an order requiring his attendance as a witness. The order also required him to produce relevant documents in his possession. Provision was made for the payment of Mr. Long's out-of-pocket expenses on the same basis as the costs of any witness covered by the scale in Schedule E of the *Alberta Rules of Court*. Mr. Long agreed this was a satisfactory arrangement and voluntarily accepted service of the order in the presence of the Board.

(3) Warrant for Mr. Long's Arrest

[19] On Friday, September 13, 1991, Mr. Long took the witness stand to present evidence in his own defence. At the adjournment of the proceedings on that day he was being cross-examined by Mr. Mintz, counsel for Mr. Kane. Mr. Long failed to appear the next hearing day, Monday, September 16, 1991. Mr. Mintz advised the Board he wished to continue his cross-examination. After hearing submissions, the Board decided to issue a warrant for Mr. Long's arrest. The reasons of the Board are set out at p. 1360 of the transcript of the proceedings.

(4) Proceeding in Mr. Long's Absence

[20] On December 10, 1991, the Board reconvened. Despite the warrant and the efforts of the R.C.M.P. to apprehend Mr. Long, he remained a fugitive. Given the fact he had been absent for approximately three months, and after hearing submissions, the Board decided to proceed to hear closing argument in his absence.

C. THE CHURCH OF JESUS CHRIST CHRISTIAN-ARYAN NATIONS

[21] The Church of Jesus Christ Christian-Aryan Nations (in this decision referred to as the "Church") is not incorporated or registered as a church or society in Alberta. The Church was represented by Mr. Long and Mr. John Ross Taylor in these proceedings. Mr. Long introduced Mr. Taylor as the "Canadian Ambassador for the Aryan Nations." Until September 14, 1991, Mr. Taylor took an active part in the proceedings, acting as Mr. Long's assistant. On September 20, 1991, Mr. Taylor filed a written submission on behalf of the respondent Church. He signed the submission, describing himself as "Ambassador to Canada from the Church of Jesus Christ Christian-Aryan Nations."

D. THE RESPONDENTS' EVIDENCE

[22] The respondents presented evidence through three witnesses, Milton Carney Nerland, Tom Erhart and Terry Long.

[23] Mr. Long applied to the Board for the costs of bringing Louis D. Beam, a former Grand Dragon Emeritus of the Ku Klux Klan, to testify. Mr. Long said Mr. Beam would give expert evidence about "cross-lighting" and other aspects of the Ku Klux Klan, including its "Identity Christian" roots. Mr. Long said Mr. Beam is a general and not a soldier in the movement and could testify as to the creed of the Church.

[24] Mr. Beam is a resident of Texas. He was apparently prepared to come voluntarily to give evidence to the Board, provided his travel costs were paid. The Board decided it had no authority to pay the costs of Mr. Beam's attendance. The reasons of the Board are set out at p. 826 of the transcript of the proceedings.

3. *The Interveners*

[25] Several counsel representing various organizations sought intervener status. After hearing the arguments of counsel for the proposed interveners, and hearing from Mr. Long, the Board decided to grant intervener status to the Canadian Jewish Congress, the Legal Education Action Fund, the Canadian Association of Journalists, and the University of Calgary Group for Research and Education on Human Rights. The reasons of the Board are set out at p. 183 of the transcript of these proceedings.

The Board later granted intervener status to the Canadian Congress of Black Women.

II. CHALLENGE TO THE JURISDICTION OF THE BOARD

A. Mr. Long's Application for Subpoenas

[26] Mr. Long challenged the jurisdiction of the Board. He sought subpoenas for several witnesses whose evidence he said would support his challenge. The Board issued subpoenas for the attendance of Fil Fraser, Chairman of the Human Rights Commission, and two *Edmonton Journal* reporters, Rick McConnell and Sherri Aikenhead. The Board

refused to issue a subpoena for the Minister of Labour, The Honourable Elaine McCoy, Q.C. The reasons of the Board are set out at p. 176 of the transcript of these proceedings.

[27] Mr. Long did not call Mr. Fraser or Ms. Aikenhead and the subpoenas requiring their attendance were vacated.

B. Mr. Long's Challenge to Jurisdiction

[28] The Board considered Mr. Long's challenge and the submissions of responding counsel. The Board ultimately decided it had jurisdiction to proceed. The reasons of the Board are Appendix 3 [reported at 18 C.H.R.R. D/259].

III. THE ISSUES

[29] The issues we must decide arise from the wording of s. 2 of the *IRPA*. That section may be parsed into the following questions.

1. Are the respondents "persons"?
2. Did the respondents "display or cause to display"?
3. Was the display "before the public"?
4. Was the display a "notice, sign, symbol, emblem or other representation"?
5. Did the display "indicate discrimination"?
6. Did the display "indicate . . . an intention to discriminate"?
7. What did the sign and symbol mean?
 - a. The meaning of the sign and symbols to the non-experts
 - b. The meaning of the sign and symbols to the experts
 - c. The meaning of the sign and symbols against the background of the national state platform
 - d. The meaning of the sign and symbols in the context of the Aryan Fest
8. Was the discrimination "for any purpose"?
9. Is there interference "with the free expression of opinion on any subject"?
10. Is the display exempt because it was "not derogatory, offensive or otherwise improper"?

Finally, we were asked to decide,

11. Did the respondents raise a constitutional challenge?

We shall deal with these questions after examining the evidence.

IV. THE FACTS

A. The Church of Jesus Christ Christian-Aryan Nations

1. *The Leadership*

A. MR. RICHARD BUTLER

[30] The headquarters of the Church is located in Hayden Lake, Idaho. Mr. Long testified the leader of the Church is "Pastor" Richard Butler who resides at the Hayden Lake Compound.

[31] The Board admitted as an exhibit a muted, edited version of a videotape entitled "*The Aryan Nation*" which had been written, produced and narrated by Mr. Lawrence Ryckman. Mr. Ryckman is a Calgary businessman who has made an extensive study of the white supremacist movement in North America. The video showed the compound at Hayden Lake and the interior of several buildings, including a chapel and assembly hall. Out-take 1 shows the guard tower at the compound. The Board determined part of the sound track was inadmissible as hearsay evidence and declined to hear it. The Board heard the following portions of Mr. Ryckman's narration:

The 20 acre Hayden Lake Compound 6 miles from Coeur d'Alene, Idaho, is the Central Headquarters for White Power groups from around the world. Every summer over 300 Aryan leaders meet here for the World Aryan Congress to organize action plans for the coming year. It's a Whites only zone, guarded day and night by armed patrols and an electronic surveillance system. There are living quarters for about a hundred people, a business office where pamphlets and racist publications are printed, a school where Aryan children are indoctrinated with the Aryan message, and a campground for recruits, trainees and convention delegates. The central meeting hall is a pride of the Aryan Nations. In it they display the flags of the countries where their sympathizers operate [Out-take 2]. Right beside it is the Church of Jesus Christ Christian, where Aryans gather to hear the weekly White Power sermon.

The Aryans believe that North America was intended to be all White. They have established what they call the Territorial Imperative, a gradual takeover of land forcing out coloured races and Jewish people. [Out-take 3 shows a map of the proposed new Aryan Nation.] The Aryans proudly honour Louis Beam. The flag of the Lone Star State is draped behind the altar. Beam writes books like *Understanding the Struggle, or Why we have to kill the Bastards*. It is printed by Butler's Aryan Nations Press and distributed by the Church of Jesus Christ Christian in Idaho. In this book Louis Beam and the Aryan Nations have put a value on your life so that the Aryan Warrior can judge the effects of proposed acts against the enemy.

This battle plan outlines who to kill and how many points are awarded for each murder. Each category has a corresponding point value. The goal is to score enough points to become an Aryan Warrior [Out-take 4]. If you kill an ordinary coloured or Jewish person from Category 9, you are only killing so-called "cannon fodder" and you only get 1/1000 of a point for each death. If you kill an opinion maker, a writer, film maker or media personality in Category 2, you get 1/3 of a point. You become a Commando. If you kill a high ranking government leader, such as one who supports equal rights, you earn the highest score, 1 full point, and are awarded the highest rank: Aryan Warrior.

[32] Displayed on the walls of the chapel were various anti-Semitic and anti-black propaganda murals. One mural shows an Aryan warrior about to slay a snake [Out-take 5].* Another mural showed an Aryan warrior about to slay a black man [Out-take 6].

* [Ed. Note: Out-takes could not be printed in C.H.R.R.]

B. MR. TERRY LONG

[33] Mr. Long is the Canadian leader of the Church. He testified he was born in Red Deer, Alberta, and is 45 years of age. In 1972 he obtained a Bachelor of Science in electrical engineering from the University of Alberta. He said he is well-versed in the petrochemical industry and has designed gas plants, sour gas plants and compressor stations. He has also been the design engineer for various petrochemical projects.

[34] Mr. Long has been involved in politics for a number of years. He joined the Conservative party and became one of the founding members of the Western Canada Concept party. He ran unsuccessfully as a candidate in 1982. In 1984, he joined the Social Credit party. Mr. Jim Keegstra was also involved in the party at that time. Later, Mr. Long became the founding president of the Christian Defence League which was formed in 1983 to provide moral, spiritual, and financial support for Mr. Keegstra and his cause.

[35] In 1983 Mr. Long became a member of the Church. He was an Identity Christian before then. He believes Anglo-Saxon, Teutonic, Celtic, Germanic and related people are the true physical and spiritual lost sheep of the House of Israel. Mr. Long also considers himself to be a National Socialist.

[36] Mr. Long described the Church as:

an Identity Christian church similar to many other Identity Christian churches but not exactly the same. It's a separate entity from the Aryan Nations *per se*. The Aryan Nations are all of our White people who believe in the sanctity and the preservation of the White race. The Church itself is an Identity Christian denomination.

[37] Mr. Long testified the Church was founded in California by Dr. Wesley Swift. He said the Church is incorporated in the United States but is not allowed income tax advantages "because the federal government . . . better known as the Zionist Occupation Government won't allow us those tax write-offs."

[38] In the summer of 1984, Mr. Long attended the Aryan Nations Congress in Hayden Lake, Idaho. In November of that year Pastor Richard Butler (the international leader of the Church) appointed him a High Aryan Warrior Priest of the Aryan Nation and Alberta leader for the Church. He has held that position since 1984. In 1986 he was appointed Canadian National Leader of the Church.

[39] In 1985, Mr. Long testified he met in Calgary with Mr. Dunsford MacaPherson, the leader of the Ku Klux Klan in Alberta and that Mr. MacaPherson wanted to sell Mr. Long the rights and registered designation of the Ku Klux Klan in Alberta for \$6,000. Mr. Long rejected the offer because he thought the Ku Klux Klan must become more "elitist, militant and private."

[40] After Mr. Long became both the national and provincial leader of the Church, he wanted to establish an institution similar to that at the Hayden Lake compound in Idaho. His goal was to create an Aryan Nation in Canada. According to the Aryan Nation Territorial Imperative [Out-take 3] the nation would include roughly half of Alberta, from Edmonton south, and portions of southwestern Saskatchewan and southeastern British Columbia. The first phase of the process would be to encourage white people to migrate into this geographic area and become the majority. Then the people would be encouraged to follow "yahweh's laws" and work within the established political system.

[41] Mr. Long testified the Church is not registered in Alberta. It has no buildings other than Mr. Long's home. There are no regularly conducted services in Alberta. The Church finances itself through donations and receives very little in the way of contributions. The Church does not have a regular newsletter and Mr. Long communicates with his Church members by telephone.

[42] In September 1989, Mr. Long appointed Carney Nerland as the Saskatchewan leader of the Church. Mr. Long testified that Mr. Nerland also calls himself Kurt Meier, after a World War II, Wehrmacht general. Mr. Long met Mr. Nerland at the Aryan Nations Congress in 1984. He was aware Mr. Nerland was a Nazi and a member of the Ku Klux Klan, and that he owned a gun shop in Prince Albert. Mr. Long denied knowing the name of Mr. Nerland's second-in-command in Saskatchewan. Given Mr. Long's leadership position in the Church, the Board does not believe Mr. Long on this point.

C. MR. CARNEY MILTON NERLAND

[43] Mr. Nerland, a serving federal prisoner, testified he has been the Saskatchewan leader of the Church since September 1989. He said Mr. Long is the Canadian leader of the Church and as such is senior both to him and to ordinary members. He said there is no one more senior in Canada. Mr. Nerland said he first met Mr. Long at the Aryan Nations Congress in July 1984, which he attended as a National Socialist, and he first met Mr. Ray Bradley in 1987.

[44] Mr. Nerland was asked about his personal views about other races. He said he does not hate any particular race or colour of people. What he does hate are persons of any colour or background who are hostile to the interests of white Aryan peoples.

[45] Mr. Nerland said given native land claims in Canada and the huge tracts of land set aside for "varying tribes of South African Negroes in Africa . . . it's only logical that certain white people who feel strongly about their religious and racial background should want tracts of land for themselves."

[46] Mr. Nerland was asked whether he hates native people. He replied he does not hate them but hates many of the things they do and their feeling they should be treated better than average Canadians.

[47] Mr. Nerland said he does not hate "Negroes in general." However, he said:

I do have disdain and do hate Negroes that are opposed to the interests of Whites, communist Negroes, terrorist Negroes, AIDS carrying Negroes, homosexual Negroes, paedophile Negroes, sodomite Negroes. I do hate certain types of Negroes, but not Negroes in general . . . As a whole race, I'm sure somewhere there probably are a few, some of them that could be described as good.

[48] Mr. Nerland was asked whether he hates orientals. He testified the Japanese are not bad because they rallied with Adolf Hitler in World War II but that didn't mean whites should marry them and have half-oriental children. He said he does not hate orientals in general but hates certain types of orientals for what they do. Under cross-examination, Mr. Nerland testified he does not believe Jews, blacks or orientals are equal to him.

D. MR. RAY BRADLEY

[49] Mr. Bradley was identified as a leader of the Aryan Nations in a letter of invitation to the Aryan Fest. This status was confirmed in Mr. Long's testimony. Indeed, Mr. Bradley was to be promoted as a reward for his involvement in the Aryan Fest. As he did not attend the hearings, the Board has little information about his involvement in the affairs of the Church, apart from his participation in the Aryan Fest.

2. *The Membership of the Church*

[50] On cross-examination by Mr. Hustwick, Mr. Long stated he did not know the present Alberta membership of the Church as that information is kept on a computer in Hayden Lake. He said he would "just be guessing" if he were to name the members. He also said he did not even have a copy of the membership list.

[51] Mr. Long testified he has a computer in his home and when an operator is present in Hayden Lake he can enter the computer system there. Mr. Long was asked whether or not there is a list of members of the Church available to him. He said "I'm not sure. I'd have to ask the Pastor." The Board felt Mr. Long was deliberately evasive and uncooperative in his testimony about membership. We did not believe his testimony that he did not know who was and was not a member of the Church, at least in Alberta.

B. *The Display of the Sign and Symbols at the Aryan Fest*

[52] The Board heard numerous witnesses. These included the complainants, the main respondent, Mr. Long, and several experts.

[53] Much of the event was captured on videotape and subpoenas were issued for the cameraman from CFCN in Calgary and CBC in Edmonton who photographed the activities of the participants and observers at the Aryan Fest. Subpoenas were also issued for their videotapes of the Aryan Fest.

[54] Stuart Russell Serediuk, a cameraman for CFCN, testified he shot the video which became Exhibit 68 in these proceedings. He was present on the road adjacent to the Bradley property on the evening of Friday, September 7, and during the morning and evening of Saturday, September 8. He shot the videos using a professional, Sony camera

equipped with telephoto lenses. The camera had no special sound enhancing equipment. He testified the videos accurately portrayed what he saw and heard at the Aryan Fest.

[55] Larry McDonald, a cameraman employed with the CBC, testified he shot the videotape which became Exhibit 69 in these proceedings. He was present on the road adjacent to the Bradley property at about the same times as Mr. Serediuk. He too shot his videotapes using a professional, Sony camera equipped with telephoto lenses. He too used a regular microphone which would pick up sound in the area of the camera. Mr. McDonald testified the video accurately portrayed what he saw and heard at the Aryan Fest.

[56] One of our main tasks was to interpret the meaning of the sign and symbols which were displayed. Our review of the evidence showed that each of the symbols and sign, standing alone, conveyed a powerful meaning.

[57] Of course, the meaning of any sign or symbol is affected by the context in which it is found. Therefore, we also reviewed the events surrounding the display of the various symbols and sign. We considered the extensive evidence presented to us under four main headings: the Aryan Fest itself; the display of symbols and sign at the Aryan Fest; the reaction to the symbols and sign by the townspeople and complainants; and the assessment of the symbols and sign by the expert witnesses.

1. *The Aryan Fest*

A. THE INVITATION

[58] On August 17, 1990, Terry Long sent out an invitation to the Aryan Fest. He used the letterhead of the Church, on which the return address was that of his home in Caroline, Alberta. The letter, which was admitted in evidence as Exhibit 65, is reproduced on the following two pages [not reproduced here].

[59] Mr. Long typed the invitation on his own typewriter at his home. He also prepared the map on the reverse of the invitation. He testified he signed the letter and made about forty copies of the invitation. He mailed or hand-delivered the invitations to those he thought were sympathetic to the movement and might be interested in attending. He said he could not remember to whom he sent the invitations.

[60] When pressed by Mr. Hustwick for a list of invitees, Mr. Kane said he had no mailing list but did it from memory. However, his memory failed him when he testified. He could only remember inviting Tom Erhart, Ryder (Rob) Robinson, Edgar Foth, Debbie Macy and Kelly Lyle.

[61] Mr. Erhart and Mr. Nerland acknowledged they had received copies of the invitation.

[62] When asked to identify the people who attended the Aryan Fest, Mr. Long again had a limited memory. He recalled Tom Erhart, Randy Johnston, Edgar Foth, Kelly Lyle, Carney Nerland, Ray Bradley and his two sons, someone named "Gary" from Saskatchewan and someone named "Joey." When asked Joey's last name, Mr. Long had a lapse of memory, notwithstanding Mr. Hustwick's reminder that Joey was present at the hearing a number of days and Mr. Long had talked to him several times. Mr. Long said Joey was a member of a group of "skins" invited by Edgar Foth with Mr. Long's knowledge.

[63] The Board felt Mr. Long was deliberately evasive in his testimony about the identity of persons he invited and persons who attended the Aryan Fest.

[64] The Board also noted Mr. Long's reference in the letter of invitation to the fact that Ray Bradley is an Aryan Nations leader.

B. THE PRESS LEARNS OF THE ARYAN FEST

[65] Mr. Long knew the press had learned about the Aryan Fest when he heard the invitation being read by Ron Collister on his CJCA talk show from Edmonton. In spite of this Mr. Long maintained " . . . we didn't expect, or want — nor want the press to be present or to publicize our meeting." He later testified:

I reiterate, it was a private meeting, and we did not intend the press to be there, nor were they welcome there. So in that sense, we did not publicly display those signs. Mr. Bradley did not publicly display those signs. And nobody publicly displayed that cross, that lighted cross.

[66] Mr. Long acknowledged the *Edmonton Journal* reporter, Rick McConnell spoke to him on September 5, 1990. Mr. Long agreed it was apparent from that conversation and from the Ron Collister radio show that the Aryan Fest was no longer a secret. He agreed with Mr. Hustwick's suggestion that even though he knew the Aryan Fest was public knowledge he never reconsidered his plan to go ahead with the meeting.

[67] The Board finds that Mr. Long decided to proceed with the Aryan Fest knowing full well it would attract attention from the public and the media. Despite his protestations to the contrary, we are of the view he welcomed the attention. As Mr. Nerland admitted, the media coverage was a very cheap form of advertising.

C. THE LOCATION OF THE ARYAN FEST

[68] The Aryan Fest was held on September 8 and 9, 1990, on property owned by Ray Bradley and his wife Janet Annabelle Bradley. The Bradley property, which is legally described in Exhibit 29, was located next to a built-up secondary road used by persons travelling to the local sanitary landfill. Traffic to the landfill is particularly heavy on Saturdays. As the videotape and eye-witness evidence indicates, the events taking place on the Bradley property were clearly visible to the public using the road.

D. "SECURITY" ARRANGEMENTS AT THE ARYAN FEST

[69] Mr. Long stated Mr. Bradley was originally in charge of security. However, when Mr. Long arrived and saw there was no security in place, Mr. Long relieved Mr. Bradley of this responsibility and asked Mr. Nerland to take over. When asked about the weapons Mr. Long said "[I] had no authority at that meeting and I couldn't tell them to put them away."

[70] Mr. Nerland confirmed Mr. Long asked him to be responsible for security. Mr. Nerland said he provided most of the weapons. They were used to "defend that area against infiltrators and unwanted visitors." He stated they were "not illegal weapons." He said he was a registered firearms dealer and had the legal right to have restricted weapons with him. Mr. Nerland testified that neither Mr. Long nor any other member of the Church authorized him to have weapons at the gate. He said he did this on his own initiative. He distributed some weapons to the persons behind the barricade. Some of the weapons were loaded and others were not. Mr. Nerland testified his own weapon was loaded.

[71] The Board had difficulty believing Mr. Long's assertion that he had no power to prohibit the use of weapons by the "guards." If Mr. Long had authority to order Mr. Nerland to provide security he could instruct him about the type of security to provide. Mr. Nerland was Mr. Long's subordinate in the hierarchy of the Church.

[72] The Board also finds it curious Mr. Nerland arrived with a number of weapons. We think it more likely Mr. Long asked Mr. Nerland to come prepared to take charge of security at the Aryan Fest.

[73] Even if we believed Mr. Nerland's assertion he was not authorized or requested by the Church to use weapons, the Church is not absolved, for Mr. Nerland, himself, is one of its leaders. The Church is further implicated by the fact the Aryan Fest was held on the property of one of its leaders, Ray Bradley, who tacitly, if not expressly, permitted weapons to be used.

E. MR. LONG'S DIRECTING ROLE

[74] Not only did Mr. Long arrange for security, [h]e played a general supervisory role over the Aryan Fest. On the videotapes he can be seen escorting an armed, uniformed man away from the gate (Out-take 7). When asked about this Mr. Long stated:

. . . the reason I went out to the gate is to call back some of those knuckleheads who were out there participating with the press because they were playing right into the press' [sic] hands in that regard . . .

[75] The Board finds Mr. Long played a general leadership role in the Aryan Fest. He prepared and issued the invitation; he arranged for security; he acted as spokesman with the press; he ordered guards about; he played a leading role in the Sunday morning Church service; and he participated in the "cross-lighting" ceremony. Mr. Long was omnipresent and in control. We find he was acting at the Aryan Fest on September 8 and 9, 1990, in both his personal capacity and his representative capacity as Canadian leader of the Church.

F. MR. BRADLEY'S SPONSORSHIP

[76] Throughout the proceedings Mr. Long tried to foist sole responsibility for the Aryan Fest upon Mr. Bradley. He said Mr. Bradley hosted the Aryan Fest in his capacity as a leader of the Brotherhood of Regular People (BHORP). This was a convenient strategy as Mr. Bradley was not present and could not take issue with Mr. Long's version of events.

[77] Mr. Long testified Ray Bradley is a member of the Church. Mr. Long said he sent out invitations to Aryan Nations members on the instructions of Mr. Bradley. He said: "Mr. Bradley asked me to invite as many of our members as we wanted . . ."

[78] Mr. Hustwick asked Mr. Long how long before September 7, 1990, he had been planning the Aryan Fest. Mr. Long started to answer and then caught himself and said: "I would say approximately — well, we — I would say that Mr. Bradley contacted me about a month prior to the meeting thereabouts." It appeared clear to the Board Mr. Long was ready to answer the question but then thought it unwise to admit having participated in planning the meeting.

[79] The Board accepts Mr. Long's evidence that Mr. Bradley played an important role in the Aryan Fest. All of the events which will be described took place on his property, not only with his consent, but with his active participation. We find Mr. Bradley acted at the Aryan Fest on September 8 and 9, 1990, not only in his personal capacity but in his representative capacity as a leader of the Church. He may have simultaneously acted as a leader of BHORP, but this does not change the character of the Aryan Fest or his participation in it on behalf of the Church.

[80] The Board finds the Aryan Fest was organized by the leaders of the Church and attended by its members and others. It was an event calculated to celebrate and promote the doctrine of the Church and was an activity of the Church.

2. *The Sign and Symbols*

[81] The complaints concern three signs or symbols: "a cross burning," "a Swastika flag," and a sign which said "KKK White Power." Mr. Rutherford also complained about the shouts of "Death to Jews," "White Power," "Sieg Heil," the Nazi salute, and the presence of white-shrouded figures.

A. THE BURNING CROSS

(1) The Cross

[82] Mr. Bradley made the cross from three-inch steel pipe which he welded together. It was then wrapped in burlap which had been soaked in one hundred gallons of diesel fuel. When finished the cross was thirty feet tall. A crane was used to erect it. As Out-take 8 shows, the cross was clearly visible from the public road during the day.

(2) The Ceremony

[83] The ceremony surrounding the lighting of the cross is clearly shown on the videotapes. One hooded and cloaked figure held a lighted torch. Five others lined up and lit their torches from his. Then they formed a circle about fifteen feet from the base of the cross. They stood for a few minutes and raised their torches in the air. The apparent leader, a man wearing a dark coloured, purple or brown robe, face unmasked, stepped forward from the circle and held his torch to the burlap. The cross burst into flame. The other cloaked figures came forward and touched their torches to the cross (Out-take 9). Flames quickly engulfed the entire structure. The hooded figures moved back into a circle surrounding the cross. They raised their right arms in a Nazi-style salute and shouted "White Power" (Out-take 10). The leader then screamed out "Sieg" and the followers yelled back "Heil." This was repeated five times. The leader yelled "White Power" and the followers repeated his words in unison. The leader called out "forward march" and all began marching in a circle around the flaming cross. They were joined by people who were not wearing Ku Klux Klan outfits. The circle occasionally stopped and there were renewed chants. The participants shouted in an orchestrated manner. A single leader's voice yelled out a slogan. The shouts of a chorus followed closely. "White Power," yelled the leader. "White Power," replied the chorus. "What do we want?" yelled the leader. "White Power," screamed the followers. "When do we want it?" the leader asked. "Now" the chorus shouted. "Hail Victory," yelled the leader. "Hail Victory," the group responded. "Sieg," shouted the leader. "Heil," replied the followers. Each time they shouted out their replies the followers thrust their right arms forward in Nazi salutes (Out-take 11).

[84] After they stopped circling, the crowd gathered on the right side of the cross. They raised their right hands in a Nazi salute and began chanting. "Death to the Jew," screamed the leader. "Death to the Jew," shouted the participants. The chanting was repetitive and continued for several minutes. It was clearly audible from the road and was easily recorded by the sound equipment of the television crews. In the night sky the flaming cross was plainly visible (Out-take 12).

(3) Mr. Nerland Comments on the Cross-Burning

[85] Mr. Nerland said the lighted cross symbolizes for him "the light that Jesus Christ brings to the world." According to him it is a symbol which is hundreds of years old and was "a common practice in Scotland." To him it has cultural, racial and religious significance.

[86] Mr. Nerland testified he was one of the persons wearing a Ku Klux Klan outfit around the flaming cross. He said he is a member of the Ku Klux Klan and had joined in 1984.

[87] Mr. Nerland did not remember who led the "Sieg Heil" chant. Nor did he remember the words "Death to the Jew" being used in the ceremony.

(4) Mr. Long Comments on the Cross-Burning

[88] Mr. Long said the cross never burns, but is "lit as a symbol of Jesus Christ being a light unto the world, and is a traditional cultural symbol to white Aryan people." Mr. Long participated in the ceremony.

[89] Mr. Long testified he heard the shouts "Sieg Heil." He said these shouts are traditionally made during services at his church. He said the translation is "Hail Victory" and means the same as "White Power." He said it indicates: "the victory of our people over the children of darkness, and the coming Kingdom of Jesus Christ, Yahweh Joshua." He said he was sure the term "White Power" was also used during the Sunday service at the Aryan Fest.

[90] In Mr. Long's view, the chant "Death to the Jew," while not part of the ceremony of the Church, is a rallying cry against the enemy. Mr. Long testified he heard it shouted but did not shout it himself. To Mr. Long, it is a "battle cry of good over evil and signifies the victory of Christ's people over the children of Satan." According to Mr. Long, the straight arm salute means "openness, friendship and indicates no secretiveness whatsoever."

[91] On cross-examination, Mr. Long acknowledged the cross was visible from the public roadway on the approach to the Bradley farm. He said he was not concerned the cross could be seen from the public road.

[92] The Board found some of Mr. Long's evidence about the cross-lighting to be completely unbelievable. He said he did not know who the KKK members were at the cross-lighting; he could not recall whether as leader of the Church he had led the marchers out to the ceremony; he did not know where the Klansmen changed into their regalia; he did not know who was the leader of the Klansmen who were present; he could not remember where the Klansmen came from before they lined up; he could not remember when the torches were lit or who lit them; he could not see who was or was not wearing a KKK robe even after the cross was lit; he could not remember having met any Klansmen from Alberta and did not know how many there are in Alberta; he did not remember what part of the march around the cross he took part in; he did not know who led the chants "Sieg Heil" or "Death to the Jew." Mr. Long was present and could easily have known all these things. Mr. Long also denied having taken part in the chant "Death to the Jew."

[93] When he gave these answers Mr. Long's demeanour changed markedly. Normally aggressive and assertive, he became subdued and reticent. Normally sure of himself and definite in his answers, he became insecure and vague. We conclude Mr. Long was lying.

[94] The Board finds Terry Long, Ray Bradley and Carney Nerland approved of the construction, erection and ceremonial burning of the cross. We also find they were active participants and leaders in the ceremony and that they ordered the lighting of the cross and orchestrated the chanting.

(5) Mr. Erhart Comments on the Cross-Burning

[95] Mr. Erhart said he understood the lighted cross represented the death and resurrection of Christ. He said the cross is lit against the "sin-darkened world" and is a religious symbol.

[96] On cross-examination by Mr. Hustwick, he said he knows the Ku Klux Klan uses the fiery cross as its symbol. He was asked if he knew what they use it for. He responded "Well, as I stated, to light up the world, the darkened world." He elaborated by saying one had to be a member in good standing of the Ku Klux Klan to burn the cross.

[97] Mr. Erhart heard the chant, "Death to the Jews." He admitted under cross-examination death meant "extinction." He agreed the chant sounded like a death threat to Jews.

B. THE SWASTIKA

(1) The Nazi Battle Flag

[98] The Swastika was a vivid symbol at the Aryan Fest. The most noticeable Swastika was on a 6.3 foot by 3.1 foot World War II Nazi Battle Flag. The flag featured a black Swastika on a white circle superimposed on a red background. Carney Nerland testified he owned the flag and brought it to the Aryan Fest. He said he hung the flag so it could be seen by the "majority of people" coming to the rally as invited guests. Under cross-examination he said he could "care less" whether the flag was visible from the roadway. As Out-take 13 shows, the flag was prominently displayed and clearly visible from the road. Spotlights illuminated the flag at night and it remained a highly vivid symbol (Out-take 14).

(2) The Nazi Armbands

[99] The Swastika was also displayed on the armbands worn by several of the men dressed in Nazi outfits. Carney Nerland had no difficulty recognizing himself in the videos. He readily agreed he was wearing a Swastika armband and advised the Board he brought it himself. He was proud of it. For him it "symbolizes the proud . . . tradition of the Aryan peoples that stood against world Zionism and Judaism, . . . [and] symboliz[es] our religious and our racial heritage as well."

[100] Out-take 15 shows Carney Nerland (in the centre) and Gary (on the left) walking toward the gate with their armbands prominently displayed. In his exchanges with the citizens who gathered to protest the Aryan Fest, Carney Nerland taunted the observers. Proudly pointing to his Swastika armband, Carney Nerland said to one of his associates "I bet he never thought he'd see one of these again." He said this in a loud voice and directed his comments toward Mr. Sobolewski, a survivor of the Auschwitz concentration camp who wore a replica of an Auschwitz prisoner's uniform.

(3) Mr. Nerland Comments on the Swastika

[101] Carney Nerland stated the Swastika and Iron Cross on the National Socialist battle flag "symbolize the power, the history and the pride of our racial comrades, fallen and presently living." He said the Swastika is a holy symbol and a symbol of his racial heritage. He also acknowledged the association of the Swastika with Hitler's Nazi regime.

(4) Mr. Erhart Comments on the Swastika

[102] Mr. Erhart testified he saw the big Swastika at the end of the garage. He understood the Swastika to be a religious symbol of the Twelve Lost Tribes of Israel. Under cross-examination by Mr. Hustwick, he stated he was a volunteer in the military service in World War II and knew the flag was a Nazi battle flag. He said he was neither a Nazi nor a member of the Ku Klux Klan.

(5) Mr. Long Comments on the Swastika

[103] Mr. Long knew that Carney Nerland owned the Nazi battle flag and had hung it on the garage. Mr. Long considers the Swastika a holy symbol "especially when it is displayed on a World War II National Socialist battle flag." It is part of the religious symbolism of the Church, according to Mr. Long.

[104] Mr. Long said the Nazi battle flag "is an ancient symbol of pride for all Aryan people." He defined "Aryan" as a word derived from "aristocrat" or "higher man." He said the Nazi flag is a religious symbol to him because he believes Adolf Hitler was Elijah the Prophet as set forth by "yahweh" and "probably the greatest leader that our people have produced in 2,000 years." Mr. Long admitted the flag was visible as one entered the gate to the Bradley property from the public road. He wanted the people at the meeting to see the National Socialist battle flag because "that's what the flag was for." He did not instruct anyone to take down the flag.

C. THE "KKK WHITE POWER" SIGN

[105] The "KKK White Power Sign" was painted by friends of Ray Bradley and attached to the metal swinging gate at the entrance to his property. Carney Nerland testified that he was present while the sign was painted. As Out-take 16 shows the sign said "KKKWHITE POWER! 1990" and an accompanying sign said "BHORP WELCOME'S [sic] ARYAN-NATIONS."

(1) Mr. Long Comments on the Sign

[106] Notwithstanding the testimony of Carney Nerland, Mr. Long said neither he nor the Church had anything to do with painting the signs. Mr. Long testified:

the signs were used for religious — as religious symbols and to show pride in our own racial and cultural heritage, and were in no way intended to reflect discrimination on any other racial or religious group.

[107] Mr. Long testified "White Power" is a rallying cry for white people. According to Mr. Long, from a religious perspective, it is a rallying cry for the Israelites to fulfil their

commitment to their God. Mr. Long believes he and the members of his Church are the "chosen people" and are to be a beacon to all other people. He believes if the laws of "yahweh" are obeyed as set out in scripture, all the promises of the scripture will be given to them.

(2) Mr. Long's "White Pride" Hat

[108] The message on the gate was buttressed by the emblem which Terry Long displayed in his hat — a Confederate flag accompanied by the words "White Pride." Outtake 17 shows the "WHITE PRIDE" cap worn by Mr. Long and others throughout the Aryan Fest. Mr. Nerland recalled the hat. In Mr. Nerland's view the "White Pride" slogan means the opposite of being ashamed or having disdain for one's race. He believes the white Aryan peoples of western Europe are the most gifted people on earth because they have enlightened the world with their culture and technological advances. He said he feels no shame saying he is proud to be white and makes no apologies whatsoever.

C. The Context in Which the Sign and Symbols Were Displayed

1. Acts of Intimidation and Threats of Violence

[109] The Board heard extensive evidence about the general atmosphere of intimidation at the Aryan Fest. We shall review this evidence to place the display of the sign and symbols in context.

A. SHOTGUN POINTED AT BRAD CLARK

[110] In September 1990, Mr. Clark was working as a freelance reporter for *Alberta Report* magazine. He has a B.A. in Economics and English from the University of Alberta and an M.A. in Journalism from the University of Wales.

[111] On September 8, 1990, he attended at the Bradley property in Provost to cover "the event." When he arrived he parked his car and walked up the road with his camera, tape recorder and note pad. He hoped to obtain permission to take some pictures and get an interview.

[112] He observed about twenty-five people in the Bradley farm yard and saw a sign welcoming "KKK people." He saw a large Nazi flag hanging from the garage. People were milling about having a beer. Mr. Clark noted they were wearing Nazi uniforms, including SS shirts and red Nazi armbands bearing the Swastika insignia. Other people were dressed in combat fatigues and survivalist gear. He also saw one "skinhead woman" in her late teens or early twenties.

[113] At no time did Mr. Clark venture into the yard. He stayed on the public road throughout his visit. Three other people were on the road at the gates to the Bradley property: Harvey Kane; Sigmund Sobolewski, wearing an Auschwitz prisoner's uniform;

and one other person Mr. Clark could not identify. Mr. Clark saw people leave the Aryan Nations gathering, cross onto the road, and confront the protesters.

[114] As he walked up the road Mr. Clark held his camera to his eye to check the meter, thinking he would take a picture. Some people from the Bradley yard shouted at him, "no pictures, no pictures." He put his camera down. Four or five men from the yard crossed the fence and came onto the public road. They screamed obscenities at him and pulled at his camera and tape recorder. Some of the men who had been confronting the protesters also came down the road toward him. One of them had a shotgun which he pumped and pointed at Mr. Clark. Mr. Clark was outraged and fearful. He felt his life was being threatened by the man with the weapon.

[115] Mr. Clark identified the man who pointed the gun at him in a photograph from the *Provost News*. The man was later identified by Mr. Harvey Kane as Kelly Lyle, the leader of the Calgary "Final Solution Skinheads."

[116] Immediately after this incident Mr. Clark went to the R.C.M.P. detachment in Provost and filed a complaint. To his knowledge no charges were ever laid.

[117] Mr. Clark identified an article from the *Alberta Report* entitled "The Supremacist Picnic, Crime and Calamity" dated September 24, 1990. This was the article he wrote about the incident. Mr. Clark stated the following excerpt from his article was an accurate account of what took place:

The reporter from this magazine had his film and tape cassette forcefully taken while a young neo-Nazi threatened him with a pistol-handled, pump-action shotgun. "We'll see you again on deader terms," hissed a skinhead as the reporter retreated to his car.

B. INTIMIDATION OF THE CAMERAMAN

[118] The videotapes contain scenes of intimation and verbal and physical violence directed against members of the media. In both videos the same "skinhead" later identified as Joey is seen to shove and push cameramen standing on the public road adjacent to the Bradley property.

[119] Following the cross-burning ceremony, and while the cross still burned in the background, some of the participants came onto the public road where members of the media and some of the protesters were watching. One burly man walked straight toward a reporter and said: "I told you before I would shove that microphone down your throat didn't I"? He then left for a moment and returned with Joey. Joey walked aggressively towards a cameraman. "You want me to shove that camera up your ass"? he threatened. Reaching out to shove one of the cameras, Joey growled, "You want it fucking through your ass"? (Out-take 18). One of the television reporters, Rick Boguski, then tried to keep Joey away from the cameramen. He tried to calm down Joey, but Joey persisted. Mr. Boguski asked Joey to leave the cameras alone and said "we are not looking for trouble." Joey replied, "What the fuck did you come here for then? You want trouble here"? He repeatedly lurched out at the cameramen (Out-take 19) saying, "I'll shove those fucking

cameras up your ass." He put his hand on the camera to shove it away (Out-take 20). "Fucking take those cameras and go home." "Get the fuck out of here." "Turn those things off and get out of here."

[120] Mr. Boguski said "If there's nothing here to shoot then we're gone." Joey replied in a menacing voice, "Oh there's lots of things to shoot around here." It is obvious Mr. Boguski was referring to shooting film with cameras while Joey was referring to shooting people with guns.

[121] The foulest and most threatening language was used by this large and intimidating individual. His menacing appearance and hostility created an atmosphere of intimidation clearly apparent to any reasonable viewer of the video exhibits.

[122] This man Joey was present during several days of the hearings. He repeatedly engaged members of the Board in staring contests. We understand how intimidating it was for the journalists and bystanders to meet this individual on a dark country road and be subjected to his aggressive tactics.

C. INTIMIDATION OF THE PROTESTERS

[123] At one point on the afternoon of Saturday, September 9, 1990, ten or fifteen demonstrators were on the road next to the driveway to the Bradley property. They carried a variety of protest signs as is shown in Out-takes 21 and 22.

[124] Two of the complainants, Mr. Downey and Mr. Kane, participated in the protest. Mr. Downey carried a large Canadian flag and wore his legion blazer and beret (Out-take 23). He threw flowers on the drive leading to the Bradley property as a symbol of peace. He hoped the people who cleared them away would learn something about peace.

[125] The other protesters stood around with picket signs. They attracted a good deal of attention from the participants in the Aryan Fest. The "guards" hectored the protesters.

[126] Mr. Sobolewski wore a replica of an Auschwitz prisoner's uniform as shown in Out-take 24. This seemed to provoke a hostile reaction from the "guards" at the gate to the Bradley property. Mr. Nerland was particularly vicious. As soon as he came to the gate he singled out Mr. Sobolewski. It is evident Mr. Nerland was trying to provoke Mr. Sobolewski into a fight. Referring to Mr. Nerland's dark sunglasses, Mr. Sobolewski yelled, "Why don't you take your glasses off?" "Come and take them off, you fucking war hero," Nerland jeered. "You survived Auschwitz, you'll survive me."

[127] Mr. Nerland handed his gun and then his bayonet to one of his associates. "Come here and take my fucking glasses off you fucking war hero, you piece of shit."

[128] Then Mr. Nerland said to Mr. Sobolewski:

You're one of the ones they didn't work to death, you parasite. You fucking weren't able to work in the camps good enough to feed the Nazi war machine. What the fuck are you doing over here you piece of

shit. You lying son-of-a-bitch. You tell everyone they got what, twenty million people at Auschwitz? Why don't you tell me they made fucking soap out of your auntie and fucking luggage out of your uncle. They made luggage out of him. I've got it in the fucking trunk of my car. I've got luggage made from your fucking uncle.

[129] Later, Mr. Nerland said to Mr. Sobolewski: "We're making a gas chamber here today. If you stay around long enough and you cross this line, we'll put you in it."

[130] This aggressive language by the Saskatchewan leader of the Church, coupled with his hostile gestures and actions, helped to create an atmosphere of menace and intimidation.

[131] Other hostile actions were taken by the "guards." Joan Pacquette testified that Harvey Kane was pushed by one of the young, blond men. The videotapes reveal that Kelly Lyle also pushed newsman Rick Boguski from the driveway leading to the Bradley property (Out-take 25).

[132] On several occasions the "guards" strode from behind the barricade to push and shove the protesters. They also carried their weapons beyond the gate.

[133] Out-take 26 shows an intimidating "guard" dog present.

D. PHOTOGRAPHING THE PROTESTERS

[134] The videotapes show a masked "guard" put down his rifle and come onto the public road from the Bradley property. He photographed the protesters. He did not answer repeated questions from the protesters about why he was taking their photographs. An intimidating effect was produced by the masked man, protected by his armed associates, taking photographs of unarmed and unmasked picketers. This happened several times.

[135] The "guards" added to the atmosphere of intimidation by taking down the licence plate numbers of the cars driven by protesters.

E. PROVOCATIVE DISPLAY OF WEAPONS

[136] Several persons at the Aryan Fest carried, and provocatively displayed, a variety of weapons. As the out-takes from the videos show, these were not simple hunting rifles. Instead, the participants carried various types of military-style assault weapons. One masked man carried a rifle with an enlarged magazine and fixed bayonet (Out-take 27). Another uniformed man carried a shot gun and bandolier of shells.

[137] The assault weapons added to the atmosphere of hostility and intimidation. The videotapes show the weapons being handled in an aggressive way.

[138] Carney Nerland played a prominent role. He approached the gate and menacingly pumped his shotgun. He held it up over the gate to display it to the protesters and journalists. He said: "This is called Native birth control." At one point in his exchange with

Mr. Sobolewski he said: "Why don't you come on private property and say that. We'll have to practise some birth control."

[139] Holding out his loaded, pistol-handled, pump-action, 12 gauge shotgun, Carney Nerland said: "a 12 gauge cuts a person right in half, it's just great for preventing further births. It's a way to customize the womb." Out-take 28 shows Carney Nerland and Gary displaying their guns at the gate.

[140] On Friday night the gate was guarded by Carney Nerland's deputy, Gary. He opened the gate to allow access to invited persons. He wore a Nazi uniform and carried a "military style," 12 gauge, pump-action shotgun. Gary said proudly of his weapon: "She's basically a close-quarter weapon, I like to call her my door opener."

F. GUNSHOTS IN THE NIGHT

[141] The videotapes recorded the sound of gunshots coming from the Bradley property in the half-hour leading up to the "cross-burning." The firing of weapons added to the atmosphere of intimidation. In a later interview on one of the videos (Exhibit 68), one of the young men who had earlier protested against the Aryan Fest justified his reluctance to assist the media people who were being roughed up on the public road. Referring to Joey, he said:

Someone that crazy you've got to be scared of him. We're here to protest not to run away but we don't want to start anything . . . He's coming out here because he wants us out of here so we backed up . . . Don't forget we heard guns. This is not a bullet proof coat.

G. NAZI UNIFORMS

[142] Several of the participants in the Aryan Fest wore replicas of Nazi uniforms. Out-take 29 shows the SS insignia on the uniform of Gary. Under cross-examination, Mr. Nerland testified he was wearing a National Socialist uniform. It was not identical to the uniform worn during World War II, but it was as close as he could get without spending a great deal of money. He stated: "I'm a Nazi; that's a Nazi uniform."

H. OTHER

[143] Playing loudly in the background during much of the day was a tape recording of a speech by an American white supremacist leader, Jim Wickstrom. The tape gives the impression the Aryan Fest was part of a larger, North American movement of persons in favour of white supremacy. The video shows cars carrying participants speeding into the drive, forcing protesters to leap back.

2. *The Philosophy of the "Church"*

A. THE NATIONAL STATE PLATFORM

[144] The National State Platform sets out the objectives of the Church as follows (we have not altered the grammar or spelling):

Preamble: To re-establish the sanctity of the individual and to make available to all of our Racial Nation the opportunity of full liberty; to be the makers of their own destiny and exercise their own right of self-determination within the framework of God's eternal natural Law Order.

Article [i] Only Aryans (White Race) are allowed citizenship of the nation, and only citizens can:

- 1- vote and own property within the nation's borders.
- 2- conduct business, possess (keep) and bear arms.
- 3- hold office in government, industry, or society.
- 4- comprise military or law enforcement personnel.
- 5- be free of all taxation other than a voluntary 10 percent yearly tithe upon net increase in wealth over the previous year.
- 6- receive loans without interest charges.
- 7- have equal rights and duties.
- 8- be free men to perform mental or physical work as they choose.

Article [ii] Non-citizens can live in the Republic but only under the custodian-ship of a citizen.

Article [iii] All hybrids called Jews are to be repatriated from the Republic's territory, all their wealth be redistributed to restore our people, and it shall be a capital offense to advocate or promote Jew Talmudic anti-Christ Communism in any manner or any other crimes against nature.

Article [iv] All Talmudism (Judaism), devil and heathen religions and practices end immediately, and there be an encouragement of the expansion of TRUE POSITIVE CHRISTIANITY.

Article [v] There be a thorough reconstruction and local citizen, parental responsibility and control of the educational process in order that the curriculum will be brought into line with the requirements of practical life, and that there be a renaissance of White Aryan Heritage, Arts, Sciences, and Humanities.

Article [vi] A creditable news media be established for the betterment of the people by:

- 1- requiring all editors, writers, actors, broadcasters, and all having any part in the media to be citizens.
- 2- not allowing the circulation of non-White media except by permission of the government, and then only with appropriate comments from Aryan cultural viewpoint.
- 3- forbidding the publication, broadcasting, televising, or circulation of any material which is not conducive to the National welfare.

Article [vii] The government, as the servant of the nation's citizens, shall:

- 1- perform its first duty, which is to protect and prosper the purity of the race of its citizens and defend the territory of the nation's citizens.
- 2- promote and preserve the industry and livelihood of the citizens.
- 3- raise the health of the nation by promoting a program of nutritional food production and processing, eliminating the current poisonous practices damaging to life and environment.
- 4- provide honest aid and support for the farmer and small private businesses, and insofar as possible shall restore all farmland and citizens' homes unlawfully seized from the rightful owners by deceit and fraud of "Usury Bankers."
- 5- make the necessary meaningful provisions for the aged, impoverished by fraud.
- 6- shall be cleared of the parasites which fatten in the wallow of the present political parties; for a race or nation divided against itself can neither prosper nor survive.
- 7- abolish all White against White genocidal wars and make the killing of any White by a non-White a capital offense.
- 8- confiscate all unearned wealth, stolen by usury or fraud and that which is made from war. The rights of lawful inheritance shall remain inviolable.
- 9- nationalize all monopolies and multi-national trusts.
- 10- immediately bring about land reform and completely prohibit land speculation or ownership of the nation's land and industries by aliens.
- 11- abolish the present fraudulent money system with its privately Jew-owned Federal Reserve, and establish an interest-free monetary system based upon a just set of weights and measures.
- 12- stop the current practice of feeding and arming the enemies of our race and culture, and force all nations that want our food or technology to buy it with their wealth and accept our authority.
- 13- immediately annul all foreign alliances and treaties with all non-White nations.

Article [viii] A ruthless war must be waged against any whose activities are injurious to the common interest, and that there be an immediate cessation of dishonouring the nation.

Article [ix] Abolish the current materialistic Jew - "Law Merchant" judicial system and all the "laws of men" and establish immediate return to our own God-ordained, racially inherent Anglo-Saxon, Germanic Common Law order.

Article [x] In order to implement the foregoing, a renewal of Racial self respect in the knowledge of our God's Eternal Natural Law Order and the will to return to it with heart, soul, and mind is imperative.

(1) Mr. Nerland Comments

[145] Mr. Nerland testified the Church teaches that the white race is imperilled by Zionist Jews. The Church also teaches that Jews are the seed of Satan and there is a world-wide Jewish conspiracy to rule the world. The Government of the United States is referred

to in Church writings as the "Zionist Occupation Government." The Church teaches that Aryans should protect themselves from this "vile system."

[146] Mr. Nerland identified a copy of a Church publication, "Calling Our Nation No. 53" which was admitted as an exhibit without any objection from Mr. Long. Mr. Nerland said he is familiar with the Aryan National State Platform contained in this document.

[147] Mr. Abells took Mr. Nerland through several provisions of the National State Platform and Mr. Nerland agreed they reflected the goals and aspirations of the Church and its members.

[148] Mr. Nerland defined "racial nation" as the "White western European Aryan descendants of the people." He said Natives, orientals and Jews are neither included nor welcome in the racial nation. He confirmed it is the aspiration of the Church to include some parts of Alberta in the racial nation. In this nation only whites would be able to vote and own property. And, only whites would be able to conduct business, possess or keep arms, or "hold office in government, industry or society." Only whites could join the military or law enforcement agencies and only Aryans would be free of taxation except for a 10 percent tithe. Only whites could receive interest-free loans and only whites would have equal rights and duties and be free to perform mental or physical work they might choose. All Jews would be expelled from the new territory and all their wealth would be appropriated and distributed according to the will of the state. There would be no place for any type of Jewish teachings. Instead, the true Christianity as advocated by the Church would be taught. Only white Aryan cultural life and activities would be permitted in the new nation. All media would be controlled by Aryans. Blacks, Jews, and orientals would be prohibited from owning land.

[149] Mr. Nerland testified the phrase, "parasites who wallow in the fat of the present political parties" should be interpreted to mean "the aliens and Zionist Jews that have infected our government and our system of law and order like parasites and a disease." Mr. Nerland testified that if he were in charge he would first ask the Jewish people to leave and if they refused, he would force them to leave.

(2) Mr. Long Comments

[150] The Aryan National State Platform was commented upon by Mr. Long. He said the Church teaches these goals will not be met until after the battle of Armageddon. Mr. Long stated that he supports the Aryan National State Platform and subscribed to it at the Aryan Fest. In order to "come apart from other peoples and maintain their integrity," Mr. Long stated the Church is working toward the formation of an all-white country. The Church subscribes to the "Territorial Imperative," according to which white families from throughout North America would move into a designated geographic area.

[151] Mr. Long also identified the Official Religious Platform of the Church and said, "that is what we stand for." It is reproduced in Appendix 5 [not published here].

[152] Mr. Long said he is not a white supremacist. He believes all peoples have the right to exist in dignity. He qualified this by commenting, "scripturally speaking, Jews don't belong anywhere in Alberta or Canada." He said he would encourage them to leave the Aryan Nation.

B. HOLOCAUST DENIAL

[153] An important element of the doctrine of the Church is denial of the Holocaust. Mr. Long testified he believes the Holocaust is:

the second greatest myth . . . of this century, generated against our people, basically with the end of exterminating our people, creating a guilt complex to such an extent that we are left with no defence mechanisms at all.

[154] Mr. Nerland feels the Holocaust is the "biggest misshapen misrepresented, sickish joke of the 20th century." He said he does not believe it occurred.

[155] Both Mr. Long and Mr. Nerland consider Hitler to be a hero. They said he was Elijah the Prophet sent forth by God in the last days. They said this is the general belief of the members of the Church.

[156] At the end of the Human Rights Commission's case, Mr. Hustwick applied to have the Board take judicial notice of the Holocaust. After hearing submissions the Board decided to take judicial notice of the Holocaust in the following terms:

The mass murder and extermination of Jews of Europe by the Nazi regime during the Second World War is so notorious as not to be the subject of dispute among reasonable persons.

[157] The reasons of the Board on this point are Appendix 4 [reported at 18 C.H.R.R. D/266] to this decision.

C. THE IMPORTANCE OF THE ARYAN FEST

[158] Mr. Nerland described the Aryan Fest as "a religious and cultural kindred gathering to reinforce our political, religious and cultural beliefs." He said most of the people who attended "could be described as Identity Christians."

[159] He defined Identity Christians as "persons who believe that the white Aryan peoples of western Europe, or Europe in general, were the direct descendants of the original Israelites," both physically and spiritually.

[160] Mr. Long stated the Aryan Fest was a "cultural and religious get-together of like-minded people . . . the yahweh spirit flows through his people when they get together."

D. THE ROLE OF THE SIGN AND SYMBOLS

[161] Under Mr. Abells' cross-examination Mr. Nerland testified he subscribed 100 percent to the political and religious teachings of the Church. Mr. Nerland said the Swastika, "KKK White Power" sign and burning cross symbolize the philosophy and teachings of the Church.

D. The Reaction to the Sign and Symbols

[162] The Board heard from the complainants, some townspeople, and a series of expert witnesses about the meaning of the sign and symbols in the context in which they were displayed.

1. The Townspeople and Complainants

A. MS. JOAN PACQUETTE

[163] Joan Pacquette is a resident of Hayter, a little town just outside of Provost. She is a preschool teacher in Provost. She was on the road next to the Bradley property on Saturday September 8, 1990. Ms. Pacquette went there with a sign showing three seated babies and bearing the words, "Racism means you're judged before you're old enough to stand up for yourself." The other side of her sign said, "Being White doesn't make you right."

[164] When she arrived at the property she saw the Nazi battle flag hanging on the shed. She said seeing the Swastika bothered her because it promotes hatred and made her think of people dying.

[165] She also saw the "KKK" sign attached to the gate. She said she associated the letters "KKK" and the burning cross with the Ku Klux Klan. She said the sign

meant Black people aren't welcome in our town, that's not true . . . That's what it made me think, and I don't want my kids to grow up surrounded by that.

[166] She believed those who displayed the "KKK" symbol had something against persons who have a different colour of skin. She understood the words "White Power" to mean inequality. She said the symbols and sign together promoted hatred.

B. MR. RICHARD HOLMES

[7] Richard Holmes is the editor of the *Provost News*. He went to the road next to the Bradley property on the afternoon of Saturday, September 8, 1990. He saw the Nazi battle flag and said he associated the Swastika he saw at the Aryan Fest with "Hitler and death and destruction." He also associated it with the "death of six million Jews during the Holocaust." Mr. Holmes associated the letters "KKK" with the Ku Klux Klan and said to him it meant "Black suppression."

[168] Mr. Holmes said he was "astounded and shocked and had a chilling feeling" when he saw the burning cross. He identified it with the Ku Klux Klan and the "persecution of Black men."

C. MR. JACK DOWNEY

[169] Jack Downey is on long-term disability leave from his duties as a peace officer with the department of the Alberta Solicitor General. Mr. Downey drove to the Bradley property on Saturday, September 8, 1990. He saw the "KKK" sign on the gate and associated it with the Ku Klux Klan. It brought to mind "images of men in masked costume terrorizing women and children, blacks, Chinese, Roman Catholics and other people since the time of the Civil War." He read the words "White Power" as "derogating from the *Canadian Charter of Rights and Freedoms*." Mr. Downey saw the Nazi battle flag and Swastika, and associated these symbols with the "crushing of Europe by the Nazis during World War II." He saw television news reports of the cross-burning and considered it to be a "desecration of the Christian symbol of love and peace."

D. MS. NELL MCKEREGHAN

[170] Nell McKereghan is a chemical engineer and visual artist. She read the September 9, 1990, article in the *Calgary Herald* and saw the accompanying photographs. She associated the letters "KKK" with the Ku Klux Klan and with the "hatred and destruction of minority groups, particularly, Afro-Americans." She associated the Nazi battle flag Swastika symbol with the "Nazi regime in Germany and the destruction of six million Jewish people as well as Catholics and anyone else who opposed the Nazis." Ms. McKereghan described her mental reaction to the burning cross as "extreme revulsion" as it represented the "hatred and destruction of Afro-Americans in the United States by the Ku Klux Klan."

E. MR. PAUL ARMSTRONG

[171] Paul Armstrong is an environmental lobbyist. He read the September 9, 1990, article in the *Calgary Herald* and watched the CFCN television broadcast the same day. When he saw the "KKK" symbol he was "repulsed" because he "believes the symbol represents racial hatred and bigotry." He believes the words "White Power" on the sign had a "racist connotation" and that the Swastika on the flag represented "oppression and genocide." He considered the burning of the cross to be an "anti-Christian act and a symbol of oppression by the Ku Klux Klan of Blacks in the southern States."

[172] Mr. Armstrong said he was "angry" when he saw the cross put to flame because he saw it as an "anti-Christian symbol of oppression."

F. MR. HAROLD JOFFE

[172] Harold Joffe is a lawyer who resides in Calgary. He is of the Jewish faith. He read the September 9, 1990, article in the *Calgary Herald*. He said he was struck by the banner hanging on the garage, the hat worn by Mr. Long, the Swastika armband worn by a young

man and the wording of the sign. He identified the Swastika with the "destruction of a significant portion of his co-religionists in Europe" and the "repression of virtually all of western Europe under the Nazi banner."

[174] Mr. Joffe also reacted against the symbolism on Mr. Long's hat. He felt the words "White Pride" are "catchwords for the neo-Nazi and other white supremacist groups throughout the United States and Canada." The words caused a "mental reaction of revulsion." They reminded Mr. Joffe of the first time Terry Long and the Aryan Nations came to public attention in 1986. At that time Mr. Long discussed race wars and the "repatriation" of ethnic groups out of Alberta and he wore the same hat.

[175] Mr. Joffe associated the initials "KKK" with the Ku Klux Klan and with "images of hooded men, Black churches being burned, crosses being burned, and Blacks being hung." He also associated the symbol with "attacks against the Jewish community in Calgary." When he saw the burning cross and men wearing Ku Klux Klan costumes giving Nazi salutes, and chanting slogans such as "Hail Victory" and "Death to the Jews," he "feared for the Jewish Community and felt shame for the desecration of the Christian symbol."

G. MR. NATE FELDMAN

[176] Nate Feldman, a businessman and a non-practising chartered accountant, resides in Calgary. He is of the Jewish faith. He read the September 9, 1990, article in the *Calgary Herald* about the Aryan Fest and saw the accompanying photographs. He identified the letters "KKK" with the Ku Klux Klan. The Swastika and burning cross symbols and the White Power sign made him feel "angry and frightened." He associated these with images of an "aggressive group of white supremacists." For him, they conjured up images of "aggressive Black persecution, of Black people being hunted like animals, Black people hanging, being burned out of their homes, of Black men castrated and left to bleed to death."

[177] Mr. Feldman understood the cross-burning to be the "desecration of a Christian symbol." He feared weaker people in society would be attracted and influenced into having the same types of aggressive beliefs.

H. MR. KEITH RUTHERFORD

[178] Keith Rutherford, a retired broadcaster, saw the reports about the Aryan Fest on television news. He also read about the event in several newspapers. His attention had been focussed on the Aryan Nations in April 1990, when he was attacked on his doorstep and blinded in his left eye by a young man who professed to be a member of the Aryan Nations.

[179] Mr. Rutherford was "shocked" and "shaken" by the press reports of the Aryan Fest. He connected the Nazi flag with "all the worst that took place in the thirties and forties during the war." When he saw the cross-burning and heard the shouts "Death to the Jews" he was fearful for the Jews. A "cold shiver" ran up his back when he saw the

flaming cross against the night sky. The "KKK" sign conjured up pictures of news clips of the "lynching and tar and feathering" of blacks in Alabama and Tennessee in the thirties and forties.

[180] For Mr. Rutherford, the "KKK White Power" sign tied in with what his attackers yelled as they went down his driveway. They were shouting "White Power."

I. MR. HARVEY KANE

[181] Harvey Kane was present on the road next to the Bradley property during the Aryan Fest and viewed the television news broadcasts of the cross-burning. He associated the Nazi Swastika flag with the "abuse of Polish Jews by Nazi SS troopers." He also associated it with the "White supremacist attitudes" of Adolf Hitler and Heinrich Himmler and with their "plans to exterminate the Jews." He associated the letters "KKK" and the burning cross with "attacks against Black Christian churches," "abuse of Black men, women and children" and "general abuses perpetrated by Klansmen against Blacks." He associated the words "White Power" with Nazism and Hitler.

J. MR. LONG'S CROSS-EXAMINATION OF THE WITNESSES

[182] Mr. Long's cross-examination of these witnesses served only to reinforce their evidence. Mr. Long was ill-tempered, sarcastic and supercilious in his approach to the witnesses. For the most part the witnesses were calm and determined in presenting their evidence.

E. The Expert Witnesses Assess the Sign and Symbols

[183] The Board heard from five expert witnesses. Some of the experts testified that the sign and symbols displayed at the Aryan Fest conveyed an intention to discriminate against identifiable groups. They testified about the impact of such discrimination. Others testified about the propaganda functions of the sign and symbols and the contagious effect on those who might be led to discriminate or might be recruited.

1. Dr. Frances Henry

[184] Dr. Henry is a Professor of Anthropology at York University. She obtained an M.A. and Ph.D. from Ohio State University and a B.A. from Brooklyn College in New York City. She was qualified as an expert witness capable of expressing an opinion about racial discrimination, the history and meaning of symbols, and the anthropological effect of symbols in race relations.

[185] Dr. Henry said the Swastika is of Sanskrit origin and was a symbol of prosperity widely used in the ancient world. It appeared on Mesopotamian coins and in early Christian art. It also appeared among the Maya Indians of this continent and the Navajo Indians of the American southwest. It is also a symbol widely used in India by the Hindus

and Jains to mark the opening of books, doors, and thresholds. As used by these peoples the Swastika was and is a sign associated with good luck and prosperity.

[186] However, in North America today the black Swastika is almost always associated with the Nazi regime in Germany. The symbol stands for the Nazi philosophy of destruction, annihilation, and eradication of non-Aryan peoples and all others who oppose the regime. She testified Jews, Catholics, Gypsies, homosexuals, and intellectuals are targets for destruction. The Nazi campaign of terror began well before World War II. All of this is encompassed by the symbol of the Swastika.

[187] Dr. Henry said she considered the words "White Power" and the letters "KKK" to be symbols. They are both symbols associated with the white supremacist movement and designed to mean white supremacy.

[188] Dr. Henry testified that the symbols used at the Aryan Fest are significant because they communicate a number of messages. First, they played an important propaganda function. The Swastika communicated a hatred of the Jews and a commitment to their annihilation. The "KKK" sign and burning cross effectively communicated the message: "keep this country White."

Second, the symbols were useful for recruiting new members.

Third, the symbols were used as a means of targeting and vilifying victims. Their aim was to assault people.

Fourth, the symbols were used to instill fear and terror.

Fifth, the symbols were used to create a climate of intolerance against the targeted groups. This climate created an atmosphere in which others were encouraged to discriminate against the targeted groups. She said such meetings and symbols play upon the existing prejudices of members of the public and can lead to forms of discrimination.

[189] Dr. Henry stated the most virulent form of discrimination in Canada is "denial of access." This means certain groups are denied equal access to the goods, services, benefits and rewards of society; they are denied the rights and privileges of citizenship. She explained denial of access or discrimination takes many different forms.

[190] She said studies done in Canada, including her own study of racial discrimination and employment, show peoples of colour are denied equal rights of employment. Similar studies show peoples of colour are denied equal access to accommodation both as renters and purchasers. Studies also show inequality of access to education and social services.

[191] Dr. Henry said demonstrations such as the Aryan Fest, by targeting and vilifying a number of groups, reinforce the tendency to discriminate which is already present

among certain people in society. She said there is a direct link between the sign and symbols and the reinforcement of discrimination in the denial of access.

[192] Dr. Henry testified the display of such symbols tends to promote latent discrimination. She said studies in Canada indicate 12–15 percent of the population are attitudinally prejudiced against certain people. However, people who are prejudiced act out their discrimination only if the occasion presents itself, and only if they have the power to carry out their beliefs. She explained hard core bigots are often not in positions of power. In fact, they are disempowered and alienated from society themselves. They are not employers, many are barely employed themselves, so they cannot discriminate with respect to offering employment. They are not landlords and cannot discriminate in the provision of accommodation. However, they can act out their prejudice in such ways as assaulting people; refusing to sit next to a person of colour in a bus or subway; using graffiti to deface property, houses of worship and cemeteries; and shouting racial epithets.

[193] Dr. Henry said such people discriminate as much as they can, given their own limited positions of power. One of the means they use is public meetings and demonstrations, which will be picked up by the media. In this way they draw attention to themselves and their message.

[194] Mr. Abells referred Dr. Henry to the Aryan National State Platform as found in the publication, "Calling our Nation No. 53." She confirmed the goals contained in the Aryan National State Platform are those of the Aryan Nations movement.

[195] Dr. Henry stated there was and is a direct link between the use of the symbols (the Swastika, the burning cross, and the "KKK White Power" sign) and the goals of the Aryan National State Platform: the establishment of a racial nation. She said using symbols which have a specific historic linkage, in the one case with the Nazis in Germany and in the other, the Ku Klux Klan, conveys a very powerful image and message. They tell the people of the Jewish religion and blacks and other peoples of colour they better take care and better watch out because their families and properties are in jeopardy. These symbols act as a sort of warning for the targeted groups to leave. At the same time they are a clarion call for the Aryan population to come together and achieve its objectives: to expropriate properties and expel the non-Aryans. So, she said, there is a clear message communicated by these symbols: on the one hand a warning and on the other a call to come together.

2. Dr. Ben Barkow

[196] Dr. Ben Barkow resides in Toronto and is employed as a psychologist by the firm "Behavioral Team." He obtained a Ph.D. in Applied Psychology from York University where he studied attitudes and social measurement. He also has an M.A. from the University of New York and a B.A. from the University of Chicago.

[197] Dr. Barkow was qualified to give expert evidence on the effect of signs and symbols and the public's general and specific perceptions and reactions to signs and symbols.

[198] Dr. Barkow confirmed he had reviewed the CFCN and CBC video footage and the articles in the *Calgary Herald* and *Provost News*. He observed several symbols, including the Nazi Swastika, the "KKK White Power" sign, the cross-burning, the armbands bearing Swastikas, the people with guns, and the slogans which could be heard on the sound track.

[199] Dr. Barkow said the burning cross symbolizes a long history of vigilantism, night-riding and fear-mongering. There is a general sense of terror. The cross excludes persons who are not of that sort of Christian persuasion.

[200] He testified the "KKK White Power" sign shows hatred toward immigrants in Canada and especially persons other than those of North European or British origin. He described "White Power" as signifying a constellation of feelings including an absence or erosion of white power and a sense that violence will be used to restore power to persons who are white.

[201] Dr. Barkow said the significance of the Swastika and the "KKK" symbols, from the point of view of the participants, was that they were able to identify with a historic movement and derive a sense of power. With the Nazi symbols, there is an identification by the participants with a large, briefly successful, movement in Germany that expressed anti-Semitism and, to the extent it was relevant, anti-black sentiment.

[202] Dr. Barkow testified that the messages on the protest signs were a good indication of the reactions of most Canadians to the symbols displayed at the Aryan Fest. He noted from the videos that the demonstrators' placards read: "Ignorance plus bigotry equals racism"; "God created man, not Blacks and Whites"; "All men created equal"; "Being White doesn't make you right" and "World has had enough hate." He said the signs make it clear what the public feels about the symbols.

[203] Dr. Barkow described the Aryan Fest as an event with a strong non-verbal content, apart from the symbols and sign. The non-verbal aspect reflected violence, aggression, a paramilitary life and the willingness to be violent.

[204] Dr. Barkow referred to the climate at the Aryan Fest: the gunshots, the people taking a belligerent stance, the instances where some people had to rush to get out of the way of vehicles entering the property, and the Doberman dogs. He also was concerned about the ominous sounds from a tape played on a public address system. The voice was of American origin and gave a sense of a tie-in with a larger movement of activities and vigilantism across North America. Dr. Barkow also referred to the actions of the participants coming outside the gate onto the roadway to take pictures of the picketers. He considered this to be a hostile and aggressive act. Dr. Barkow also mentioned the violent attack on the camera people. Generally, he said, there was an

undercurrent of violence in the event, evident both in the uncut video and the short clips prepared for the news.

[205] Dr. Barkow stated that the sign and symbols, and the activities taking place around them, promote discrimination in a number of ways. He described six mechanisms by which the sort of violence observed at the Aryan Fest becomes imitated by those in the public who are initially disposed in that direction.

1. "Imitative induction." Some people have a sense of similarity to those committing the violence. As they see the targets of the violence, they choose a similar target. The more real the event, the more the imitation — and here, the event was totally real.

2. "Priming." This is bringing events or activities or motivations to the focus of one's attention. When one sees on screen groups for which one may have a subtle feeling of dislike, and others taking part in some activity directed against these groups, this comes more to one's attention and one may dwell on this.

3. "False sense of consensus." Media and others who observed the Aryan Fest found it difficult to estimate the number of people attending the rally. Others who become aware of the event may have a false sense of consensus, believing many people share bigoted views.

4. "Contagion." This is the simple observation that after a dramatic act of violence, similar acts of violence take place.

5. "Just World concept." If a bigoted person sees a person of a certain race become a victim there is a tendency to believe the person deserved it, i.e. it must have been brought on by his own behaviour. Therefore, there is an increase in hatred for people who are victims or who are singled out as victims.

6. "Weapons effect." Dr. Barkow said studies have shown that, not only while a weapon is in view, but for periods of days or weeks later, there is an enhancement of a sense of violence just from the visual contact with weapons.

[206] Mr. Hustwick asked in view of the above mechanisms and the reactive effects they develop what the likely manifestations of communicated discrimination might be.

[207] Dr. Barkow explained "you don't leave an event and go out and do something terribly violent or discriminatory just like that." You may not immediately be in a position to do something discriminatory or dramatically violent. However, there is an increased likelihood of discrimination which can be subtle. If a person were fairly bigoted, perhaps this would put him over the threshold. Perhaps he would not sell his house to an East Asian, for example. As anger toward the targeted groups increases, discomfort in being with members of those groups also increases.

[208] Dr. Barkow testified that the chant "Death to the Jew" around the lighted cross would be considered the ultimate death threat.

3. Ms. Joanna Buhr

[209] Ms. Joanna Buhr was qualified as an expert in Canadian ethnic history. She testified the Ku Klux Klan came to Alberta in the mid 1920s. They focussed much of their antagonism against Catholics, French and foreigners. There was a minimal amount of active terrorism, but there were a number of cross-burnings in central Alberta. The only recorded act of terrorism by the KKK was an abduction and tarring and feathering of a blacksmith from Lacombe. No conviction resulted.

[210] She testified that the KKK used hooded robes. In the early 1920s there were approximately 5,000 to 7,000 Klan members in Alberta. Ms. Buhr stated the Klan has been part of a much broader context of institutionalized racism which has existed since before Alberta became a province.

[211] She said the racism and discrimination espoused by the KKK and others have contributed to a legacy of fear, suspicion and fragmentation in society. In her view, the burning cross is symbolic of legitimizing segregation and discriminatory practices against specific groups of peoples.

4. Mr. Robert Blair

[212] Mr. Blair was qualified as an expert in business and business practices in Alberta. He testified there are discriminatory practices in many Alberta businesses in the hiring of certain people based on their race, colour, politics or gender.

[213] He stated that the effect of overt acts of racism, which are demonstrations of physical and mental threats to co-citizens, is totally negative. It is particularly damaging if it happens to be conducted in circumstances in which the public and the state do not comment negatively on the threat. Threats made in public and in the presence of the state, without any intervention, and without any moral reproof, are taken more seriously by those who receive them.

[214] He also testified physical and mental threats seriously interrupt and distract minority group members in the work force. Signs and symbols which are mentally and physically threatening to minority groups are counter-productive to the economic development of Alberta.

[215] Mr. Blair stated he does not know of any corporation that has prevailed by emphasizing racial purity within its employee ranks. In fact, he stated the strongest international corporations are those which are operating without racial barriers.

5. Professor Catharine MacKinnon

[216] Professor MacKinnon was qualified to give evidence as a legal and social expert on equality and freedom of expression. She characterized acts such as cross-burning, displaying the Swastika and the marching of KKK members in their white robes as discriminatory expressive acts. They divide the world into two groups: (a) members of targeted groups who live in fear, dread and apprehension; and (b) members of the dominant groups who are told how to discriminate against the targeted group. The effect is to mobilize and extend existing discriminatory attitudes and behaviour in society.

[217] Discriminatory expressive acts produce a sense of a total lack of personal security in the targeted group because one feels one could at any moment be assaulted with impunity. So there is no place to run to be safe.

[218] The actual harm created by such acts is to make individuals in those groups vulnerable to illness affecting their physical, emotional and mental well-being. Further, targeted groups are denied equal access to education, employment, accommodation and political participation. The net effect is continued subordination of the targeted group by the dominant group. These effects are magnified for those persons who are members of two or more targeted groups such as women of colour and Jewish women. They are in a position to be interactively terrorized by racist acts and sexual discrimination. This reverberates into employment discrimination.

[219] Professor MacKinnon was asked about the effect of the display of the sign and symbols at the Provost Aryan Fest. She said the first and most prominent effect would be the feeling of terror, the sense of a total lack of personal security, the feeling one could at any moment be assaulted with impunity.

[220] She testified the other major consequence of such discriminatory expressive acts is that it silences the targeted people. They feel they cannot speak. They feel they will be very visible in public. They feel they cannot appear in proceedings like this one because they do not know who is here and what may be done to them.

[221] Professor MacKinnon testified that a cross-burning in a neighbourhood says "get out, we are coming to get you." What a cross-burning does for the Aryan Nations is to say "this is our place, Blacks and Jews get out of here." "If you don't do it voluntarily we have ways of coming after you to make sure you leave." "If you don't leave we have plans for you."

V. DECISION

A. The Nature of Human Rights Legislation

[222] Over the last fifty years virtually every jurisdiction in Canada has enacted human rights legislation. The underlying premise of such legislation is that persons should be treated equally and with dignity, regardless of the fortuitous attributes of gender, race, age, colour, ancestry or place of origin, or physical disability. Certain personal choices, such as religious beliefs, are also protected. Some of the standards contained in human

rights legislation require a modicum of civilized conduct in a multicultural society. Prohibiting discrimination on the basis of race, colour, ancestry and place of origin enhances this objective. That Canada is a multicultural society is an obvious demographic fact. Human rights statutes are just one, but perhaps one of the most important, legal guarantees of the equality and dignity to be accorded all peoples in Canada. No doubt some of the standards typically found in human rights legislation would be necessary even in a culturally homogeneous society. Prohibiting discrimination based on gender, age, physical disability or religious beliefs ensures equal treatment of particularly vulnerable people.

[223] The courts have had considerable experience with human rights legislation and have developed interactive principles which are instructive to boards of inquiry.

[224] First, human rights statutes are more important than all laws except the constitution.

[225] In *Insurance Corp. of B.C. v. Heerspink*, [1982] 2 S.C.R. 145 at 158 [3 C.H.R.R. D/1163 at D/1166, para. 10302] Lamer J. said in the absence of "express and unequivocal language" it is intended that human rights legislation will "supersede all other laws when conflict arises." Lamer J. went on to say such legislation "should be recognized for what it is, a fundamental law."

[226] Second, human rights legislation should be interpreted in such a way as to allow it full impact. In *Canadian National Railway Co. v. Canada (Human Rights Commission)*, [1987] 1 S.C.R. 1114 at 1134 [8 C.H.R.R. D/4210 at D/4224, para. 33238], Dickson C.J.C. observed:

Human rights legislation is intended to give rise, amongst other things, to individual rights of vital importance, rights capable of enforcement, in the final analysis in a court of law. I recognize that in the construction of such legislation the words of the *Act* must be given their plain meaning, but it is equally important that the rights enunciated be given their full recognition and effect. We should not search for ways [. . .] to enfeeble their proper impact.

[227] Third, a board is to interpret human rights legislation to advance its broad purposes. In *Ontario Human Rights Commission and O'Malley v. Simpsons-Sears Ltd.*, [1985] 2 S.C.R. 536 at 546 [7 C.H.R.R. D/3102 at D/3105, para. 24766] McIntyre J. said:

The accepted rules of construction are flexible enough to enable the Court to recognize in the construction of a human rights code the special nature and purpose of the enactment [. . .] and give to it an interpretation which will advance its broad purposes. Legislation of this type is of a special nature, not quite constitutional but certainly more than the ordinary — and it is for the courts to seek out its purpose and give it effect.

[228] Fourth, we are to give the *IRPA* the widest interpretation possible. In *Canadian Odeon Theatres Limited v. Saskatchewan Human Rights Commission and Huck*, [1985] 3 W.W.R. 717 at 735 [6 C.H.R.R. D/2682 at D/2686, para. 22174] Vancise J.A., writing for the majority of the Saskatchewan Court of Appeal said:

The interpretation of a statute which guarantees fundamental rights and freedoms and which prohibits discrimination to ensure the obtainment of human dignity should be given the widest interpretation possible.

[229] Human rights legislation is thus tantamount to fundamental law. The important purposes of such statutes are to be advanced through progressive and generous interpretation. Such legislation is idealistic and inspirational. It seeks to protect the weak. It seeks to change human behaviour and create a more tolerant and just society. Any interpretations of such statutes must try to give life to these noble objects.

[230] Having considered the general interpretive principles we are to apply, we shall now deal with the issues raised in this case.

B. The Issues Arising from Section 2 of the IRPA

[231] The complaints allege a violation of s. 2 of the *IRPA*. That section provides:

2(1) No person shall publish or display before the public or cause to be published or displayed before the public any notice, sign, symbol, emblem or other representation indicating discrimination or an intention to discriminate against any person or class of persons for any purpose because of the race, religious beliefs, colour, [gender], physical disability, [mental disability,] age, ancestry or place of origin of that person or class of persons.

(2) Nothing in this section shall be deemed to interfere with the free expression of opinion on any subject.

(3) Subsection (1) does not apply to

(a) the display of a notice, sign, symbol, emblem or other representation displayed to identify facilities customarily used by one gender,

(b) that the display or publication by or on behalf of an organization that

(i) is composed exclusively or primarily of persons having the same political or religious beliefs, ancestry or place of origin, and

(ii) is not operated for private profit,

of a notice, sign, symbol, emblem or other representation indicating a purpose or membership qualification of the organization, or

(c) the display or publication of a form of application or an advertisement that may be used, circulated or published pursuant to section 8(2),

if the notice, sign, symbol, emblem or other representation is not derogatory, offensive or otherwise improper.

[232] We shall examine each of the elements of s. 2 which are relevant in this case. For convenience we shall restate the questions we must answer.

1. Are the respondents "persons"?

2. Did the respondents "display or cause to display"?
3. Was the display "before the public"?
4. Was the display a "notice, sign, symbol, emblem or other representation"?
5. Did the display "indicate discrimination"?
6. Did the display "indicate . . . an intention to discriminate"?
7. What did the sign and symbols mean?
 - a. The meaning of the sign and symbols to the non-experts
 - b. The meaning of the sign and symbols to the experts
 - c. The meaning of the sign and symbols against the background of the National State Platform
 - d. The meaning of the sign and symbols in the context of the Aryan Fest
8. Was the discrimination "for any purpose"?
9. Is there interference "with the free expression of opinion on any subject"?
10. Is the display exempt because it was "not derogatory, offensive or otherwise improper"?
11. Did the respondents raise a constitutional challenge?

We shall now consider each of the issues.

1. *Are the Respondents "Persons"?*

[233] "Person" is broadly defined in the *IRPA* as follows:

38(1)(h) "person", in addition to the extended meaning given it by the *Interpretation Act*, includes an employment agency, an employers' organization, an occupational association and a trade union;

[234] "Person" is defined in the *Interpretation Act*, R.S.A. 1980, c. I-7 as amended as follows:

1(p) "person" includes a corporation and the heirs, executors administrators or other legal representatives of a person.

[235] Clearly the respondents Long and Bradley, as natural human beings, are "persons." The Board has decided that the Church, which is an unincorporated association, is also a "person" for the purposes of the *IRPA*.

[236] In reaching this conclusion we adopt the reasoning of Vancise J.A. in *Saskatchewan Human Rights Commission v. Engineering Students' Society* (1989), 10 C.H.R.R. D/5636. In that case one of the issues was whether the Engineering Students' Society, which was an unincorporated association, was a "person" for the purposes of the *Saskatchewan Human Rights Commission Act*, R.S.S. 1972, c. 108 [sic] as amended (the *Saskatchewan Code* [S.S. 1979, c. S-24]). The majority of the Court did not answer the question. However, Vancise J.A., writing in dissent, did decide the issue. His reasoning is very persuasive.

[237] It is important to note the *Saskatchewan Code* contained the same definition of "person" as the *IRPA*. Vancise J.A. began by observing the courts, including the Supreme Court of Canada, have taken a liberal approach to the interpretation of human rights legislation.

[238] He noted the *Saskatchewan Code* expressly applied to entities which could be incorporated or unincorporated associations, such as trade unions and occupational associations. He observed the *Code* definition of "person" was expansive and not restrictive.

Vancise J.A. concluded as follows [at p. D/5653, para. 41357]:

The definition of "person" does not expressly include an unincorporated association. However, it does state that it "includes" and then enumerates organizations which are or can be both incorporated or unincorporated. The use of the word "includes" gives an expansive and not a restrictive interpretation to the word defined. To apply the *Code* to incorporated organizations and not to unincorporated associations, or to some unincorporated associations and not to others, would defeat the purpose and objective of the legislation. If unincorporated associations could discriminate against a person or class of persons because of his or its sex, or any of the other enumerated characteristics, the recognition and protection of human dignity and the guarantee of equality and freedom and protection against discrimination would be impaired if not defeated.

[239] We agree. The *IRPA*, like the *Saskatchewan Code*, includes typically unincorporated associations such as "employers' associations," "occupational associations," and "trade unions" in the definition of "person." There is no indication this list was intended to be exhaustive or exclusive. Rather, it illustrates the range of entities to which the *IRPA* applies.

[240] If natural persons are at one end of a continuum and artificial persons such as corporations are at the other, unincorporated associations are in the middle. They are simply associations of natural persons. The *IRPA* clearly applies to natural persons, corporations, and to some, specified, unincorporated associations. Why would it deliberately exclude some other unincorporated associations? Given the important objectives and comprehensive design of the *IRPA*, it is our view no sensible public purpose would be served by an interpretation which excluded some, but not all,

unincorporated associations. Indeed, such an interpretation would undermine the objectives of the *IRPA*. Unincorporated associations such as the Church could discriminate with impunity. By simply refusing to incorporate, they could completely avoid the *IRPA*. In our view this result was not intended by the drafters and is not mandated by the *IRPA*. We find the concept of "person" in the *IRPA* includes unincorporated associations such as the Church. We further find the Church participated in the Aryan Fest through the actions of its chief Canadian official, Terry Long, and his fellow leaders, Ray Bradley and Carney Nerland.

[241] The unincorporated association was properly made a party to these proceedings. Its chief officer was named in both his personal and representative capacity. Further, Mr. Long and Mr. Taylor, the "Canadian Ambassador" for the Church, represented the Church before the Board, and never raised the question of the Church's status.

2. Did the Respondents "display or cause to display"?

[242] Counsel referred the Board to several, helpful dictionary definitions of the key words in the various phrases to be construed. We are clearly entitled to consider dictionary definitions. See *Warren v. Chapman* (1981), 11 D.L.R. (4th) 474. "Display" is defined as "exhibit, expose to view, show; show ostentatiously; reveal, betray, allow to appear; present as a display" (*The Concise Oxford Dictionary of Current English*, 7th ed.).

[243] We find the "Swastika." "burning cross" and "KKK White Power" sign were all displayed in the sense they were shown "ostentatiously" by the respondents. Mr. Long knew the sign and symbols were clearly visible to both participants and observers of the Aryan Fest. He said he did not care.

[244] Mr. Long argued the Aryan Fest was meant to be a "private" meeting. He said that is why he placed a postscript on the letter of invitation. It asked invitees not to tell the press about the event. However, there is overwhelming evidence Mr. Long knew the media was aware of the imminent Aryan Fest. He also knew with reasonable certainty the media would cover the event. Yet, he took no steps to change the time or place of the Aryan Fest or to reduce the exposure of the sign or symbols.

[245] Even if the meeting could in some respects be characterized as private, the display of the sign and symbols was public. The cross was thirty feet tall and visible in daylight from the road. When lit at night it could be seen from a considerable distance. Mr. Long participated in the "cross-burning" ceremony. The "KKK White Power" sign and "Swastika" battle flag were clearly visible from the public road. We find Mr. Long, in his personal capacity and in his capacity as Canadian leader of the Church, displayed or caused to be displayed the sign and symbols. Mr. Long and his co-leaders, Ray Bradley and Carney Nerland, enthusiastically participated in the event and helped draw attention to the sign and symbols.

[246] We find Mr. Bradley caused the display to take place, for he and Mr. Long initiated the Aryan Fest and he permitted his property to be used for it. He, personally, built and

erected the cross; the Nazi battle flag was attached to his workshop; and the "KKK White Power" sign was made on his property and affixed to his gate. He was an active participant in the event and was to be rewarded for his contribution with a promotion in the leadership ranks of the Church.

[247] Carney Nerland, the leader of the Church for Saskatchewan, supplied the Nazi battle flag with its Swastika and Iron Cross and personally hung it so it would receive maximum exposure. The flag was floodlit at night to enhance its impact. Mr. Nerland proudly strutted about in his Nazi uniform and drew attention to the Swastika on his armband. He participated in the "cross-burning" ceremony and was "right there" when the signs was [*sic*] painted and hung.

[248] The Board finds the Church's leaders, Long, Bradley and Nerland displayed, or caused to be displayed, the "KKK White Power" sign, "Swastika" and "burning cross." The Board further finds the Church displayed, or caused to be displayed, the same sign and symbols through the actions of its leaders.

3. Was the Display "before the public"?

[249] "Before" is defined as, "in front of so as to be in the sight of: under the cognizance of" (*The Concise Oxford Dictionary of Current English*, 7th ed.). "Public" is defined as, "open to general observation, done or existing in public" (*op. cit.*).

[250] As our review of the facts indicates, many of the events which took place during the Aryan Fest were "open to general observation." The Board finds that members of the public who were on the road next to the Bradley property had a clear view of the "burning cross," "Swastika" and "KKK White Power" sign. The persons who attended as protesters, the media representatives and the persons using the road to go to the dump, could see the prominently displayed sign and symbols. Indeed, anyone passing the Bradley property during the Aryan Fest would have been confronted with the sign and symbols.

[251] In our view it is no defence to argue, as Mr. Long repeatedly did, that the event took place on private property. The *IRPA* does not contemplate such a limit on the application of the prohibition. The question is whether the display was "before the public" not whether it took place on public property. Clearly, sign or symbols which are found to infringe the *IRPA* are not to be displayed before the public, either from private or public land. This approach is consistent with the objectives of the *IRPA*. The purpose is to prohibit the public display of discriminatory signs or symbols, regardless whether the signs or symbols are actually hung or anchored on public or private premises.

[252] The Board also finds some of the people who attended the Aryan Fest were members of the public for the purposes of the *IRPA*. Not everyone there was a member of the Church. Tom Erhart, for example, testified he knew very few people at the Aryan Fest. He had received a copy of the invitation letter from Mr. Long. While he was familiar with the teachings of the Church, and had previously met Mr. Long, he said he was not on any mailing list. Some skinheads from Calgary were present. Some members of the

Brotherhood of Regular People came from Provost. Members of the Ku Klux Klan attended. This was a gathering of some members of the public who were interested in white supremacy.

[253] The invitation was quite open-ended. It was directed to the invitees and their "White friends." It was not an invitation addressed to the members of an exclusive club. Membership in the Church was not a precondition to attendance. For, as Mr. Nerland said, one of the purposes of the Aryan Fest was to recruit new members. The Board finds the persons attracted to the Aryan Fest were members of the public before whom the sign and symbols were displayed.

[254] Support for this notion of the "public" may be found in *Jennings v. Stephens*, [1936] 1 All E.R. 409 (C.A.). The question was whether a play performed at the monthly meeting of a women's institute was performed "in public." The institute was formed to encourage music and dancing. Every female living in the village was eligible to become a member. Sixty-two of the 109 members of the institute were present at the performance. The audience was restricted to members of the institute. The gathering was thus unlike the motley group of people attending the Aryan Fest. Despite the fact that only members of the institute were present, Lord Wright M.R. held the persons who attended the performance were members of the public. He held the meaning of the term, "public," must be taken from the context in which it is used. He said at [p.] 412:

It does not generally mean the inhabitants of the world or even the inhabitants of this country. In any specific context it may mean for practical purposes only the inhabitants of a village or such members of the community as particular advertisements would reach, or who would be interested in any particular matter, professional, political, social, artistic, or local . . . Thus it is clear that by "public" is meant . . . "a portion of the public."

[255] The persons attending the Aryan Fest were not all members of any particular organization. They did not have to be. They simply had to be white and sympathetic to the cause of white supremacy. They were "a portion of the public."

4. Was the Display a "notice, sign, symbol, emblem or other representation"?

[256] "Sign" is defined as "a mark or device having some special meaning or import attached to it, or serving to distinguish the thing on which it is put" (*The Concise Oxford Dictionary of Current English*, 7th ed.). "Symbol" is defined as "something that stands for, represents, or denotes something else, esp. a material object representing or taken to represent something immaterial or abstract" (*op.cit.*).

[257] The Board finds the "burning cross" and "Swastika" were "symbols" and the "KKK White Power" sign was a "sign" and "symbol" for the purposes of the *IRPA*.

5. Did the Display "indicate discrimination"?

[258] "Indicate" is defined as "to point out, point to, make known, show (more or less distinctly) . . . 2. to be a sign or symptom of; to betoken 1706 . . ." (*The Shorter Oxford English Dictionary*, 1985).

[259] The concept of "discrimination" in the context of human rights legislation has been extensively considered by the courts. A useful definition is found in *Saskatchewan Human Rights Commission v. Engineering Students' Society*, *supra*. Cameron J.A. said at para. 41271 [p. D/5641]:

Discrimination in this context may be taken to mean any distinction, exclusion, restriction, or preference which is founded on any aspect of the person mentioned in these sections — his or her race, religion, colour, sex and so on — and which in purpose or effect impairs the enjoyment of persons of their rights secured by these sections, to equal opportunities in these fields.

[260] The question: "what indicates discrimination"? has been examined in two cases we shall consider.

In the first, *Singer v. Iwasyk* (November 5, 1976), (Sask. Bd.Inq.) [unreported] the Saskatchewan Human Rights Commission dealt with a complaint about a caricature of "a small person with black or brown skin colour wearing a chef's hat and grass skirt and bearing the words ??Sambo's Pepperpot'." The caricature was used on a large sign and in advertisements for the respondent restaurant. It was alleged the caricature violated s. 4(1) of the *Fair Accommodation Practices Act*, R.S.S. 1965, c. 379 which provided:

4(1) No person shall:

(a) publish or display.

any notice, sign, symbol, emblem or other representation indicating discrimination or an intention to discriminate against any person or any class of persons for any purpose because of the race, religion, religious creed, colour, sex, nationality, ancestry or place of origin of that person or class of persons. [Emphasis added.]

[261] The Commission found the stereotypical caricature indicated discrimination. At p. 4 of its decision the Commission said:

The Commission feels it is proper to ask the following question: "Would the representation of Blacks as childish, funny, emasculated, inferior, as described by the witnesses, indicate discrimination"?

To put it another way, it is not only a question of whether a Black person would feel humiliated or be insulted by this representation, but the question of whether or not such a person's rights to equal employment opportunities and even to non-discriminatory treatment in housing and public accommodation would be affected.

It seems to us that to ask the question is to answer it. If a stereotypical image of a certain class of persons as incompetent, childish and funny is allowed to be displayed, the opportunities of members of the class for responsible jobs and to obtain rights on an equal footing with the majority class groupings are endangered.

The effect of such a caricature is to reinforce prejudice against Blacks and as a consequence to prolong the existence of hangovers of prejudice against non-White minority groups in Canada.

In the above sense the representation in question indicates discrimination against Blacks within the meaning of s. 4(1).

The Commission went on to observe at p. 6

. . . a poster, drawing, cartoon or other similar representation, in words or otherwise depicting Blacks as inferior to White persons, would disclose a discriminatory predilection, belief or attitude, and thereby indicate discrimination against Blacks but would not necessarily indicate an intention to discriminate.

[262] This decision was quashed by the Saskatchewan Court of Queen's Bench (1977), 80 D.L.R. (3d) 1, but restored on appeal, [1978] 5 W.W.R. 499. The application for *certiorari* and the appeal dealt with the issue of bias. The reasoning of the Commission in construing the statute and defining the phrase "indicating discrimination" was not questioned. Therefore, the decision is of some assistance to us.

[263] It is also important to note the disposition of one of the arguments urged upon the reviewing court in *Iwasyk, supra*. It was argued a complaint must allege a specific instance of infringement and that it was not sufficient to make a broad allegation of infringement without pointing to a particular instance of discrimination. For example, in *Iwasyk* there was no complaint that a particular black person had been denied a meal. Instead there was a generalized complaint that black people would be demeaned and belittled by the "black Sambo" symbol. Hughes J. rejected this argument at p. 6, holding the Commission had jurisdiction to inquire into a broad rather than specific allegation.

[264] In the second case, *Black United Front of Nova Scotia v. Bramhill* (1980), 2 C.H.R.R. D/249, a Board of Inquiry decided another symbol indicated discrimination against black people. The respondent distributed buttons which displayed a picture of a black singer surrounded by the words "I'm a Big Mouth Cape Bretoner — so Kiss Me." The Board accepted the evidence of the respondent that he had not intended to discriminate against black people but wished to satirize a statement made by the Attorney General in the provincial legislature. Though holding there was no intention to discriminate, the Board went on to find the button "indicated discrimination" against black persons as a class. The Chairman, Professor W.H. Charles, came to this conclusion based on evidence from expert witnesses and members of the black community. He said at D/249 [para. 2150]:

At the hearing, testimony was provided by many members of the Black community clearly stating that the uniform reaction of Blacks to the button was one of anger, shock, disgust, outrage and indignation. All felt that the button portrayed a negative image of a Black person as being loud-mouthed with few brains. Concern was expressed for the effect upon Black youth and the fact that the button would reinforce existing feelings of inferiority. Dr. Hill, presently a human rights consultant and former Chairman and Director of the Ontario Human Rights Commission for nine years from 1962 to 1971, expressed the view that the button had the effect of promoting latent discrimination, as well as active discrimination. In his opinion, the button could have an effect upon opportunities for employment.

[265] From these cases we take the following points:

First, there does not have to be an actual act of discrimination for there to be an indication of discrimination. Employing the *Shorter Oxford English Dictionary* definition of "indicate," a "sign or symptom" of discrimination is necessary. The caricature of a black person showing that person to be inferior to whites indicates discrimination because it discloses a "discriminatory predilection, belief or attitude" and because it will "reinforce prejudice against Blacks." Such symbols promote "latent discrimination, as well as active discrimination."

Second, by reinforcing prejudice or promoting latent discrimination such displays endanger the rights of the target group to obtain equal opportunities in employment, housing and public accommodation.

Third, there does not have to be evidence of an intention to discriminate to find an indication of discrimination. In *Iwasyk, supra*, there was no evidence the owner of the restaurant had an "intention to discriminate" against blacks. In *Bramhill, supra*, the Board accepted the respondent did not intend to discriminate. Nevertheless, the symbols were considered to be an indication of discrimination.

[266] As we shall show, the display of signs and symbols at the Aryan Fest indicated discrimination.

6. Did the Display "indicate . . . an intention to discriminate"?

[267] It is significant that s. 2(1) of the *IRPA* does not require actual discrimination to have taken place before the section can bite. Instead, an "intention to discriminate" is sufficient. On the facts of this case we find not only that the sign and symbols indicated discrimination, but they also indicated an "intention to discriminate." This is made clear by a consideration of what the sign and symbols mean.

7. What Did the Sign and Symbols Mean?

[268] The meaning of a particular sign or symbol may change through time and is partly determined by the context in which it is found. We shall consider the meaning of the sign and symbols from the points of view of the complainants, townspeople and expert witnesses. We shall then consider how their meaning was affected by the context in which they were displayed. We shall determine whether additional meaning was provided by the Aryan National State Platform and the climate of the Aryan Fest.

A. THE MEANING OF THE SIGN AND SYMBOLS TO THE NON-EXPERTS

[269] The complainants and townspeople who testified gave virtually identical interpretations of the sign and symbols. The Board found the reaction of the witnesses was deep-seated and genuine. All of the witnesses were credible, public-spirited, and concerned citizens. It is clear the sign and symbols produced a powerful and adverse effect on the witnesses.

[270] The Swastika reminded the witnesses of Hitler's Nazi regime and the annihilation of Jews and opponents of the regime. It brought to mind oppression and genocide and the white supremacist ideas of Himmler and Hitler. People felt revolted by the Swastika, and fearful for the Jews. For Joan Pacquette the symbol promoted hatred and made her think of people dying. This symbol conveyed a powerful, anti-Semitic message.

[271] The "KKK White Power" sign made the witnesses think of the Ku Klux Klan and that organization's oppression of non-white Americans. The sign gave some of the witnesses a chilling feeling as they thought of women and children being terrorized. The sign symbolized racial hatred and bigotry. For Mr. Joffe the "KKK" brought to mind images of white hooded men burning black churches and hanging blacks. He also associated the sign with attacks against the Calgary Jewish community.

[272] The "burning cross" sent a shiver up the back of Mr. Rutherford. The shouts of "Death to the Jew" made him fearful for the Jewish community. Several witnesses felt the "burning cross" was a desecration of this Christian religious symbol. They reacted with extreme revulsion as the "burning cross" represented the hatred and destruction of blacks in the United States by the Ku Klux Klan.

[273] The Board finds the sign and symbols communicated intense racial hatred and a threat of violence against Jews and non-white persons. We find these messages were obvious and easily understood by ordinary people. There is no subtlety in the sign and symbols. Their meaning is transparently clear. They mean: "Join us in discriminating against Jews and non-white people." "Run for your life if you are a Jew or are not White."

B. THE MEANING OF THE SIGN AND SYMBOLS TO THE EXPERTS

[274] The expert evidence supported the common sense views of the townspeople and complainants. The expert witnesses said the sign and symbols conveyed an intention to discriminate against identified groups. We will not repeat here all the evidence which is summarized above. We shall simply note a few points. In general, we wish to indicate our acceptance of the expert testimony.

[275] Dr. Henry testified the black Swastika is today nearly always associated with the Nazi regime and its philosophy of non-Aryan peoples. She testified the words "White Power" and the letters "KKK" are symbols associated with the white supremacist movement and mean white supremacy.

[276] In her view the symbols communicated a hatred of Jews and non-Aryans and a commitment to their annihilation or removal from the Aryan Nation.

[277] We also accept her analysis of the method by which such symbols promote latent discrimination in the denial of access to employment, accommodation, education and social services.

[278] Dr. Barkow testified the burning cross symbolizes a long history of vigilantism and fear-mongering and creates a general sense of terror. He said the "KKK White Power" sign shows hatred to non-white immigrants.

[279] Dr. Barkow described six mechanisms by which discrimination would be fostered by the provocative symbolism and activities of the participants at the Aryan Fest. The Board accepts Dr. Barkow's evidence about the tendency of an event such as the Aryan Fest to induce discriminatory behaviour in others.

[280] Professor MacKinnon characterized the display of the sign and symbols used at the Aryan Fest as "discriminatory expressive acts." She said they discriminate by dividing the world into two groups: those in the target group who live in fear and apprehension; and those in the dominant group who are instructed how to discriminate against the target group. The effect of discriminatory expressive acts is to mobilize and expand already-existing discriminatory beliefs and behaviour.

[281] Professor MacKinnon testified there are specific effects of discriminatory expressive acts on the targeted groups. She said they produce "a total lack of sense of personal security" because a member of the targeted group feels they could, at any moment, be "assaulted with impunity." They feel "there is no place to run and . . . no place to be safe." Further, discriminatory expressive acts have the effect of silencing the members of the target groups.

[282] The Board accepts Professor MacKinnon's description of the effects of discriminatory expressive acts. We also accept her opinion that such acts of discrimination have a magnified effect on women who belong to target groups.

[283] The Board also accepts Mr. Blair's testimony about the damage done to the Alberta business climate through highly public acts of discrimination which are not reprovved by the state.

[284] Further, we accept Ms. Buhr's testimony that the racism and discrimination espoused by the KKK has contributed to a legacy of fear, suspicion and fragmentation in society.

C. THE MEANING OF THE SIGN AND SYMBOLS AGAINST THE BACKGROUND OF THE NATIONAL STATE PLATFORM

[285] The sign and symbols were displayed by a particular organization — The Church of Jesus Christ Christian-Aryan Nations. The meaning of the sign and symbols is affected by the intentions or goals of the group making the display. This was not a coincidental collection of sign and symbols. Rather, it was a bold display of carefully selected symbols designed to promote the goals of the Church. It is important to examine the relationship between the sign and symbols and objectives of the Church.

[286] The intentions or goals of the Church are set out in the National State Platform. It calls for the removal of non-Aryans from the territory of the new nation, and confiscation of their property and redistribution of their assets to the Aryans. Non-Aryans would not be able to vote or hold office in government, industry or society. They could not own property, conduct business or possess arms. They could not join the military or law enforcement agencies. Only whites would be free of taxes above a 10 percent tithe and would be eligible to receive interest-free loans. Only whites would be free to perform mental or physical work they might choose. Non-Aryans would live in custodianship. Only Aryan cultural life would be permitted and all media would be controlled by Aryans. Only the religious teachings of the Church would be permitted.

[287] On every point this program flagrantly contradicts the values and guarantees contained in the *IRPA*. It proposes pervasive discrimination based on race, religious beliefs, colour, ancestry and place of origin. As we discuss later, the National State Platform proposed discrimination in several matters under provincial jurisdiction and some which are directly protected by the *IRPA*.

[288] At this point it is sufficient to observe the goals and intentions of the Church are directed against the very premise of the *IRPA*. We find this in the Preamble of the *IRPA* which reads:

WHEREAS recognition of the inherent dignity and the equal and inalienable rights of all persons is the foundation of freedom, justice and peace in the world; and

WHEREAS it is recognized in Alberta as a fundamental principle and as a matter of public policy that all persons are equal in dignity and rights without regard to race, religious beliefs, colour, [gender], physical disability, [mental disability,] age, ancestry or place of origin; and

WHEREAS it is fitting that this principle be affirmed by the Legislature of Alberta in an enactment whereby those rights of the individual may be protected;

THEREFORE HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

[289] Standing in stark contrast, the National State Platform is a prescription for racial tyranny. It is hard to imagine a document which could aim to do more to promote racial discrimination and which would be more antithetical to the objectives of the *IRPA*. Indeed, the National State Platform is so extreme it is inconceivable that reasonable people could subscribe to it.

[290] The Official Religious Platform makes clear the anti-Semitic objectives of the organization and its commitment to white supremacy. Two articles serve as examples of a doctrine which is profoundly at odds with the values expressed in the Preamble to the *IRPA*.

2. We believe that Adam-man of Genesis was the placing of the White Race upon this earth. Not all races descend from Adam. Adam is the father of the White Race only.

5. We believe that the Canaanite Jew is the natural enemy of our Aryan (White) Race. This is attested by scripture and all secular history. The Jew is like a destroying virus that attacks our racial body to destroy our Aryan culture and the purity of our Race. Those of our Race who resist these attacks are called 'chosen and faithful'.

[291] The sign and symbols displayed at the Aryan Fest are directly linked with the attainment of the goals of the National State Platform and the Official Religious Platform. We heard this evidence from Dr. Henry, Carney Nerland and Mr. Long. Mr. Nerland said the "Swastika," "White Power" sign and "burning cross" symbolizes the philosophy and teaching of the Church. Mr. Long testified the "KKK White Power" sign, and the "Swastika" and burning or "lighted" cross, as he preferred to call it, were symbolic of the values of the Church.

[292] Dr. Henry testified there was a direct link between the sign and symbols and the goals of the National State Platform. She said symbols such as the "Swastika" and "burning cross" convey a powerful message. They tell the people of the Jewish religion and blacks and other peoples of colour they better take care and better watch out because their families and properties are in jeopardy. The symbols act as a sort of warning for the targeted groups to leave. At the same time they are a clarion call for the Aryan population to come together and achieve its objectives — to expropriate properties and expel the non-Aryans. Two clear messages are communicated by these symbols: on the one hand a warning and on the other a call to come together.

[293] The Board finds the "Swastika," "burning cross" and "KKK White Power" sign reflect the doctrine and are integral to the aspirations of the Church. The choice of these particular symbols was deliberate. Each of them reinforces the objectives of the Church. The main goal of the Church is the creation of an all-white or "Aryan" nation. The program involves both encouraging "Aryan" families to move into the designated territory and discouraging non-Aryans from staying. Considered in this context the collection of symbols displayed at the Aryan Fest effectively communicates the message "we intend to discriminate against Non-Aryans."

D. THE MEANING OF THE SIGN AND SYMBOLS IN THE CONTEXT OF THE ARYAN FEST

[294] As our review of the evidence shows, the Aryan Fest was a celebration of racial intolerance. It was organized and promoted by the leaders of the Church. In Dr. Barkow's words "there was an undercurrent of violence" at the Aryan Fest. This climate was created by the "Nazi" uniforms and "KKK" hooded robes; by physical and verbal threats and assaults on the media and protesters; by chants of "Sieg Heil," "Hail Victory," "White Power" and "Death to the Jew"; by Doberman dogs, rifles discharged in the night, and speeding cars requiring people to jump out of the way; by anti-Semitic abuse and racist taunts; by masked gunmen, fixed bayonets, military-style assault weapons, bandoliers of shotgun shells, SS insignia, "guards" photographing the protesters and writing down their licence plate numbers; and paramilitary style uniforms; and by the Confederate Flag and "White Pride" caps. If there were any doubt about the meaning of the sign and symbols, standing alone, the atmosphere of violence and intimidation removes any possibility of a benign interpretation.

[295] The Board finds the climate of the Aryan Fest enhanced the meaning of the sign and symbols. The Swastika celebrated the racist policies of the Nazi regime. It was intended to attract Nazis and white supremacists and frighten their intended victims. The burning cross with white-hooded Klansmen marching and chanting around it was also intended to attract white supremacists and frighten non-white people. The "KKK White Power" sign was intended to do the same. Together, the sign and symbols conveyed the impression that participants in the Aryan Fest were members of a larger, national and international, conspiracy to discriminate.

[296] The "burning cross" was not used at the Aryan Fest, even assuming it ever was in history, as an ancient Scottish symbol or to represent the light Christ brought to the world. The "KKK White Power" sign was not some sort of holy symbol. Mr. Long's efforts to portray these images as benign or non-discriminatory symbols were defeated by the ugly reality of the Aryan Fest.

[297] The sign and symbols used at the Aryan Fest were far more powerful indications of discrimination than the "Sambo's Pepperpot" sign or "Big-Mouth" button considered in *Iwasyk, supra*, and *Bramhill, supra*. The Aryan Fest sign and symbols were selected because they represented past and ongoing instances of racial discrimination. They celebrated the practices of organizations dedicated to racial discrimination. They were an invitation to discriminate and a promise of fellowship for those who joined in the activity. The weapons and intimidatory behaviour reinforced the impression the armed disciples of racism attending the Aryan Fest could discriminate with impunity knowing there was nothing anyone could do to stop them. In part the message communicated by the sign and symbols was: "Join us. We discriminate against Jews and non-white people. Come and help us to discriminate." The sign and symbols clearly "indicate discrimination" insofar as they "point out" and are a "sign or symptom" of discrimination. In the words of the Commission in *Iwasyk* the sign and symbols showed a "predilection, belief or attitude" to discriminate and reinforced prejudice against Jews and non-white persons. Based on the expert evidence we heard it is clear such sign and symbols promote, in the words of the Board in *Bramhill* "latent discrimination as well as active discrimination."

[298] The sign and symbols were designed to encourage others to discriminate against Jews and non-white persons. Dr. Henry testified such displays would lead to, and exacerbate, already existing discrimination in access to services. Dr. Barkow testified such displays would induce others to discriminate. We find a causal connection between the display and the specific forms of discrimination defined in ss. 3 and 4 and 6 to 10 of the *IRPA*.

8. Was the Discrimination "for any purpose"?

[299] The question here is whether a "display" is prohibited only if it indicates "discrimination or an intention to discriminate" about the matters protected elsewhere in the *IRPA*, such as employment, public accommodation, union membership or tenancy. Or, does the section also prohibit displays which indicate "discrimination or an intention to discriminate" "for any purpose," including matters not otherwise protected by the *IRPA*?

[300] There were no decisions interpreting s. 2(1) of the *IRPA*.

[301] We begin by comparing the words of the *IRPA* with those in the equivalent section in the *Human Rights Code*, R.S.B.C. 1979, c. 186 as amended (the "B.C. Code"). In *Ukrainian Canadian Professional and Business Association of Vancouver v. Konyk* (1983), 4 C.H.R.R. D/1653, MacDonell J. considered s. 2(1) of the B.C. Code [R.S.B.C. 1979, c. 186]. That section provides:

No person shall publish or display before the public . . . a sign . . . or other representation indicating discrimination or an intention to discriminate against a person or class of persons in any manner prohibited by this Act. [Emphasis added.]

[302] The *IRPA* is not worded as restrictively as the B.C. Code. The *IRPA* section does not include the words "in any manner prohibited by this Act." The difference in wording is significant and suggests the Alberta section is intended to apply beyond the particular modes of discrimination enumerated in the *IRPA*. The difference in wording accounts for, and distinguishes, the British Columbia decision.

[303] Nevertheless, we must be cognizant of our limited authority from a constitutional point of view. We are a board established by a provincial statute. We are sensitive to the danger of overstepping our jurisdiction. An expansive reading of the words "for any purpose" could lead to our attempting to regulate matters in federal jurisdiction. We are alive to the constitutional danger of an interpretation which would trench upon the federal criminal power to prohibit speech which promotes racial hatred. However, we must assume the Province of Alberta did not intend to overreach its constitutional jurisdiction. We must give these words an interpretation which will respect the division of legislative powers between the federal and provincial governments.

[304] As Cameron J.A. observed in *Saskatchewan Human Rights Commission v. Engineering Students' Society, supra*, at D/5641 [para. 41266], "provincial enactments of this nature are not to be approached as ??constitutionally presumptively suspect'." but on the assumption the Legislature did not intend to exceed its jurisdiction.

[305] Certainly the display of the sign and symbols in the context of the Aryan Fest could be said to have promoted racial hatred. However, the display can also be said to have "indicated discrimination or an intention to discriminate." We are here dealing with the second characterization. We are staying within the well-recognized jurisdiction of the Province of Alberta to prohibit discrimination in respect of matters within provincial legislative competence. Nevertheless, we feel we should expressly recognize that the discriminatory intentions of the Church, as enumerated in the National State Platform, go beyond matters within exclusive provincial jurisdiction. There may also be federal competence to prohibit those manifestations.

[306] The so-called "Church" is nothing more or less than a conspiracy to create a nation for the "Aryan" race. The policy of the Church is set out in the National State Platform. This document is an unusually ambitious and comprehensive code for racial discrimination. The first three articles make the discriminatory mandate clear.

Article I Only Aryans (White Race) are allowed citizenship of the nation, and only citizens can:

- 1- vote and own property within the nation's border.
- 2- conduct business, possess (keep) and bear arms.
- 3- hold office in government, industry, or society.
- 4- comprise military or law enforcement personnel.
- 5- be free of all taxation other than a voluntary 10 percent yearly tithe upon net increase in wealth over the previous year.
- 6- receive loans without interest charges.
- 7- have equal rights and duties.
- 8- be free men to perform mental or physical work as they choose.

Article II Non-citizens can live in the Republic but only under the custodian-ship of a citizen.

Article III All hybrids called Jews are to be repatriated from the Republic's territory, all their wealth be redistributed to restore our people, and it shall be a capital offense to advocate or promote Jew Talmudic anti-Christ Communism in any manner or any other crimes against nature.

[307] The platform is clearly broad enough to encompass matters within federal jurisdiction. For example, subjects such as citizenship, the right to bear arms, holding office in federal institutions, membership in the military, liability to pay federal taxes, interest rates, and capital punishment for promoting religious beliefs come within the jurisdiction of Parliament. However, the discriminatory intentions of the Church are also directed against matters within provincial jurisdiction. Subjects such as qualifications for voting in provincial and municipal elections, eligibility to hold office in provincial and municipal institutions, ownership of land, eligibility to join law enforcement agencies, liability to pay provincial taxes and the qualifications for employment fall within provincial jurisdiction. Several of the provisions have a discriminatory impact on tenancy, public accommodation and employment, matters expressly protected by the *IRPA*.

[308] We find s. 2(1) of the *IRPA* applies to displays "indicating discrimination or an intention to discriminate" about matters not otherwise prohibited in the *IRPA*. However, any such matters must be within provincial legislative competence.

[309] We find the sign and symbols displayed at the Aryan Fest indicated discrimination or an intention to discriminate.

9. Is There Interference "with the free expression of opinion on any subject"?

[310] Section 2(2) of the *IRPA* provides:

2(2) Nothing in this section shall be deemed to interfere with the free expression of opinion on any subject.

[311] What does this mean? A similar, "so-called exemptions" clause, as it is described by Dickson C.J.C. in *Taylor v. Canadian Human Rights Commission* (1990), 75 D.L.R. (4th) 577 at 604 [13 C.H.R.R. D/435 at D/457] is found in the human rights statutes of every jurisdiction except the Yukon, Quebec and Canada. The clause was present in the first statute which prohibited the display of signs or symbols "indicating discrimination or an intention to discriminate": the 1944 Ontario *Racial Discrimination Act*, S.O. 1944, c. 51. The "exemption" clause in that statute provided:

2. This Act shall not be deemed to interfere with the free expression of opinion upon any subject by speech or in writing and shall not confer any protection to or benefit upon enemy aliens.

[312] The reference to "enemy aliens" not only dates the clause but dramatically reminds us it was written during the Second World War, before bills of rights and long before the *Charter of Rights and Freedoms*. If the words are interpreted in that context the literal meaning is easier to appreciate. The legislator was defining the limits of free expression. The clause underlined the fact prohibiting discriminatory notices, signs, symbols, emblems or other representations was not an interference with free expression. Read in this way, the "so-called exemptions" clause provides no "exemption" at all.

[313] This has been recognized in several cases. In *Bramhill, supra*, the Board of Inquiry held at D/252, s. 12(2) of the Nova Scotia *Human Rights Act*, R.S.N.S. 1969, c. 11, as amended which was very similar to s. 2(2) of the *IRPA*:

. . . should not be read as imposing an absolute limit upon s. 12(1) but, rather, in the context of a right of expression that is not absolute and which must, in some circumstances, give way or be curtailed in order to make other rights effective. It could be interpreted as a declaration that the Provincial legislature did not intend, by virtue of Section 12(1) to go beyond the bounds of what is necessary in order to prevent discrimination by signs, symbols, etc.

[314] This theme was elaborated upon by a Manitoba Adjudicator in *Linklater v. Winnipeg Sun [sub nom. Warren v. Chapman]* (1984), 5 C.H.R.R. D/2098. The issue was how s. 2(2) of the Manitoba *Human Rights Act*, [S.M. 1974, c. 65] which was identical to s. 2(2) of the *IRPA*, should be construed. The Adjudicator reviewed the decision in *Bramhill, supra*, and concluded at D/2103 [para. 17830]:

It would appear unrealistic that on the one hand the legislature would enact enlightened legislation whose object was to lessen discrimination of all types and on the other hand would concurrently enact in the same statute legislation which would permit absolutely any type of discriminatory remark or comment and excuse same under the guise of freedom of expression.

[315] In coming to this conclusion he adopted the views of Professor Tarnopolsky, as he then was, in his text, *Discrimination and the Law in Canada*, at 338 as follows:

Thus one has to conclude that although these prohibitions of discriminatory messages are *intra vires* the provinces, the exemption provisions are probably superfluous. On the one hand, whether these messages indicate discrimination or an intention to discriminate, prohibition of them is a valid restriction on speech and expression and therefore cannot be said to infringe either of those freedoms. On the other hand, if the prohibition were to touch the essence of free speech, free press or free expression, in the sense that it is not related to discrimination and those matters covered by provincial Human Rights Acts, then it is *ultra*

vires the provincial legislature. In either case, the exemption provision is superfluous, unless it is intended merely as an indication to Human Rights Commissions that it is necessary to balance, on the one hand, the importance and the seriousness of the communication and, on the other hand, its effect on discrimination against those groups protected by the legislation.

[316] The Adjudicator said at p. D/2103 [para. 17829]:

I am of the view that the conclusions of Professor Tarnopolsky are correct and that Subsection 2 should not be read as "imposing an absolute limit on Section 2(1)" but rather in the context of a right of expression that is not absolute and which must, in some circumstances, give way or be curtailed in order to make rights effective.

[317] In *Taylor v. Canadian Human Rights Commission*, *supra*, Dickson C.J.C. commented on the effect of "so-called exemptions" clauses in human rights statutes. He was considering the argument that the absence of such a clause in the *Canadian Human Rights Act* [S.C. 1976–77, c. 33] made that statute overly broad.

He said at 601–2 [D/456–D/457, paras. 62–64]:

As the norm is to include in human rights statutes an exemption emphasizing the importance of freedom of expression, the appellants forcefully argue that the absence of such a provision in the federal statute contributes to its being overbroad.

Though not wishing to disparage legislative efforts to bolster the guarantee of free expression, for several reasons I think it mistaken to place too great an emphasis upon the explicit protection of expressive activity in a human rights statute. First . . . it is worth noting that the Canadian, Quebec and Yukon Territory human rights statutes contain no such protective element, and that in any event the exemptions referred to by the appellants are found in provisions which appear to be radically different from s. 13(1) [which prohibited using the telephone to spread hate propaganda]. Second, having decided that there exists an objective in restricting hate propaganda of sufficient importance to warrant placing some limits upon the freedom of expression, it would be incongruous to require that s. 13(1) exempt all activity falling under the rubric of "expression."

Perhaps the so-called exemptions found in many human rights statutes are best seen as indicating to human rights tribunals the necessity of balancing the objective of eradicating discrimination with the need to protect free expression: see e.g., *Rasheed v. Bramhill* (1980), 2 C.H.R.R. D/249 at p. D/252.

[318] In her reasons in *Taylor*, *supra*, McLachlin J. referred to the "so-called exemptions" clauses and said [at D/481, para. 156]:

The *Act* does not, as other human rights Codes do, admonish the tribunal to have regard to the speaker's freedom of expression in applying the provision.

[319] Given these recent opinions from the Supreme Court of Canada it appears we should regard s. 2(2) as an "admonition" to "balance" the necessity for "eradicating discrimination with the need to protect free expression."

[320] There is nothing in the *IRPA* which tells us how to balance these interests. However, we note the approach taken by the Court of Appeal of Alberta in *University of Alberta v. Alberta Human Rights Commission* (1991), 83 D.L.R. (4th) 1 [17 C.H.R.R.

D/89n]. In that case one of the questions was how s. 11.1 of the *IRPA* should be interpreted. That section provides:

- 11.1 A contravention of this Act shall be deemed not to have occurred if the person who is alleged to have contravened the Act shows that the alleged contravention was reasonable and justifiable in the circumstances.

[321] The Court of Appeal decided the trial judge was correct in using the test in *R. v. Oakes* (1986), 26 D.L.R. (4th) 200 in analyzing the section. Lieberman J.A. said at 3:

No issue arises directly under the *Canadian Charter of Rights and Freedoms*. Consideration of Charter issues becomes relevant by analogy only because criteria applied in analyzing s. 1 of the Charter and particularly the *Oakes* test, *infra*, were used by the learned chambers judge in analyzing s. 11.1 of the *Individual's Rights Protection Act*. That he was correct to refer to such criteria is not disputed, the submission of the appellant being that he misapplied the *Oakes* test and drew wrong inferences in reaching evidentiary conclusions contrary to those reached by the Supreme Court of Canada in *McKinney* which dealt with the universities' policy of mandatory retirement under the Charter.

[322] Later in his reasons Lieberman J.A. referred to the conclusions reached by the Supreme Court of Canada and said at p. 7:

These basic social and economic conclusions of the Supreme Court of Canada are judicially approved criteria and policy guidelines binding on this court, whether in the context of a Charter analysis under s. 1 or an analysis under s. 11.1 of the *Individual's Rights Protection Act*.

[323] This conclusion was reached despite the obvious, and quite significant, differences between s. 1 of the *Charter* [*Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B of the *Canada Act 1982* (U.K.), 1982, c. 11] and s. 11.1 of the *IRPA*. We think we are entitled to use the same analysis in trying to balance the interests of free expression with the eradication of discrimination. After all, why would we try to reinvent the wheel or create a new method of analysis for balancing these rights? Even if we had the duty of developing a method of analysis we would borrow heavily from the model developed in *Oakes, supra*.

[324] It may be the "admonition" to balance does not require anything as elaborate as an *Oakes* analysis. Perhaps we need simply say we have seriously considered the fact that any order we make will limit the freedom of expression of the respondents and that we feel the eradication of discrimination is more important than their right to display discriminatory signs and symbols. Such a conclusion would still leave respondents the opportunity of launching a *Charter* attack to secure their right to freedom of expression, if they felt it had been wrongly denied.

[325] However, out of an abundance of caution, and because this is such an important case, we feel we should use the more rigorous analysis of the *Oakes* test. We emphasize that we are using this test to comply with the admonition to balance the interests of free expression with the prohibition against the display of signs or symbols which indicate discrimination or an intention to discriminate.

[326] We begin by setting out the test as restated by Dickson C.J.C. in *Taylor, supra*, at 591 [D/448, para. 33]:

According to *Oakes*, there are two aspects to this portion of the s. 1 inquiry. First, it is necessary to ask whether the objective of the challenged measure is sufficiently important to warrant limiting a *Charter* right or freedom. If this initial question is answered affirmatively, the second aspect of the inquiry arises, namely, that of proportionality.

[327] At p. 594 [p. D/451, para. 45] Dickson C.J.C. restates the "proportionality" test as follows:

Adopting the analytical guidelines suggested in *Oakes*, an impugned measure is seen as proportionate only if the state shows that: i) a connection exists between the measure and objective so that the former cannot be said to be arbitrary, unfair or irrational; ii) the measure impairs the *Charter* right or freedom at stake no more than is necessary; and iii) the effects of the measure are not so severe as to represent an unacceptable abridgement of the right or freedom.

[328] The first step is to determine the objective or purpose of the *IRPA*. We find this stated in its preamble which we will repeat here for convenience:

WHEREAS recognition of the inherent dignity and the equal and inalienable rights of all persons is the foundation of freedom, justice and peace in the world; and

WHEREAS it is recognized in Alberta as a fundamental principle and as a matter of public policy that all persons are equal in dignity and rights without regard to race, religious beliefs, colour, [gender], physical disability, [mental disability,] age, ancestry or place of origin; and

WHEREAS it is fitting that this principle be affirmed by the Legislature of Alberta in an enactment whereby those rights of the individual may be protected.

[329] We find the object of the Government of Alberta in enacting the *IRPA* was to promote equality in the dignity and rights of persons without regard to their race, religious beliefs, colour, sex [now gender], physical disability, age, ancestry or place of origin. The *IRPA* prohibits certain types of discriminatory conduct to achieve this objective. Among the prohibitions is s. 2(1). This section prohibits the public display of signs, symbols, emblems and other representations which indicate discrimination or an intention to discriminate. We find the purpose of this provision is very similar to that advanced in justification of prohibitions of hate propaganda.

[330] In *Keegstra*, [1991] 2 W.W.R. 1 the Supreme Court of Canada struck a balance between freedom of expression and the willful promotion of hatred. The Court held s. 319 of the *Criminal Code*, [R.S.C. 1985, c. C-46] did limit freedom of expression. However, the Court found the limit was justifiable under s. 1.

[331] The Court applied the *Oakes* test to analyze the limitation. The Court found the objective of the *Criminal Code* section was pressing and substantial and sufficient to warrant overriding a constitutional freedom. Parliament had recognized the harm caused by the promotion of racial hatred, particularly in a multicultural society. Several types of harm could arise. The humiliation and degradation of target group members could lead

to drastic measures in reaction. There might be an increase in discord between social groups as some were attracted to, and others were repelled by, hate propaganda.

[332] Further, the Court found Canada's international legal obligations supported the prohibition of speech promoting hatred. On the international level such measures are not incompatible with free expression. Finally, the Court held other rights in the *Charter* support the objective of avoiding the harm caused by hate propaganda. The Court referred to ss. 15 (equality), 16–23 (language rights), 25 (aboriginal rights), 27 (multiculturalism), 28 (gender equality), and 29 (denominational schools).

[333] In our view the following analysis of Dickson C.J.C. describes one of the main harms the *IRPA* seeks to avoid by prohibiting the public display of signs or symbols indicating discrimination or an intention to discriminate. At p. 42 he said:

In my opinion, a response of humiliation and degradation from an individual targeted by hate propaganda is to be expected. A person's sense of dignity and belonging to the community at large is closely linked to the concern and respect accorded to the groups to which he or she belongs (see Isaiah Berlin, "Two Concepts of Liberty," in *Four Essays on Liberty* (1969), p. 118 at p. 155). The derision, hostility and abuse encouraged by hate propaganda therefore have a severely negative impact on the individual's sense of self-worth and acceptance. This impact may cause target group members to take drastic measures in reaction, perhaps avoiding activities which bring them into contact with non-group members or adopting attitudes and postures directed towards blending in with the majority. Such consequences bear heavily on a nation that prides itself on tolerance and the fostering of human dignity through, among other things, respect for the many racial, religious and cultural groups in our society.

[334] In *Taylor, supra*, Dickson C.J.C. decided the objectives of the *Canadian Human Rights Act*, S.C. 1976–77, c. 33 section prohibiting the use of the telephone to communicate hate propaganda was sufficiently pressing to override freedom of expression. He said at p. 594 [D/450, para. 40]:

It can thus be concluded that messages of hate propaganda undermine the dignity and self-worth of target group members and, more generally, contribute to disharmonious relations among various racial, cultural and religious groups, as a result eroding the tolerance and open-mindedness that must flourish in a multicultural society which is committed to the idea of equality.

[335] The majority of the Supreme Court of Canada reached a similar conclusion about the charge of willful promotion of hatred as contained in s. 319(2) of the *Criminal Code*. In *R. v. Andrews* (1990), 77 D.L.R. (4th) 128, Dickson C.J.C. adopted the reasoning of Cory J.A., as he then was, who had found:

. . . the public and wilful promotion of hatred against identifiable groups as the very antithesis of all the essential values and principles stressed by this court in *Oakes, supra*, and that the aim behind s. 319(2) clearly constituted a pressing and substantial objective under s. 1.

[336] We find the objective of s. 2(1) of the *IRPA* is directed toward the same sorts of evils as hate propaganda prohibitions. The main difference is that the *IRPA* focusses on signs and symbols which indicate discrimination or an intention to discriminate. The purpose is to stop discrimination which is the antithesis of the tolerance and open-mindedness necessary for the survival of our multicultural society. If Parliament's

objective in prohibiting hate propaganda is so pressing and substantial as to warrant the limitation of the fundamental freedom of expression, so too is the Province's objective in prohibiting signs and symbols which indicate discrimination or an intention to discriminate. We are mindful we are not here dealing with a *Charter* challenge to the *IRPA* but are interpreting s. 2(2) of the *IRPA* in this context.

[337] Having found the objective of s. 2(1) sufficiently important to limit the "free expression of opinion on any subject," we must determine whether s. 2(1) is a proportionate response.

[338] First, we must consider whether there is a rational connection between the objective and the legislative measure. We have no difficulty reaching the conclusion there is a rational connection. The expert witnesses provided extensive testimony about the manner in which discriminatory behaviour is induced by the display of discriminatory signs and symbols. The elimination of such displays should help to reduce discrimination. The prohibition of such displays is thus rationally connected to the eradication of discrimination.

[339] Once again, we find support for this conclusion in the reasoning of Dickson C.J.C. writing for the majority in both *Keegstra, supra*, and *Taylor, supra*. Particularly apt are his words in *Taylor* at 597 [D/453, para. 52]:

For reasons similar to those give in *Keegstra*, I am unable to accede to the view that the impugned legislative measure does not advance Parliament's aim of reducing the incidence of hate propaganda. The process of hearing a complaint made under s. 13(1) and, if the complaint is substantiated, issuing a cease and desist order reminds Canadians of our fundamental commitment to equality of opportunity and the eradication of racial and religious intolerance. In addition, although the criminal law is not devoid [of impact] upon the rehabilitation of offenders, the conciliatory nature of the human rights procedure and the absence of criminal sanctions make s. 13(1) especially well-suited to encourage reform of the communicator of hate propaganda.

[340] It is clear to us the means set out in s. 2(1) of the *IRPA* cannot be said to be "arbitrary, unfair or irrational" in relation to the objective of the section. Indeed we find the statutory means are rationally connected to the statutory ends.

[341] We must next consider whether s. 2(1) does more than is necessary to attain the statutory end. Is the provision overly broad? Dickson C.J.C. held neither the *Criminal Code* nor *Canadian Human Rights Act* prohibitions on hate propaganda were overly broad in *Andrews, supra*, *Keegstra, supra*, and *Taylor, supra*.

[342] In *Taylor* Dickson C.J.C. dealt with two main attacks on the alleged overbreadth of the prohibition against communicating hate propaganda on the telephone. First, he considered the argument that the terms "hatred and contempt" as used in s. 13(1) [of the *Canadian Human Rights Act*] were "overbroad and excessively vague." The concern was whether the broad meaning of "hatred" and "contempt" would extend the prohibition to cover expression which did not cause the harm Parliament wished to prevent. There was also a concern about the subjectivity of deciding that a statement contained "hatred" or

"contempt." This meant the Human Rights Commission could censor any statements it considered offensive.

[343] Dickson C.J.C. concluded at p. 600 [p. D/455, para. 59] there was no conflict between s. 13(1) and the freedom of expression

. . . so long as the interpretation of the words "hatred" and "contempt" is fully informed by an awareness that Parliament's objective is to protect the equality and dignity of all individuals by reducing the incidence of harm-causing expression.

[344] He went on to say at p. 601 [p. D/456, para. 61]:

In sum, the language employed in s. 13(1) of the *Canadian Human Rights Act* extends only to that expression giving rise to the evil sought to be eradicated and provides a standard of conduct sufficiently precise to prevent the unacceptable chilling of expressive activity.

[345] In our view, if the concepts of "hatred" or "contempt" are not so vague as to create overbreadth, neither is the concept of "discrimination." Indeed, "discrimination" is a well-defined term. The courts, including the Supreme Court of Canada, have had long experience in dealing with the concept of both under human rights statutes and, more recently, under s. 15 of the *Charter*.

[346] Second, Dickson C.J.C. faced the argument that the absence of a requirement of "intention" made the section overly broad. It was alleged this was so because even statements containing unintended messages of "hatred" or "contempt" could be prohibited. He answered this attack at p. 604 [p. D/459, para. 69] as follows:

In sum, it is my opinion that the absence of an intent component in s. 13(1) raises no problem of minimal impairment when one considers that the objective of the section requires an emphasis upon discriminatory effects. Moreover, and this is where I am perhaps jumping ahead to the "effects" component of the proportionality test, the purpose and impact of human rights codes is to prevent discriminatory effects rather than to stigmatize and punish those who discriminate. Consequently, in this context the absence of intent in s. 13(1) does not impinge so deleteriously upon the s. 2(b) freedom of expression so as to make intolerable the challenged provision's existence in a free and democratic society.

[347] The wording of s. 2(1) of the *IRPA* is different from that of s. 13(1) of the *Canadian Human Rights Act*. Section 2(1) does mention "intention." The relevant phrase reads "indicating discrimination or an intention to discriminate." [Emphasis added.] While an "intention" is necessary for the second part of the phrase, it is clearly not for the first. It is not necessary for the Commission to prove the person "indicating discrimination" had an intention to do so. For the reasons accepted by Dickson C.J.C., we find this provision in the *IRPA* is not overly broad. As in the case of the *Canadian Human Rights Act*, the *IRPA* has a remedial focus on compensation and protection of the victim — not stigmatization and punishment of the perpetrator.

[348] Finally, we must decide whether the effects of the prohibition in s. 2(1) are so severe as to "represent an unacceptable abridgement of the right or freedom." Once again

we look to the views of Dickson C.J.C. in *Taylor, supra*. He said at p. 605 [D/463, para. 82]:

It will be apparent from the preceding discussion that I do not view the effects of s. 13(1) upon the freedom of expression to be so deleterious as to make intolerable its existence in a free and democratic society. The section furthers a government objective of great significance and impinges upon the [*sic*] expression exhibiting only tenuous links with the rationale underlying the freedom of expression guarantee. Moreover, operating in the context of the procedural and remedial provisions of the *Canadian Human Rights Act*, s. 13(1) plays a minimal role in the imposition of moral, financial or incarceratory sanctions, the primary goal being to act directly for the benefit of those likely to be exposed to the harms caused by hate propaganda. It is therefore my opinion that the degree of limitation imposed upon the freedom of expression by s. 13(1) is not unduly harsh, and that the third requirement of the *Oakes* proportionality approach is satisfied.

[349] We can see no basis for coming to a different conclusion and hold the *IRPA* does not "represent an unacceptable abridgement" of the "free expression of opinion on any subject."

[350] In responding to the "admonition" to balance the Province's objective of eradicating discrimination with the respondent's right to "free expression of opinion on any subject," we have relied heavily on the reasoning of the majority of the Supreme Court of Canada in *Andrews, supra, Keegstra, supra*, and particularly, *Taylor, supra*. We have done so not only because the reasoning seems to fit this case so closely but because, in the words of Lieberman J.A. in the *University of Alberta* case, *supra*, at 7, the Supreme Court of Canada has "judicially approved criteria and policy guidelines binding" on this Board. This is our conclusion based on our understanding of the admonition to balance under s. 2(2) of the *IRPA*.

10. Is the Display Exempt Because It was "not derogatory, offensive or otherwise improper"?

[351] Section 2(3) of the *IRPA* provides:

2(3) Subsection (1) does not apply to

(a) the display of a notice, sign, symbol, [emblem] or other representation displayed to identify facilities customarily used by one [gender];

(b) the display or publication by or on behalf of an organization that

(i) is composed exclusively or primarily of persons having the same political or religious beliefs, ancestry or place of origin, and

(ii) is not operated for private profit,

of a notice, sign, symbol, emblem or other representation indicating a purpose [or] membership qualification of the organization, [or]

(c) the display or publication of a form of application or an advertisement that may be used, circulated or published pursuant to section 8(2),

if the notice, sign, symbol, emblem or other representation is not derogatory, offensive or otherwise improper.

[?;] Can the respondents invoke this exemption? In our view they cannot. Even assuming the display could be brought within s. 2(3)(b) as a "sign, symbol, . . . indicating a purpose of . . . the organization," the respondents would have to show the "sign, symbol . . . is not derogatory, offensive or otherwise improper."

[353] The respondents would have to put forward some evidence the "Swastika," "KKK White Power" sign and "burning cross" were "not derogatory, offensive or otherwise improper." Apart from Mr. Long's explanations about the place of these symbols and sign in the teachings of the Church, there is no such evidence. Far from satisfying us that the symbols and sign were benign, Mr. Long persuaded us of their truly derogatory and offensive nature.

[354] The Aryan Fest was not a discreet retreat of quiet worshippers. It was a brazen and provocative display of a discriminatory sign and symbols.

11. Did the Respondents Raise a Constitutional Challenge?

[355] Mr. Taylor submitted a written submission to the Board by fax. It was received by the Board's counsel on September 20, 1991. The submission contained Mr. Taylor's arguments on behalf of the Church. In the document there are two references to the *Charter*. At p. 2 he said:

Section 2(2) above of the *IRPA* is simply an endorsement of the *Canadian Charter of Rights and Freedoms* Section 2 of which reads . . .

[356] He then set out s. 2 and s. 15 of the *Charter*. He made no further reference to the sections until seven pages later when he said:

Section 2 and 15(1) of the *Charter of Rights and Freedoms* protect all of the persons who attended by invitation the Provost gathering of September 8, 9, 1990 A.D. on private property of like-minded people. Freedom of religion, freedom of speech, freedom of assembly and association are fundamental freedoms in Alberta that are inviolable.

[357] Mr. Taylor did not attend for the oral argument before the Board. Indeed he never came back again after Mr. Long disappeared. The Board was perplexed by Mr. Taylor's behaviour.

[358] Out of an abundance of caution we directed our counsel to give the Attorneys General for Alberta and Canada notice Mr. Taylor may have raised a constitutional challenge. Mr. Robb appeared for the Attorney General of Alberta. He took two positions. First, he said Mr. Taylor's submissions did not raise a constitutional challenge. Second, he argued the notice to the Attorney General was defective.

[359] Section 25 of the *Judicature Act* [R.S.A. 1980, c. J-1] specifies as follows:

25(1) If in a proceeding the constitutional validity of an enactment of the Parliament of Canada or of the Legislature of Alberta is brought into question, the enactment shall not be held to be invalid unless 14 days' written notice has been given to the Attorney General for Alberta.

(2.1) The notice shall include what enactment or part of an enactment is in question and give reasonable particulars of the proposed argument.

[360] Mr. Robb referred the Board to two cases, *R. v. Doman* (1988), 12 M.V.R. (2d) 136 (Alta. Q.B.) and *R. v. Edmorthy* (March 26, 1990) (Alta. Q.B.) [unreported]. He argued these cases indicate a tribunal cannot, on its own motion, raise questions of constitutional validity.

[361] Mr. Robb also referred the Board to two decisions of the Alberta Court of Appeal: *M. v. Director of Child Welfare*, [1988] 6 W.W.R. 661 and *R. v. Byers Transport* (1991), 63 C.C.C. (3d) 235. These cases indicate that the provisions of the *Judicature Act* are mandatory and may not be waived.

The Board is of the view Mr. Taylor's submissions could possibly be construed as a constitutional challenge. Had he attended and expressed the wish to pursue the argument we would certainly have accommodated him. If necessary we would have considered an adjournment to allow him to perfect the required notice to the Attorneys General.

However, given his failure to comply with the *Judicature Act*, we find we have no jurisdiction to consider the matter.

VI. CONCLUSION AND ORDER

[362] The powers of this Board are set out in s. 31 of the *IRPA* as follows:

31(1) A board of inquiry

- (a) shall, if it finds that a complaint is not justified, order that the complaint be dismissed, and
- (b) may, if it finds that a complaint is justified in whole or in part, order the person against whom the finding was made to do any or all of the following:
 - (i) to cease the contravention complained of;
 - (ii) to refrain in future from committing the same or any similar contravention;
 - (iii) to make available to the person [dealt with contrary to this Act the rights,] opportunities or privileges he was denied contrary to this Act;
 - (iv) to compensate the person [dealt with contrary to this Act] for all or any part of any wages or income lost or expenses incurred by reason of the [contravention of this Act;]
 - (v) to take any other action the board considers proper to place the person [dealt with contrary to this Act] in the position he would have been in but for the contravention of this Act.

31(2) A board of inquiry may make any order that it considers appropriate.

32. An order made by a board of inquiry may be entered with the clerk of the Court of Queen's Bench in the judicial district in which the inquiry was held, and on being entered it is enforceable in the same manner as an order of the Court of Queen's Bench.

[363] We find the complaints are justified in whole. Throughout this decision we have come to findings of fact and law. We set out some of those here in summary fashion. We do so for convenience and not in any way to diminish or modify the lengthier findings contained in the full text of the decision.

[364] First, we find the respondents Terry Long and Ray Bradley displayed or caused to be displayed a "KKK White Power" sign, a Swastika and a burning cross at the Aryan Fest held on Ray Bradley's farm on September 8 and 9, 1990. We find the sign was a "sign" and the Swastika and burning cross were "symbols" within the meaning of the *IRPA*.

[365] Second, we find the respondent Church displayed or caused to be displayed the same sign and symbols at the Aryan Fest through the actions of its leaders, Terry Long, Ray Bradley and Milton Carney Nerland.

[366] Third, we find the display was before the public, including the media and other persons on the road adjacent to the Bradley property, and those members of the public who attended the Aryan Fest.

[367] Fourth, we find the sign and symbols indicate discrimination and an intention to discriminate against classes of persons based on their race, religious beliefs, colour, ancestry or place of origin.

[368] Fifth, we find s. 2(2) of the *IRPA* requires us to balance the Government of Alberta's objective in eradicating discrimination with free expression of opinion. In carrying out this balance we conclude s. 2(1) of the *IRPA* is directed toward achieving a pressing and substantial objective and is of sufficient importance to warrant limiting freedom of expression in this case and that the statutory means used to meet this objective are proportionate.

[369] Sixth, we find the sign and symbols do not qualify for exemption under s. 2(3) of the *IRPA*. The sign and symbols are "derogatory, offensive or improper."

[370] In coming to these conclusions we wish to make several observations.

The Aryan Fest was a shocking event in the history of Alberta. The blatant display of signs and symbols redolent of racial and religious hatred, bigotry and discrimination challenge the very foundations of our society. The cornerstone of public policy and law in this province is that all persons are equal regardless of their race, religious beliefs, colour, ancestry or place of origin. This was true even before this value was enshrined as a fundamental principle in the *IRPA*. Of course, this tenet of our democracy is buttressed

by the guarantees contained in the *Charter*. In particular, the rights of all citizens to equality before and under the law and to equal benefit and protection of the law is guarded by s. 15 of the *Charter*. A further indication of constitutional policy is found in s. 27 of the *Charter* which provides:

27. This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.

[371] Multiculturalism is not a tentative notion or vague proposal for public policy. It is a legislated, constitutional concept. Similarly, equality between persons of different races, colours and religious beliefs is not a new concept open to debate. It is basic law.

[372] In light of these constitutionally entrenched values there can be no doubt the respondents are seriously at odds with the fundamental goals of our free and democratic society. The sign and symbols they displayed at the Aryan Fest represent the program of the so-called "Church" and are designed to further its objectives. The program is a crude and primitive design for a new, racially pure, white nation. The similarity between the program of the "Church" and the aims of Adolf Hitler are no mere coincidence. These modern-day Nazis worship Hitler as Elijah the Prophet. They wish to succeed in creating a racial nation in Alberta, British Columbia, Saskatchewan, and part of the northwest United States such as Hitler attempted to achieve in Europe. They wish to fulfill the grotesque ambition that thousands of Canadians died to thwart.

[373] Some may say this is an over-reaction to the ineffectual, albeit evil, plans of a small fringe group. They might say bringing this group before a human rights tribunal simply gives their leaders a public platform and more media attention than they could ever hope to gain if left alone. Many people of good will have expressed views such as these. We are in no position to make any definitive comment about this issue. It is a matter which will be vigorously discussed in many forums.

Nevertheless, we wish to make certain observations based on our experiences as a Board hearing this controversial case.

[374] This Board had the opportunity of observing and listening to Mr. Long, as assisted by Mr. John Ross Taylor, and Mr. Nerland over several days. There is no doubt about the strength of the hatred these men feel for Jews, Native Canadians, and non-white people. We also have no doubt about the lengths they would be prepared to go, given the opportunity, to implement their evil plans. The hatred in the court room was palpable. It was patently clear to us these are not simply misguided eccentrics. They are dedicated Nazis. Their creed is racial hatred and their goal is the destruction of our multicultural society.

[375] Neither should it be blithely assumed that the few men we saw are alone. We heard sufficient evidence of the network linking these extremist organizations to convince us there is an international conspiracy to create an Aryan Nation. The disappearance of Mr. Long and his ability to elude the R.C.M.P. may itself be eventually explained by his ability to rely on the network.

[376] The Nazi regalia and uniforms; the Ku Klux Klan hoods and cross-burning ceremony; the military-style weapons; the racist taunts, the physical and psychological intimidation; were not an accidental cluster of phenomena at the Aryan Fest. The glorification of violence and the invocation of the power of larger racist movements are steps designed to impress the weak-minded and disaffected members of our society. The collection of youths wearing Nazi-like uniforms who attended the hearings before this Board reminded us these tactics for recruitment have worked before and will work again. It is obvious the sign and symbols in this case are used because they are sensational and give these morally inadequate individuals some sense of self-importance.

[377] Not only did the sign and symbols serve as recruiting tools. They inspired insecurity and fear among ordinary, decent and entirely credible people; fear for themselves and their families and fear for their neighbours. These fears were not imaginary or fanciful. They are the sort of emotions which can lead to self-defensive actions and even, ultimately, to conflict and disorder.

[378] The protesters at the 1990 Aryan Fest were armed only with picket signs. If another Aryan Fest were to be scheduled, exactly along the lines of the 1990 event, who can predict what the reaction of protesters would be? How tolerant would the members of those groups targeted for hatred be the next time? Would they be content to submit to the bullying of the likes of Carney Nerland and Joey and Kelly Lyle? Would they be tempted to bring their own weapons for protection? This is more than a policing issue. The realistic possibility that target group members may take "drastic measures" in reaction to hate propaganda was identified by the former Chief Justice of Canada as a reason for justifying the prohibition of such expression in *Taylor, supra*, at p. 42 [sic]. It must be remembered he was dealing in that case with pre-recorded hate messages on the telephone — not the volatile, and potentially explosive, Aryan Fest. In *Taylor* the Supreme Court dealt with the possible harm of a private hate message. Here, we are dealing with powerful visual images enhanced by Carney Nerland and his cohorts, aggressively displaying weapons and attempting to intimidate the protesters. Certainly, a prudent police officer would have to be concerned about the possibility of a drastic reaction to another Aryan Fest. It seems to us the display of such discriminatory signs and symbols in a multicultural society is tantamount to shouting "fire" in a crowded theatre. The *IRPA* seeks to avoid such danger.

[379] But the possibility of "drastic measures" in reaction by the target groups is not the only reason discriminatory signs and symbols are prohibited. We are convinced by the evidence we have heard that such displays cause actual harm to the target groups. They are threatened with death and destruction and told they do not belong. The display invites and encourages discrimination. It selects targets and promises assistance and respect for those who join in. Promotion through the ranks of the so-called "Church" depends on the enthusiasm a member shows in pursuing the discriminatory objects.

[380] Albertans hope extremism will play no part in their public lives. The Aryan Fest dramatically showed this province is not immune from organized bigotry and racial

discrimination. This spectre of evil is not limited to far-off Europe or the deep south of the United States.

[381] We believe an important purpose of a board of inquiry is to examine, expose and denounce discriminatory practices. This is one way the process imposes a cost on those who would hope to use a hearing room as a platform to spread hatred. By reporting what happened at the Aryan Fest and by describing the platform and objectives of the respondents we inform decent citizens of this threat to our multicultural society. We seek to heed John Philpot Curran's warning that the price of "liberty is eternal vigilance."

[382] Upon the request of a Special Prosecutor with Department of the Attorney General, the Board provided copies of the transcripts of the proceedings and the exhibits to his office. In light of the evidence disclosed in the Inquiry we trust the advisability of initiating prosecutions will be fully explored in respect of the threats against Brad Clark; the apparent assaults on various media persons; the possession and use of weapons; and the conspiracy to promote racial hatred which appears to be the main reason for the existence of the respondent Church.

[383] Our mandate, having found the complaints are completely justified, is to make an order under s. 31(1) of the *IRPA*. We make the following order. It is the strongest order we are allowed to make, limited as our powers are, under the *IRPA*.

1. The respondents shall refrain in the future from the same or any similar public display of the following discriminatory signs and symbols:
 - (a) Swastika signs and symbols;
 - (b) "White Power" signs and symbols;
 - (c) burning or lighted crosses;
 - (d) signs or symbols indicating an affiliation with the KKK (Ku Klux Klan).
2. The Board reserves jurisdiction to deal with the issue of costs.
3. The Board vacates the arrest warrant for Terry Long. The parties to this proceeding can later determine whether to instruct their counsel to initiate contempt proceedings when and if he appears in Alberta.

* Ed. note: See also preliminary decisions 18 C.H.R.R. D/259 and 18 C.H.R.R. D/266.