

**CANADIAN
HUMAN RIGHTS
TRIBUNAL**



CANADA

**TRIBUNAL CANADIEN
DES DROITS
DE LA PERSONNE**

BETWEEN/ENTRE:

RICHARD WARMAN

Complainant/Plaignante

and/et

CANADIAN HUMAN RIGHTS COMMISSION

Commission

and/et

ALEXAN KULBASHIAN, JAMES SCOTT RICHARDSON,
TRI-CITY SKINS.COM, CANADIAN ETHNIC CLEANSING TEAM and
AFFORDABLESPACE.COM

Respondent/Intimée

BEFORE/DEVANT:

ATHANASIOS HADJIS

THE CHAIRPERSON/

LE PRÉSIDENT

ROCH LEVAC

THE REGISTRAR/

LE GREFFIER

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CANADIAN HUMAN RIGHTS TRIBUNAL/TRIBUNAL CANADIEN
DES DROITS DE LA PERSONNE

SITTING IN THE ARGUS ROOM, HOLIDAY INN OAKVILLE - CENTRE
590 ARGUS ROAD, OAKVILLE, ONTARIO ON
TUESDAY, AUGUST 31, 2004, AT 09:50 A.M. LOCAL TIME

CASE FOR HEARING/DANS L'AFFAIRE

IN THE MATTER of a complaint filed by Richard Warman dated February 5, 2002 pursuant to section 13, subsection 1 of the Canadian Human Rights Act against Alexian Kulbashian, James Scott Richardson, Tri-CitySkins.com, Canadian Ethnic Cleansing Team and AffordableSpace.com. Complainant alleges that the respondents have engaged in a discriminatory practice on the grounds of religion, race and national and ethnic origin in the matter related to the usage of a telecommunication undertaking.

APPEARANCES/COMPARUTIONS

Monette Maillet	on behalf of the Canadian Human Rights Commission
Richard Warman	on his own behalf
Vahe Kulbashian	on behalf of Alexian Kulbashian
Alexian Kulbashian	on his own behalf
James Scott Richardson	on his own behalf

TABLE OF CONTENTS/TABLES DES MATIÈRES

	PAGE
RICHARD WARMAN, Resumed:	361
Examination-in-Chief by Ms Maillet (Cont'd)	361
Cross-Examination by Mr. Vahe Kulbashian	434
Cross-Examination by Mr. Alexan Kulbashian	477

LIST OF EXHIBITS / PIÈCES JUSTICATIVES

EXHIBIT	DESCRIPTION	PAGE
HR-1 (Tab 30)	As previously entered with second double-sided sheet attached	359
HR-1 (Tab 49)	One-page photocopy of jewel case described as James Richardson's hard drive	371
HR-1 (Tab 50)	One-page photocopy of inventory of files found on CD described on jewel case filed as Tab 49	371
HR-1 (Tab 51)	Two-page inventory of D drive files from CD represented by Tab 49	373
HR-1 (Tab 52)	31-page document consisting of Internet relay chat logs	414
HR-1 (Tab 53)	One-page document consisting of Internet relay chats from BOB-log	416
HR-1 (Tab 54)	One-page document consisting of Internet relay chats from Bootboy log	417
HR-1 (Tab 55)	Three-page document consisting of Internet relay chats from Chloe25.log	420
HR-1 (Tab 56)	Five-page document consisting of Internet relay chats from FdaJEWS.log	424
HR-1 (Tab 57)	One-page document consisting of Internet relay chats from Fukmedia.log	426
HR-1 (Tab 58)	Two-page document consisting of Internet relay chats from IhateJews.log	429

LIST OF EXHIBITS / PIÈCES JUSTICATIVES

EXHIBIT	DESCRIPTION	PAGE
HR-1 (Tab 59)	One-page document consisting of Internet relay chats from TankTCS.log	431
HR-1 (Tab 30)	Revised with additional page added to it	432
HR-1 (Tab 34)	Revised with additional copy of tab 34 added to original Exhibit	433
R-2	Book of Documents of respondent Alexan Kulbashian	444
R-2 (Pg 3 & 4)	Draft complaint form filed with Commission	446
R-2 (Page 8)	Copy of tab 1 of Exhibit HR-1	458
R-2 (Page 18)	Standard notification form letter	460
R-2 (Page 21)	E-mail from Richard Warman to Dean Steacy dated February 23, 2003 page 21, Appendix III	469

Oakville, Ontario

--- Upon commencing on Tuesday, August 31, 2004
at 9:50 a.m.

REGISTRY OFFICER: Order, please.

All rise.

Please be seated.

THE CHAIRPERSON: Good morning.

Well, I guess the first thing we have to do is we have to introduce ourselves to the people who are here today, the newer people.

Mr. Kulbashian, if you could introduce yourself.

MR. ALEXAN KULBASHIAN: I'm Alexan Kulbashian, respondent.

THE CHAIRPERSON: Louder, please.

MR. ALEXAN KULBASHIAN: Alexan Kulbashian, respondent.

THE CHAIRPERSON: Alexan Kulbashian.

What I'm going to ask you to do, we discovered yesterday the microphone systems only work best when we actually stand up at the podium, so when addressing the Tribunal, if you could just get up to the podium.

Sir?

MR. RICHARDSON: James Richardson,

StenoTran

respondent.

THE CHAIRPERSON: Thank you.

And the woman next to you?

MRS. TURNER: Kathleen Turner, I'm a witness.

THE CHAIRPERSON: Okay. You are just a witness. Okay.

Sorry for that.

Now, also, is Mr. Smith here? Yes.

MR. SMITH: Yes, Mr. Chairman.

THE CHAIRPERSON: Okay. We'll get to your motion in a moment. We're all pretty much aware of what it involves, but I just wanted to do some introductory remarks to the individual respondents who weren't here yesterday, things that we dealt with yesterday at the opening of the hearing for Mr. Kulbashian and Mr. Richardson.

Have you had an opportunity, Mr. Kulbashian, to speak to your father about the hearing yesterday?

MR. ALEXAN KULBASHIAN: Yes, I have.

THE CHAIRPERSON: So, you have been informed a bit of what went on.

Did Mr. Richardson speak to you, Mr. Kulbashian?

MR. RICHARDSON: (nodding)

THE CHAIRPERSON: Okay. Well then, I'll just speak in general terms.

I explained yesterday a bit of how the process works, first of all, the basics.

We have a morning and an afternoon session, we stop for a noon break about an hour and a half, and we can take a break partway through the morning, partway through the afternoon, just simple little quick breaks.

I also indicated yesterday the way the process works. The first part of the hearing process of the Tribunal is opening statements.

An opening statement was made yesterday by Mr. Warman on his own behalf, as well as by the Commission.

I offered the opportunity, I believe to Mr. Kulbashian, Sr. -- I will use the term -- to make an opening statement yesterday, but I think he opted to do it at the opening of your case -- of the defence's case, and that's the option that's available to you, Mr. Richardson.

MR. RICHARDSON: We'll do the same thing.

THE CHAIRPERSON: Okay, you'll do the

same thing. Okay.

I explained a little bit about how the testimony works.

Now, Mr. Kulbashian, Sr. explained to me that he had some experience with hearings, has attended at court.

I talked about the examination of witnesses, that each party can call a witness. When calling the witness, you question the witness, the evidence is introduced.

The types of questions that can be used by -- the types of questions that can be made to witnesses that you have called cannot be leading, they have to be sort of open-ended questions; right:

What happened on that evening, as opposed to: Didn't you walk to the store that evening, right?

Of course, once all that's done, then the opportunity arises for the other party to cross-examine that witness. In cross-examination leading questions are allowed.

You are not supposed to engage in an argument with the witness, you're supposed to simply point out facts that support your case, contradictions in the evidence and so on.

I also mentioned yesterday that there's a duty on the part of the party that's not calling a witness - so, let's say, the Commission's witness - there is a duty on you when you cross-examine to raise any potential contradictions that you intend to raise in your own evidence later on with that witness.

So, if you have a paper, for instance, that demonstrates the opposite of what that witness has just said, you have a duty to confront him with it:

Well, look at this other paper. What do you have to say about it?

He may adopt it as: Oh yes, it's true, I was wrong in my previous testimony, or he may insist that his previous testimony was correct. But there is a duty there to present him -- it's only fair, basically.

And I also explained to everyone, to Mr. Kulbashian, Sr., about the objections. You can make objections along the way.

The objections are meant to deal with issues like -- well, one example might be that the evidence is not relevant, it doesn't assist the case. You'll raise an objection of that sort.

And if it's to simply ask a question about that piece of evidence, about that testimony that had just occurred to try to raise another point, that is more likely to be a matter to be dealt with in cross-examination.

If that's how your objection comes out, I'll point that out to you and say: Why don't you just take a note and bring it up in your cross-examination of the party.

That happened a couple of times yesterday with Mr. Kulbashian, Sr. He took some notes down, I believe, and those are the issues that are going to be raised later on in the cross-examination of Mr. Warman.

And, finally, at the end of the case we're going to have argument. You bring up the facts that support your position, present a summary of the evidence as you see it, a description of the weak elements of the other side's case, references to law, to jurisprudence, to other cases that might support your position, and an ultimate conclusion that, I presume in the case of the two respondents, is that the complaint be dismissed.

So, those are the -- I went into a bit more detail yesterday, but that's generally sort of

an introductory that I gave, considering that I understand both of you are not being represented by lawyers today, so I made those comments yesterday for the benefit of Mr. Kulbashian, Sr.

So, where we were yesterday was we were partway through the evidence of Mr. Warman, but we were also mindful of a motion that's been filed by a witness to whom Mr. Kulbashian had sent a subpoena, that would be a crown prosecutor from the London area, if I recall, to Mr. Kierluk.

MR. ALEXAN KULBASHIAN: That's correct.

THE CHAIRPERSON: And we had originally said in one of our case management calls that the motion would be dealt with at the opening of the case yesterday.

When I learned of your absence yesterday, Mr. Kulbashian, and also Mr. Richardson's afterward, I thought it would be best to simply put off the hearing of the motion until today.

A call was placed by the Tribunal Registry to Mr. Smith's office and he agreed to show up today.

So, what we'll do, I think we'll interrupt the evidence of Mr. Warman for the moment and

deal with the issue raised by the notice of motion.

Now, I believe there was some material that was e-mailed to our office in Ottawa late yesterday.

Are there hard copies of that now available?

MR. SMITH: Mr. Chair, I provided hard copies of everything.

THE CHAIRPERSON: Perhaps you should introduce yourself for the record.

MR. SMITH: Oh, Jim Smith, Ministry of the Attorney General, and I'm here as counsel to Peter Kierluk, K-i-e-r-l-u-k, who's under summons of the Tribunal at the request of Mr. Kulbashian.

And the point is, is we're here to try and -- we're asking the Tribunal to quash that summons.

Now, just to review the material. There was a notice of motion and affidavit of Mr. Kierluk that was circulated, that was sent to the Tribunal last Thursday evening, which I understand was then served on the parties by e-mail.

THE CHAIRPERSON: That is my understanding. Did you both receive it?

MR. ALEXAN KULBASHIAN: Yes, we did.

THE CHAIRPERSON: Mr. Richardson?

MR. RICHARDSON: Yes.

THE CHAIRPERSON: And you did receive it at the Commission?

MS MAILLET: Yes.

MR. WARMAN: Yes.

MR. SMITH: And subsequently last night, the item that you're referring to, Mr. Chair, is just a very brief statement of fact and law that was e-mailed at about five o'clock last night.

So, I doubt if there was an opportunity to distribute that electronically, but I've brought hard copies - enough for everyone - and I don't know whether people have had a chance to review them or not?

THE CHAIRPERSON: Has everyone had a chance to review these documents?

Have you, Mr. Kulbashian?

MR. ALEXAN KULBASHIAN: Yes, we have, briefly.

THE CHAIRPERSON: Okay. Has the Commission?

MS MAILLET: Yes, we have.

THE CHAIRPERSON: Okay.

--- Discussion off the record

THE CHAIRPERSON: All right. Well, listen, for the time being we'll all speak quite loud, and if that air conditioner kicks in up there we'll -- it is on now? It seemed noisier yesterday.

Okay. Nothing seems to be working. So, let's all just speak loud.

MR. SMITH: Well, no problem for me. I expect to be about 15 minutes, subject to questions, Mr. Chair.

And what I propose to do is, since this material is all relatively new to the members, is I was going to review the affidavit or, at least, the salient parts of the affidavit of Peter Kierluk and then I'll just make very brief argument of law and then I'll sit down.

THE CHAIRPERSON: Let me just, as an initial point -- Mr. Kulbashian, your position is still the same as at the last occasion when we spoke during the case management call, that you wish to maintain the subpoena, that you wish Mr. Kierluk to testify still?

MR. ALEXAN KULBASHIAN: Yes, Mr. Chairperson.

THE CHAIRPERSON: Yes. Okay.

Okay. So then, let's proceed.

MR. SMITH: Now, the affidavit of Mr.

Kierluk is a very brief one, it's at tab A of the smaller of the two bound volumes.

And basically, in summary - I'm not going to go through it line by line - but Mr. Kierluk was served at some point in July, I understand, with the summons without conduct money but, since receiving the summons, Mr. Kierluk has tried -- has turned his mind to what he can remember about the charges against Mr. Kulbashian.

He both examined his memory and he sought documents that he was asked in the summons to bring.

Unfortunately, he has very little memory of the particular instance and the particulars of the charges. He outlines this -- he outlines at paragraph 4 that he has tried to recall his involvement with the charges.

He recalls being involved in a prosecution of Mr. Kulbashian in the time frame 2002-2003, and that was in the Provincial Court in London.

Mr. Kierluk has, for some almost 18 years, been a crown attorney -- an assistant crown attorney in the London region.

THE CHAIRPERSON: 18 years, you said?

MR. SMITH: Since '86 I believe. I'm sorry, Mr. Chair, since 1987 he's been an assistant crown attorney, yes.

Now, he recalls that he met with the police -- with the investigating officers on three or four occasions, he's not sure which, but he has no specific memory of what was discussed during those meetings.

I mean, basically the process that he's undergone is he can presume that it had something to do with the charges against the respondent, and he recalls -- the only other thing he can really recall is that there was some discussions concerning some form of breach of a release order.

Now, he recalled at one point the matter was referred to Crown Law (Criminal) in Toronto, but that -- to consider transferring it there, but it was returned to London and the prosecution continued.

His recall is that the only court appearance he made on this was on or about October 10th in 2003 when the charges were withdrawn at the request of the crown.

Now, he has no memory of the specific reasons for this request. I mean, he can once again infill and realize that one of the primary reasons for

withdrawing charges is if the crown attorney in his discretion determines that there's no reasonable prospect of conviction, but he has no specific memory what his thinking was at the time.

Since that point, to receiving the summons, he's had no further dealings with the respondent, nor any reason to turn his attention to such matters.

Now, what he also did -- what Mr. Kierluk did is he made an effort to locate the crown's file on the matter, and he learned that it had been shredded six months after the appeal period had expired.

THE CHAIRPERSON: I see the affidavit speaks of it being shredded.

The entire file was shredded; is that your understanding?

MR. SMITH: The crown copy of whatever there was, whatever there had been, copies of information.

I mean, usually there is a crown brief of some kind and it usually reproduces things like what, the information, police notes, that sort of thing, and it's the subject of disclosure then to the accused.

The crown's copy, because there was no reason to keep it, was shredded.

THE CHAIRPERSON: It doesn't mean that these documents in their original form have been shredded, they may be elsewhere; is that what you're saying, the crown's file?

MR. SMITH: Yes, yes, Mr. Chair.

Mr. Kierluk actually then goes on to say that he presumes that the local police have copies of the salient documents, but those aren't under his control.

And his position, in general, is just that without the specific file material and with no specific memory, he just does not think he can be of any assistance to the Tribunal in dealing with the question that is before this Tribunal about breach of the Canadian Human Rights Act.

Now, he does go on. He was once -- I think it was actually after the case conference that occurred, there was a copy of the Human Rights complaint, the response and a letter from the respondent and various things that were sent on to the supervising crown attorney in the London region.

And I actually directed Mr. Kierluk to take a look at this material to see if any of it was

of assistance.

He notes that in the letter from the respondent to the Commission - it's a letter dated June 28th - he notes that the apparent reason for him being summonsed, at least as far as he can discern, is that he was to comment or commentate on investigation techniques or on evidence the police are going to give.

And he has no evidence on that, he has absolutely no evidence. And it's certainly understandable, Mr. Chair, given his inability to remember much of what went on.

Now, I'll move to the larger bound document which is the brief, what I've called the brief statement of fact and law.

And in the first six paragraphs or so I've just summarized what I've just advised the panel of -- advised the Tribunal of.

So, I mean, the question before the panel, Mr. Chair, is one. I mean, presumably there is not a very contentious initial question: Can the panel quash a summons?

Now, Mr. Chair, should I deal with that?

THE CHAIRPERSON: I don't think it's an issue. I mean, it's a summons that's been issued by

the Tribunal. It's actually an order from the Tribunal, I mean.

Certainly some of the authorities I've consulted, almost anyone disagrees -- wishes to raise a point of disagreement with this, with some of the authorities I've consulted, indicates that it's implicit in the power to issue a summons that the summons can also be withdrawn.

MR. SMITH: Well, in fact, Mr. Chair --

THE CHAIRPERSON: Did you wish to draw my attention to the authority?

I mean, my understanding is that that is within the jurisdiction of the administrative Tribunal.

MR. SMITH: Yes, Mr. Chair.

And also, I mean, within the Act itself, the Canadian Human Rights Act, in section 50(3)(e), which I've included for your convenience at tab 1, and the third page at tab 1 notes the additional powers that can be exercised by yourself, Mr. Chair, by the Tribunal in the hearing of an inquiry.

And (3)(e) empowers this Tribunal to:

"decide any procedural or evidentiary question..."

So...

THE CHAIRPERSON: Specifically on the matter of subpoenas, it says it's an implicit power as well.

MR. SMITH: And I've included a case, or at least a decision of the Tribunal - which I won't take you to - but it's there in the book as well.

THE CHAIRPERSON: Is it in there?

MR. SMITH: Yes. It's the one referenced under paragraph 8. It's the Canadian -- it's at tab 2.

THE CHAIRPERSON: Yes.

MR. SMITH: And it's the Canadian Telephone Employees Association.

THE CHAIRPERSON: Known unofficially as the Bell Canada pay equity case?

MR. SMITH: Yeah. See, I don't appear before the Tribunal very much, I wish I'd known that.

But this is a ruling that took place in 2000, I believe, with respect to a subpoena for documents.

And there was an initial issue in that motion whether the Tribunal had any discretion to quash a summons and, of course, the panel at that point

said that that was not a serious question and there was a power in the Tribunal to quash the summons.

THE CHAIRPERSON: All right. Let's move on then to the next point.

MR. SMITH: Okay.

Now, so the question then becomes: Should the Tribunal quash the summons to Mr. Kierluk?

Now, at tab 3 -- basically at paragraph 9 of this argument I've summarized the holding of the case that's referenced underneath:

"A summons may be quashed when:

"a. the proposed witness has no relevant or admissible evidence;

b. the summons is an abuse of process, such as for an ulterior or improper or tactical purpose; or"

if:

"c. the proposed evidence is not necessary, or is extrinsic to the main evidence."

Now, at tab 3, if you'd like some background on the case, Mr. Chair --

THE CHAIRPERSON: Mm-hmm. Go ahead.

MR. SMITH: Okay. It was a commercial dispute and it involved a plaintiff who wanted to remove the defendant's counsel of record and it also served a summons on that counsel, and there was a cross motion to quash the summons.

The summons had been used in the judgment of the court for tactical reasons in this dispute among business partners and it was part of a long history of dispute between these partners in this limited partnership.

And interestingly, in this case as well, there was a report that no longer existed, it sort of was a report that had been prepared at one point that no longer existed.

And I don't know, there's not reference to argument being made, whether that witness was summonsed to speak directly to that report, but it could have been a live issue, Mr. Chair.

But what Mr. Justice Greer did is set out the test on whether a subpoena should be quashed, and that's at paragraphs 27 and 29 at the top -- page 8 is the page number at the top right-hand corner.

THE CHAIRPERSON: Mm-hmm.

MR. SMITH: Paragraph 27, basically

this is what I've summarized at the point.

So, it can be quashed if there is no,
"...relevant and admissible
evidence."

About seven lines down, if it's
"...used for an ulterior or
improper purpose...",
or for tactical reasons.

Near the very end of paragraph 27 is
the:

"...evidence necessary?"

Paragraph 29 goes on to elaborate
whether the:

"...evidence is extrinsic to the
main evidence..."

I just stop here, Mr. Chair, because
even if Mr. Kierluk had total recall and had all the
documents, what evidence -- what direct evidence could
he give?

He could give evidence about the
prosecution that took place.

In our submission, he couldn't give a
stick of evidence about whether the breach had
occurred.

And certainly, I just want to

clarify, Mr. Chair, that we're not taking the position that a counsel can't be summonsed, we're not taking that position, anybody can be summonsed, and if their evidence is necessary, relevant and admissible, then they should be there.

And if this panel judges Mr. Kierluk has evidence, whatever he can give, then he will, of course, attend.

But the last paragraph of paragraph 29 is of interest, and that's at the very bottom of page 8:

"While counsel are not immune from being summoned or subpoenaed, simply because counsel has interviewed a witness whose statement becomes the subject of cross-examination, does not make that person a necessary witness."

It would appear that there may be investigative notes of the police. From the letter from the respondent it appears that the police documents may or may not be something that are cross-examined upon.

This is very germane to that, Mr. Chair. Just because Mr. Kierluk may at some point have looked at this material, does not make his evidence necessary with respect to -- or does not inhibit any cross-examination on those notes.

So, his evidence would be absolutely useless in terms of dealing with the police witnesses.

So, if you go back to -- now, the other case that I've included at tab 4, just a very brief one, it was a motion to quash a summons once again, but it was a summons by the defendant and it was to the plaintiff's expert at the commencement of a trial.

And, in essence, Mr. Justice Nordhiemer said that -- the only thing that I've included it here for is that at page 2 Mr. Justice Nordhiemer makes an observation in paragraph 8:

"Cross-examination is also not to be used as a fishing expedition."

It's not the point of summonsing someone in the hope that if you ask them enough questions something will pop up that will be of use.

That's not the point of the summons or that's not the test of what is relevant evidence.

Now, in our submission, we basically have a situation where Mr. Kierluk has no relevant or -- no relevant evidence, in fact based on the affidavit, he has no evidence to speak of, and whether there's been a violation of the Canadian Human Rights Act, is certainly not within Mr. Kierluk's expertise.

He's, of course, aware and alive to the Act, as are we all.

THE CHAIRPERSON: Of the what?

MR. SMITH: He's aware and alive to the Act itself, but beyond that...

THE CHAIRPERSON: Well, I think we should focus not just on the Act itself, I mean we had a bit of this discussion yesterday with respect to, I believe it's another criminal prosecution and what were identified were specific issues, findings of fact that were in the judgments that were issued in the other series of cases that were relevant to the issues that the Commission and complainant had raised.

I believe one of them was identification or linkage between the respondents and documentary evidence that had been presented.

So, while it may be the opinion of Mr. Kierluk that he has no evidence to give on the Act, per say, unknowingly, and perhaps he may not be aware

of the fact, that perhaps something that is within his grasp, within his knowledge may be of assistance to one of the issues in this case.

MR. SMITH: If he had more memory of the facts of that particular prosecution, certainly, Mr. Chair, certainly.

On the issue of something like identification, I mean, it wouldn't have been the crown attorney that did the identification.

THE CHAIRPERSON: It's not identification in the sense of an ID line.

MR. SMITH: Oh no, no, no. I was just using that as an --

THE CHAIRPERSON: It was more -- you know, we were talking about a situation where a linkage was intended to be made between these individual respondents and certain websites, so we were dealing with factual components that were building, I guess, the circumstantial case of the complainant.

MR. SMITH: Absolutely, Mr. Chair. But, I mean, we must be alive to the fact that the job of an assistant crown attorney in conducting a prosecution is to act as a minister of justice and to determine whether there are sufficient -- whether there is a reasonable chance to convict on a particular

criminal code or, in some cases, Provincial Offences Act charge.

I mean, that's the mandate of the crown attorney and that's what he concerns himself with and that's what he exercises his discretion on, not with respect to the quality of the investigation, not with respect to any particular aspects.

In fact, we have no idea, and Mr. Kierluk has no idea at this point on what he based -- what he theorizes may have been the reason that the charges were withdrawn.

It could be there was a witness that wasn't around. There are many things that enter into a crown's thinking when they do their assessment.

THE CHAIRPERSON: But, if Mr. Kierluk -- I know he says he doesn't have any recollection, but assuming his recollection was better, let's assume that for the moment, it's possible that he may be aware of some of the vecunas, of some of the failures in the case that was made against these respondents.

And I think what we gathered from the exchange of disclosure documents and from a conference call that also occurred last week where the Commission and complainant elaborated a bit on the evidence that

they intended to lead with the police officers is, again, I think it was the information that had been gathered with respect to these websites that are referred to in the complaint, and that the police officer conducted that investigation, and that material was then presented to the crown for prosecution, and then at some point the crown says: We will not prosecute this case.

I mean, the ultimate decision is the crown's; correct?

MR. SMITH: That's correct.

THE CHAIRPERSON: So, and I think -- well, I suppose it borders a little on fishing, but one does wonder, if one side is presenting a series of facts that were collected by one of the two actors from the prosecution side, the police investigators, and then the final prosecution does not occur, one wonders: What happened there?

And if there's some sort of fault in the first component, the police investigation, that could be of significance if that police investigation is now being used to make the case in this Human Rights complaint.

I think that's -- and I haven't heard from Mr. Kulbashian, except we did discuss it a bit

during that conference call, I should advise you, so this is not coming out of thin air, and this is what I gather the point is that will be made, so...

MR. SMITH: Well, Mr. Chair, certainly it does -- I think I take comfort in the fact you recognize it's on the boundary of fishing, it's close to fishing.

But something that was said to me by another crown in another case I think is germane.

I was standing there with him, there were eight boxes of documents - it was an arson case - there was a malicious prosecution action that I was defending - the crown attorney looked at those eight boxes, we spent a day going through them, we find all sorts of documents and he says: Well, I must have seen that because there's my highlight at the side, I must have seen that.

I said: What can you say about those in your affidavit -- because we were bringing a motion to strike the action.

He said: I have no memory of that. I could stand here right now, Mr. Smith, and make up something and I could probably sort of reasonably -- because I'm a clever man, I could reasonably kraft what I may have been thinking.

But that's not evidence, that's guesswork, Mr. Chair.

THE CHAIRPERSON: Well, we have the affidavit to that effect, but one wonders whether the parties shouldn't have the opportunity to -- of course, it's his own witness, so it's not a question of testing it on cross-examination, but the opportunity to put the questions perhaps in a more direct fashion.

I mean, it's one thing for him to be writing this affidavit, it can be quite another thing for him to come testify, for documents to be presented to him.

I mean, we have already a whole book of documents before us here. In reviewing some of the documents his recollection may improve.

I'm having some difficulty with the argument that: I have no recall, therefore, I'm not relevant.

Recall is something that's determined and often it may change in the course of an examination or a cross-examination, for that matter. I mean, something may happen, he may remember the reason why the case didn't proceed through cross-examination.

I mean, anything can happen here. Things change when they show up on the stand, right.

So, the mere fact that he doesn't recall doesn't seem -- I'm wondering whether that's sufficient to say it's not relevant.

To say that he prosecuted the gentleman on a traffic violation, I mean, there I can clearly see there is no relevance.

But we already know the chain of that prosecution began with the criminal investigation by London police investigators. One of them will be testifying today, I believe.

I understand from what I have heard that the documents that were collected in the course of that investigation have been and will be used in the course of -- as part of the evidence that's being led by the Commission and complainant.

And then the next logical step was the prosecution, and to further complicate things the prosecution did not go through. So, what happened?

I mean, to give you another analogy, yesterday when the Commission and the complainant put forth a judgment on sentencing and a Court of Appeal decision thereafter - and I haven't even read them yet because we interrupted the evidence at that point - but, I looked at them and said: Well, where is the judgment on the conviction, and it wasn't there.

So, I said, please provide me a copy because it's important, I think, to get the whole picture. I was left with half the information, I felt, and that will be provided to me today.

So, I think -- you know, I must indicate to everyone, perhaps I'm being a bit more interventionist in this case, but I'm mindful of the fact that there isn't legal representation on the other side.

I'm assuming legal authorities will not be presented to me from the respondent, I don't know, on these points, so -- but let's have an informed discussion on this.

And this is, I think, the point that the individual at this point, having read three or four documents that form part of the official disclosure record, feels he has nothing to contribute may not be sufficient.

And I don't know whether we should hold it against the respondent for not having a full will-say statement of the kind you would acquire having spoken to your witness and had a long discussion with him.

Let's face it, this was a man who was prosecuted by this prosecutor. I don't know what terms

they're on, but it's not the kind of thing: Can I have a meeting with you so I can set you up for the case and give me the details of your evidence.

You have to be mindful of that too.

MR. SMITH: Absolutely.

THE CHAIRPERSON: And let's be mindful of another point, sort of a reverse onus type of argument, interesting; the Commission and complainant are calling the investigator, they're not calling the prosecutor.

So, the other side may say: Why is that? Is there some conclusion to be drawn? Perhaps not. But that is a logical consideration perhaps.

And I only raise that -- again, I raise that last point because the prosecution stopped. Had it gone through...

But there's question marks left out there, which I gather are the question marks that came into the minds of this respondent.

MR. SMITH: Well, certainly, Mr. Chair, whether a prosecution goes through or not, or is withdrawn is of assistance in determining whether there's been a breach.

I submit that there is a disconnect somewhere there, because there are endless reasons.

I mean, Mr. Kierluk could have an 'Ah-hah moment' on the stand and say: 'Ah-hah', it was because someone didn't show up that particular day.

THE CHAIRPERSON: In which case that's one 'Ah-hah' which would not assist this case at all, right.

What if the 'Ah-hah moment' was that: Oh, well, we realized that there was -- one of the names that we've heard through the course of yesterday's evidence was a Mr. Krause. Oh, we found a Mr. Krause who lived nearby, and that's why we didn't prosecute.

I'm throwing this out as a hypothetical, I have no idea whether this came up.

But that's another Ah-hah which could come up which would then, in some way, contradict the evidence that's been made against the respondent.

MR. SMITH: That's right, Mr. Chair.

And who would have found Mr. Krause? The police would have found Mr. Krause.

THE CHAIRPERSON: Right.

MR. SMITH: The crown attorney does not do investigation, the crown attorney prosecutes, Mr. Chair.

THE CHAIRPERSON: But if the crown

attorney was aware of that evidence -- we're dealing with relevance here. I mean, that's what we're talking about here.

I'm not trying to get to whether that will be the case or whether the crown's evidence will be better than the investigator's evidence, it's just at a sort of *prima facie* stage is it relevant; can it be relevant? And that's the question I'm asking.

Because on the other hand I hear what you're saying - and I will turn to Mr. Kulbashian in a moment - because you're saying, realistically speaking, let's use a large number, 99 per cent, this individual, Mr. Kierluk, has no recollection of what happened that day, and you mentioned conduct money, and that's significant because that is required under our Act, conduct money has to be provided - the references are to the Federal Court Act or Provincial Statute, whichever is greater, I believe that's what the Statute says - so that can be of a significant cost perhaps to the respondent, and if really there is no significant evidence to come from this individual, then it's something perhaps to be considered.

But I'm just dealing with it at the level that you're talking about right now, in terms of strictly just dealing with the relevance.

MR. SMITH: Yes. And, Mr. Chair, if I could, before you -- if I could just take you to the last case that I will refer to, which is at paragraph 11, first of the argument of law, and this is basically the summary of it before I take you to the case.

There's a crown prosecutor whose only connection was in the conviction.

THE CHAIRPERSON: That's very similar to what you were talking about here; isn't it?

MR. SMITH: It is. If he has no direct and immediate experience of the act, then there is -- at least the Superior Court of Justice has determined that there is no evidence then that is material, relevant or necessary.

Now, if we can turn to tab 5.

THE CHAIRPERSON: Yes.

MR. SMITH: It's actually a very interesting case. It's actually one of the few that I was able to find about summoning a crown prosecutor.

And this is a decision of Justice O'Driscoll in 1997 of what was then called the General Division. Basically set up the facts because the facts are odd, is that Verdiroc, which is a construction firm, was prosecuted under the Ontario Health and Safety Act by a crown prosecutor named Arnott.

THE CHAIRPERSON: Arnott?

MR. SMITH: Identified by the initial "A" in the summary of the case.

THE CHAIRPERSON: Mm-hmm.

MR. SMITH: Bruce Arnott, who was a prosecutor -- still is actually, but he prosecuted Verdiroc.

Now, the person who requested the summons was a person named Mladenoff.

THE CHAIRPERSON: Right.

MR. SMITH: Now, Mladenoff was -- in the course of the investigation of Verdiroc, Mladenoff was the president of the consulting company that provided services to Verdiroc.

But what he was accused of doing was interfering with the Health and Safety inspector in carrying out his investigation. I don't have the dirt on what the interference was, it's not in the case, unfortunately, but he was charged with interfering with the operation of the inspector.

Now, this case actually involves two individuals, DeFrancesco and Mladenoff. DeFrancesco was actually an articling student who was also summonsed by Mladenoff.

I'll just get to the nub of the case.

I mean, basically Mr. Mladenoff summonsed the prosecutor who, in response - and this was to come to the criminal proceedings to talk about the charge against Mr. Mladenoff, this was to talk about that particular -- actually Verdiroc and the other players all ran off, pled guilty, did various things, Mladenoff was actually still left there facing the charge.

And so he summonsed Bruce Arnott as the prosecutor saying that he had relevant evidence to give because he had been involved, he was the prosecutor for the prosecution of that very case.

But Mr. Arnott -- Mr. Bruce Arnott deposed that he had no direct or independent knowledge of the breach, he had no knowledge of the offence that took place, his only involvement was as the prosecutor.

And what happened here is that Justice O'Driscoll granted the application to quash the summons and basically stated at page 7 that Mr. Arnott was only a prosecutor, he had no direct knowledge of the offence and, hence, had no evidence that was material, relevant or necessary.

Harking back to the submission I made earlier, he certainly may have had information about how he was conducting the prosecution - in fact, hopefully he would have - but he had no independent,

direct knowledge of the offence, of the interference with the inspector.

And, at least in the judgment of the Superior Court, that doesn't provide direct, relevant or necessary evidence.

THE CHAIRPERSON: The fact in issue there was the offence itself though; right?

What we're talking about here -- I don't think what's in issue here is the criminal offence for which he was charged, as far as I've seen it so far, it's components of the evidence that was gathered for the criminal prosecutions.

I may be wrong on that, and I'd like to hear what the Commission and complainant have to say, but my understanding from what I've heard so far - either in the case management calls or in yesterday's evidence - was that the purpose of leading the evidence of the police investigator is to take little titbits of information that were collected by that investigator and then eventually made it out to the crown prosecutor, but that's what's of concern, and not the actual charge, not the actual crime per se.

So, we're not prosecuting that crime here today, this is a distinct complaint on a human right -- on a separate statutory provision.

MR. SMITH: Exactly, Mr. Chair, but if it's at further arm's length, if it's not even about the charge, then it's even more distant, it's less chance of being relevant.

THE CHAIRPERSON: On the legal side, but perhaps not on the factual side.

I think we both understand each other. I know your position on this point.

MR. SMITH: You have my position.

THE CHAIRPERSON: And you know now my questions relating to those issues as well.

MR. SMITH: Well, certainly.

So, what we're asking is, that we're asking that the summons be quashed, Mr. Chair.

Subject to any questions...

THE CHAIRPERSON: I understand.

And on the question of conduct money, do you have any representations to make?

Quite frankly, our legislation is a little bit vague. Reference is made to the Federal Court rules, but I think the provincial rules may supersede if higher, if I recall.

MR. SMITH: The most help -- I don't have any submission. Certainly I think I can be of assistance.

At tab 6 there is a case I didn't refer to.

THE CHAIRPERSON: Yes, Day vs. Hortie.

MR. SMITH: Basically tab 6, I had included it because at paragraph 4 -- this is a decision of Dr. Paul Groarke.

THE CHAIRPERSON: Right.

MR. SMITH: And it was Amanda Day and Michael Hortie, in any case, a 2003 decision of the Tribunal.

And just in paragraph 4 it says:

"...conduct money is to be provided to the witnesses when they receive their subpoenas.

The witnesses have no obligation to appear if they do not receive the money."

I suspect from -- it may be that it's in the power of the Tribunal to say what the amount would be.

THE CHAIRMAN: Look at the preceding paragraph. That's why I'm asking you, coming from the provincial jurisdiction it says:

"The practice in the Federal

Court is governed by rules 42 and 43 of the Federal Court Rules, which state that a witness is entitled to the fees and travel expenses set out in Tariff A.

Section 3 of the Tariff states that witness fees should be paid in the amount of "\$20 per day plus reasonable expenses, or the amount permitted in similar circumstance in the superior court of the province where the witness appears, whichever is greater".

MR. SMITH: Well, in that respect I can be of some assistance because I have to pay cash of \$53.50 to witnesses who live within the city. Outside the city I have to pay reasonable travel expenses, return at the most economical rate, plus \$50.

THE CHAIRPERSON: That's the input I'm seeking from you, if you can provide that.

MR. SMITH: Yes, that's what I did with about 20 witnesses at a trial last year, Mr.

Chair.

THE CHAIRPERSON: So, let me record your -- is that -- well, the reasonable sum...

MR. SMITH: Under the rules of civil procedure, it actually is probably tariff at the end of the rules of civil procedure, which I'm sorry I didn't bring with me, but I have high confidence that my numbers are right.

THE CHAIRPERSON: So, that would be according to the rules?

MR. SMITH: According to the Tariff -- one of the tariffs to the Ontario rules of civil procedure, which is the revised Regulations of Ontario 194.

THE CHAIRPERSON: Okay.

MR. SMITH: As amended.

THE CHAIRPERSON: And that would be...?

MR. SMITH: The amount would be \$50.

THE CHAIRPERSON: Fifty?

MR. SMITH: \$50 plus reasonable travel expenses for out-of-town witnesses.

That's not quite the wording of the regulation, but it splits between people who live within the city where you give them subway fare and

people who live outside the city where you have to give them --

THE CHAIRPERSON: In this case, would Mr. Kierluk be coming in from London?

MR. SMITH: Yes.

THE CHAIRPERSON: So, in your submission what would the reasonable travel expense be from there? Would it be by vehicle or...

MR. SMITH: Oh, I would expect by vehicle. So, a mileage rate of 40-cents --

THE CHAIRPERSON: You don't know.

MR. SMITH: I wouldn't want to misrepresent what government employees get.

THE CHAIRPERSON: Okay. Perhaps I can be of help there.

MR. SMITH: Certainly I could send something to you.

THE CHAIRPERSON: Okay, but it's in that range. And certainly the \$50 exceeds the amount of the Federal Court rate and in accordance with the Federal Court Act, Federal Court rules that are referenced in this decision, we must use the more superior figure, so...

Those are your submissions?

MR. SMITH: Those are my

supplementary submissions, Mr. Chair.

THE CHAIRPERSON: Now, I don't know who wishes to speak. This is a subpoena that's been requested by the respondent Mr. Kulbashian.

Would the Commission and complainant be making any submissions?

MS MAILLET: I take no position, Mr. Chair, on this application.

THE CHAIRPERSON: Okay.

MS MAILLET: Unless you have specific questions for the Commission, I would be happy to answer them; otherwise I take no position.

THE CHAIRPERSON: No. And the complainant?

MR. WARMAN: Same.

THE CHAIRPERSON: The same. Okay.

Mr. Kulbashian, we're going to take a 10-minute break so that the gentleman can adjust the air conditioning and we can adjust the sound system as well.

REGISTRY OFFICER: All rise.

--- Recessed at 10:50 a.m.

--- Resumed at 11:00 a.m.

REGISTRY OFFICER: Order, please.

All rise.

Please be seated.

THE CHAIRPERSON: Much better.

Everything is working.

So, yes, Mr. Kulbashian.

Oh, your father will...

MR. ALEXAN KULBASHIAN: My Dad will be proceeding with the first part and I'll come in later on.

THE CHAIRPERSON: Okay. Is there any objection from anyone?

MS MAILLET: That's fine.

THE CHAIRMAN: We discussed this yesterday. I have decided to give a little allowance for this.

I understand it's your father helping you out as opposed to someone trying to represent himself as a lawyer, for instance.

MR. VAHE KULBASHIAN: Thank you, Mr. Chairman, for handling the legal aspect for this case.

I would like to go now to the facts, let's say, regarding the affidavit, the content of that affidavit.

THE CHAIRPERSON: Yes.

MR. VAHE KULBASHIAN: It really makes us very hard to believe that amnesia, I would call,

from the part of Mr. Kierluk.

This was an extensive case which took almost two years during which our lawyer, Mr. Peter Lindsay, from the beginning to the end he was in direct contact with the crown. He was the only person handling this case.

We have no doubt that everyone was referring to him, especially the police during this investigation.

With me I have this bunch of papers which our lawyer has charged us, not the ones that he hasn't, which shows his numerous conversations with Mr. Peter Kierluk.

This is enough evidence and especially the high profile -- this high profile case to make us very hard to believe what he's pretending.

Especially there were many meaningful events during this case, during which my son was arrested in the U.S., and at a certain time our lawyer almost daily was in contact with Mr. Kierluk.

What comes to his witness stance, we're not inviting him to discuss with him the issue of the Human Rights Act, but as a material witness of what happened.

We only want to know the truth of

what happened during this whole two years ordeal, during which my son was jailed so many times due to the irregularities of the police, due to filings of false affidavits in the courts, and I would mention that they got caught during the appeal when they came with those affidavits.

Our lawyer asked him questions. He didn't even answer back. This is how the whole situation...

So, pretending this was a very simple case which maybe lasted a day or two and maybe a lawyer would contact the crown for once, it's not true.

This is the whole picture which shows you. See those lines, these are highlight ones, these are the ones --

THE CHAIRPERSON: These are from invoices sent by your lawyer?

MR. VAHE KULBASHIAN: Yes.

THE CHAIRPERSON: And they indicate conversations with the crown?

MR. VAHE KULBASHIAN: He was in telephone conversation, the whole thing, also his correspondence when it came.

These are just some of them, not the whole.

THE CHAIRPERSON: So, I understand your comment to be then that it wasn't one of those run-of-the-mill cases where a prosecutor has 60 files on his desk in the morning, where he wants to arrange for arraignments--

MR. VAHE KULBASHIAN: Exactly.

THE CHAIRPERSON: --and then meets for five minutes outside in the hallway.

MR. VAHE KULBASHIAN: Exactly.

THE CHAIRPERSON: And chooses not to prosecute a case.

MR. VAHE KULBASHIAN: Yes.

THE CHAIRPERSON: Okay.

But what about -- you brought up some elements though, the ordeal, jail irregularities, you just mentioned all the truth.

Now, those -- I'm not saying they're not important, but they may not be relevant to what the case is before us.

I'm not dealing with whether the police did a good job or not in that prosecution or the other one.

MR. VAHE KULBASHIAN: I understand.

THE CHAIRPERSON: The issue that is before us is this complaint.

We've already heard perhaps a good portion of what the evidence is that is related to this in terms of the documents, references to the website, and I asked yesterday again, what's the link with respect to the other prosecution?

I gather there have been two prosecutions and that was explained to me, just components, elements of the facts, that's what they want to draw the Tribunal's attention to.

Something similar has to exist for the evidence of Mr. Kierluk to be relevant as well.

MR. VAHE KULBASHIAN: Yes.

THE CHAIRPERSON: Can you be specific about that?

MR. VAHE KULBASHIAN: Yes. The complainants, they're bringing forth --

THE CHAIRMAN: Sorry.

MR. VAHE KULBASHIAN: Cst. Wilson is the police officer who was part of that investigation, as well as some documents.

They're relying their case, I would say, on some documents which were produced to them by the police and their reports.

THE CHAIRPERSON: Who relied on those?

MR. VAHE KULBASHIAN: The prosecution -- the complainants.

THE CHAIRPERSON: The complainants are relying on documents that were provided to them by the London Police Force?

MR. VAHE KULBASHIAN: Yes, they're relying.

THE CHAIRPERSON: Yes.

MR. VAHE KULBASHIAN: And those documents, according to us, I'm trying to use the words, you know, the very soft words, untrue, and we believe that Mr. Kierluk would in a way help us, how should I say-- screen those documents.

THE CHAIRPERSON: Screen?

MR. VAHE KULBASHIAN: To--

MR. RICHARDSON: Discredit.

THE CHAIRPERSON: Discredit.

MR. VAHE KULBASHIAN: Discredit, exactly. I'm sorry, discredit.

THE CHAIRPERSON: I overheard the words that are being pronounced to you from Mr. Richardson.

MR. VAHE KULBASHIAN: Discredit.

THE CHAIRMAN: But you must be mindful of the principle that was pointed out by Mr.

Smith, that you cannot conduct a fishing expedition, nor can it be done for some other ulterior motive.

Now, that's what I dealt with a bit earlier when I said you were trying to sort of inquire and perhaps get back at perhaps what you would consider a malicious prosecution, in your mind - I'm not using that term in the legal sense - but that's what I sense you were trying to say.

MR. VAHE KULBASHIAN: I understand.

THE CHAIRPERSON: But at the core, again, if you tell me that you wish to use the evidence of Mr. Kierluk to discredit some of these documents, do you have any reason to believe that he can discredit these documents or are you just guessing?

MR. VAHE KULBASHIAN: Now, if you are -- should I go into more details? Am I, or am I allowed to open my whole case now, or let's say.

One thing that I would say, there were some affidavits presented to the court, to the appeal court on which his name was mentioned.

THE CHAIRPERSON: Whose name?

MR. VAHE KULBASHIAN: Mr. Kierluk for certain facts.

THE CHAIRPERSON: I'm sorry, I'm a little confused. Affidavits were presented to which

court?

MR. VAHE KULBASHIAN: To the appeal court.

THE CHAIRPERSON: In the case that we heard in the judgment?

MR. VAHE KULBASHIAN: On the assault case.

THE CHAIRPERSON: On the assault case, right?

MR. VAHE KULBASHIAN: Yes.

THE CHAIRPERSON: Affidavits were presented by Mr. Kierluk in the assault case.

MR. VAHE KULBASHIAN: Actually I believe it's Detective McKinnon who presented an affidavit to the court at that time, which our lawyer, Mr. McKinnon's affidavit, mention that it's full of falsehoods, and in that affidavit the crown was sort of witness there.

What I'm trying to say that, if I would go into more details, my son had undertaken a trip to the U.S. with his prior consent and during this appeal period he denied it, although we had his handwriting.

THE CHAIRPERSON: Who denied what, I'm sorry?

MR. VAHE KULBASHIAN: Mr. Kierluk in that affidavit, he said that that trip was without his consent.

THE CHAIRPERSON: Okay. But you know, I understand. Okay, I'll wait for Mr. Kulbashian --

You can go to the other microphone, it doesn't bother me.

MR. ALEXAN KULBASHIAN: I'll deal with some of these issues right now.

Actually we need Mr. Kierluk to directly challenge the credibility of Terry Wilson.

Terry Wilson was one of the officers that was involved, I guess to a great extent, with this case.

THE CHAIRPERSON: Which case now are you talking about?

MR. ALEXAN KULBASHIAN: The prosecution --

THE CHAIRPERSON: That was dropped in London?

MR. ALEXAN KULBASHIAN: That's right. But the issue is that a lot of the files, a lot of disclosure, well, I can't really -- I don't know if I should call it disclosure at this point, but that's

been forwarded to us--

THE CHAIRPERSON: Yes, that's disclosure.

MR. ALEXAN KULBASHIAN: --are files that were supposedly collected during that time.

A lot of the issues are up for debate right now, as far as we're concerned.

Mr. Kierluk can directly address the credibility of Terry Wilson as a whole as whether or not he's a credible witness in the first sense, also the credibility of some of the evidence he's provided to the investigator and --

THE CHAIRPERSON: Who's provided?

MR. ALEXAN KULBASHIAN: Terry Wilson has provided to the investigator.

THE CHAIRPERSON: To the Commission investigator?

MR. ALEXAN KULBASHIAN: That's right, Dean Steacy I think his name is.

So, we need to --

THE CHAIRPERSON: Do you have reason to believe that Mr. Kierluk, mindful -- there's a context now, we have an affidavit, a sworn affidavit from Mr. Kierluk--

MR. ALEXAN KULBASHIAN: That's right.

THE CHAIRPERSON: --saying that he has no recollection whatsoever about these things.

Do you have reason to believe that Mr. Kierluk would be able to deal with those specific issues that form and arise -- issues that arise from the documentary disclosure that you received from the Commission and complainant in this complaint?

MR. ALEXAN KULBASHIAN: We do have quite a few documents that will refresh his memory, including directly documents that would have, I guess you could peg, as the reason why the case was dropped in the first place, as well as a few other documents that my Dad is holding right now, that would create a link between Kierluk and Wilson -- I'm sorry, Mr. Kierluk and Mr. Wilson and they would be -- should be able to sort of jog his memory as to the events.

THE CHAIRPERSON: But does this jogging of memory deal with the issues that arise in the Human Rights complaint?

See, if the issue is something that related to the assault charge or that related to the criminal charge that he was prosecuting, it may not be relevant to this case.

It has to be something that is going to be referred to in this case for the purposes of the

Human Rights complaint.

MR. ALEXAN KULBASHIAN: I understand that.

The issue is, he won't be testifying necessarily directly on information that would, I guess, forward the case as you put it, kind of directly on the Human Rights aspect, he'll be testifying about Cst. Wilson who is basically our only witness that can challenge the credibility of, I guess, the crown's star witness -- not crown, sorry, applicant's star witness.

THE CHAIRPERSON: So, one of the issues that you say can be dealt with by Mr. Kierluk is the credibility of--

MR. ALEXAN KULBASHIAN: Cst. Wilson.

THE CHAIRPERSON: --of Officer Wilson?

MR. ALEXAN KULBASHIAN: That's right.

THE CHAIRPERSON: Based on the documents that have been disclosed to you from the Commission, and what was -- I mean, the evidence of Mr. Wilson is not in yet.

MR. ALEXAN KULBASHIAN: That's true, but there are some documents that were disclosed to us in the bundle.

THE CHAIRPERSON: And it deals with

those?

MR. ALEXAN KULBASHIAN: And those documents, we very much want to deal with those documents.

I don't think the documents are actually included in the --

THE CHAIRPERSON: They may not be in the joint book of documents, but if they are in the disclosure--

Yes?

MR. VAHE KULBASHIAN: Yes, they are in the disclosure, some of the documents.

THE CHAIRPERSON: I should back up. I said joint book and that's not correct.

There's a book of documents that would suggest these are the documents that the Commission would intend to use, but there were other documents that were disclosed?

MR. ALEXAN KULBASHIAN: That's right.

THE CHAIRPERSON: Is this the entire book of documents that the Commission intends to use?

MS MAILLET: That's correct, Mr. Chair. We won't go outside of any of these documents, as far as I'm concerned, unless something comes up that's unexpected.

THE CHAIRPERSON: Well, you have to be mindful of that too in your discussions, Mr. Kulbashian, because disclosure requires the entire set to be sent to the other side.

MR. ALEXAN KULBASHIAN: That's right.

THE CHAIRPERSON: Evidence is made up of a sub-set and this is the sub-set here that's found in the black binders.

So, you have to be mindful of that as well.

MR. ALEXAN KULBASHIAN: What I have -- actually, my Dad just informed me that we have included some of the documents--

THE CHAIRPERSON: Some of these have been included in--

MR. ALEXAN KULBASHIAN: Have been included in our booklet.

THE CHAIRPERSON: Oh, in your book?

MR. ALEXAN KULBASHIAN: That's right.

And, see, the issue is, these documents go as far back as dealing with the communication between Mr. -- sorry, Officer Wilson and the investigator from the CHRC.

So, like, they haven't exactly proved that in their new evidence, and they might not get him

to testify on them, but we want to challenge him on this in order to challenge his credibility as a whole.

THE CHAIRPERSON: All right. I suppose I find myself in a rather odd situation here, and perhaps I'd like to hear from everyone on this.

It seems often the practice occurs of challenging a subpoena as a person's about to testify, we know where the case is.

Right now I'm in an interesting situation in that I haven't heard the evidence of Mr. Wilson, I don't quite know, other than there was a more detailed disclosure provided in the conference call that we did some time ago - last week actually - but I haven't heard his evidence, so it's kind of difficult for me to determine what is relevant or not a bit in the abstract.

I'm kind of wondering whether I should withhold my decision on this until I've heard the evidence, at least of Mr. Wilson.

I'd like to hear from you on that, Mr. Smith. Would you have any -- I mean, my understanding was - and let's do it, let's be a little informal here - one of the concerns from a practical perspective was that this subpoena came somewhat at the last minute, the time frame was kind of short, and Mr.

Kierluk was -- there was some difficulty in his being available this week.

I don't know if that's correct, but...

MR. SMITH: Well, in fact, I'm not sure it was a difficulty with respect to Mr. Kierluk's availability as much as since he's in the respondent's case, the prediction was that he would be called as a witness for the respondent in the respondent's case, which the date I heard was October--

THE CHAIRPERSON: October, that's right.

MR. SMITH: October 12th. So, it was more because of whose witness he was rather than that.

THE CHAIRPERSON: You're right.

MR. SMITH: That's my understanding.

THE CHAIRPERSON: Yes. Well, what I'm driving at is that certainly I could you use the benefit of the time that we have in front of us to perhaps make a more reasoned decision, one with more facts behind it.

I'm wondering whether I should withhold any decision on this matter of the subpoena until at least I've heard maybe all of the Commission's evidence which is scheduled to end by Wednesday or

Thursday, and then determine whether the proposed evidence of Mr. Kierluk is relevant.

And I am also mindful now that we are still way in advance of the October dates we're talking about. I think it was the second or third week of October that we're scheduled to continue.

MR. SMITH: Certainly, Mr. Chair, whatever is most useful for yourself in coming to a reasonable decision.

However, I may need to make further submissions at that time, but I'm in your hands, Mr. Chair.

I think, if I can make a more global comment, and that is this seems --

THE CHAIRPERSON: Could you approach a microphone.

MR. SMITH: As I said, taking notes for a brief reply, the word that kept coming up was premature. I mean, there's been no evidence.

Documents that are held up--

THE CHAIRPERSON: That's right.

MR. SMITH: --or documents that are in a book are not evidence; hopefully they will be introduced through a witness and the witness will -- I would be hard pressed to expect that anybody knows what

Mr. Wilson or anybody else will testify to until they've testified, I think that's the problem that you're speaking of, Mr. Chair.

And I just think that the summons itself, whether one can use someone as a star witness to challenge someone's credibility before they've even testified seems inconceivable.

THE CHAIRPERSON: Well, they're trying to organize their case.

MR. SMITH: It's a hope and prayer, Mr. Chair.

THE CHAIRPERSON: Well, I'm not saying that, I'm saying that they're trying to organize their case.

I'm saying, we do have some idea of what Mr. Wilson will be testifying to because they've received the documents, there has been some explanation made - which you may not be aware of - in one of the transcripts during the case management call last week - no, you're not aware.

But what I'm going to suggest, I have a nice practical solution, we can end this right here.

I think I've heard both sides of the story and I think I understand what the positions are.

But I think in order for me to make a

reasoned decision on this, it really becomes very important for me to know exactly what the nature of the Commission's evidence will be, including that of Mr. Wilson.

He's key to this entire discussion, because my understanding from Mr. Kulbashian is they need Mr. Kierluk to deal with the evidence of Mr. Wilson. If it wasn't for Mr. Wilson's evidence, we wouldn't need Mr. Kierluk.

Am I correct on that, Mr. Kulbashian?

MR. ALEXAN KULBASHIAN: That's correct.

THE CHAIRPERSON: So, and here we go with the benefit of time in front of us.

I'll hear the evidence of Mr. Wilson, I believe it's coming today or tomorrow, and after that what we'll do -- I think we have a 10-day turnaround on the transcripts and they're made available now electronically; is that correct? They can be.

So, perhaps within the course of two weeks after the close of this case they will be made available to all of you electronically, meaning by e-mail I assume, and perhaps then, this debate, we don't have to do it live.

I think after that, if you wish to

make any further submissions in writing, Mr. Smith, you may do so, but I'll have -- you can just refer back to the evidence, and so will you, Mr. Kulbashian, you will be able to just refer back to what evidence was heard - you may not even have to wait for the transcripts since you will have been here - and just indicate to us what relevance you think the proposed evidence that you intend to lead with Mr. Kierluk, to what aspects of the evidence of - I've lost all the names now - to Mr. Wilson, what he can address, you see.

MR. SMITH: Sir --

THE CHAIRPERSON: I think Mr. Kulbashian has been trying to speak for a moment now.

MR. SMITH: Oh, I'm sorry. I was just going to suggest that rather than written, I'd appreciate the trip down, I have no problem.

THE CHAIRPERSON: Except that it would be only days before, or perhaps the same day as Mr. Kierluk would be scheduled to testify.

See, we've only got two weeks set down for hearing, this week -- so you would be willing to come down at the end of this week, is that what you're saying?

You won't have access to the evidence of Mr. Wilson, unless you stay.

So, what I'm saying is that we can do it -- look I'm willing to even look at the possibility, if you think you'd like to make submissions verbally, at least we can set up a conference call. I just don't see the need for everyone to be displaced to Oakville if we wanted to debate the point.

MR. SMITH: A conference call, that works for me.

THE CHAIRPERSON: Would that work for you, Mr. Kulbashian?

MR. ALEXAN KULBASHIAN: That would work for me.

THE CHAIRPERSON: So, we can do that. Either writing or conference call over, let's say somewhere in the next three weeks.

Perhaps you would advise Mr. Kierluk just the same to keep, I guess, the first or second day of that week in October open, if he can.

The subpoena is there, we don't have a specific date.

MR. SMITH: The October 12th date was not --

THE CHAIRMAN: I think we're beginning then, but was that the date that you intended to call Mr. Kierluk?

MR. ALEXAN KULBASHIAN: I'm not sure what's going on any more. I wish I knew what was going on.

Okay. Initially we had wanted him for this month, but that because we weren't exactly sure what was going on.

Another issue, I just want to deal with it briefly because I haven't had a chance to speak right now, is in section 3, the third point he brought up in his affidavit where he was talking about the lack of conduct money.

I just want to make it clear that I wasn't notified that I needed to send any conduct money.

THE CHAIRPERSON: Right. Actually, if you look in the letter we sent you and we sent all parties with the subpoena, on the second page, there's a reference, mind you it's a bit legal in nature, but there is a reference to the provision in the Act that requires you to provide conduct money. There is a reference in that section of the Act.

MR. ALEXAN KULBASHIAN: I wasn't sure if it was going to be included in the subpoena, though.

THE CHAIRPERSON: I'm sorry?

MR. ALEXAN KULBASHIAN: I wasn't sure

if it was going to be included in the subpoena, because at that point --

THE CHAIRPERSON: That may not be clear, I'll agree with you on that, that may not be clear, but we can deal with that.

I gather you're not objecting to providing the conduct money?

MR. ALEXAN KULBASHIAN: No, I'm not objecting.

THE CHAIRPERSON: Okay.

MR. ALEXAN KULBASHIAN: Just another small issue is, there was talk earlier on when Mr. Smith was talking and he said that there was no -- the lack of will-say statement I understand, like he just signed that, we didn't know how to prepare, but we were kind of expecting Mr. Kierluk to get in touch with us because I had provided contact information and the contact was established directly with the Tribunal instead of coming back to us, and we heard--

THE CHAIRPERSON: Yes.

MR. ALEXAN KULBASHIAN: --from the second level what was going on.

So, I'm not sure how we could have helped it if he'd have come right back to us and asked us any questions, and in the meantime until...

THE CHAIRPERSON: So, you're saying one of the reasons that your disclosure is somewhat limited with respect to what Mr. Kierluk would say, Mr. Kierluk has chosen to not communicate with you?

MR. ALEXAN KULBASHIAN: That's right. He hasn't communicated with us at all directly.

Also, if he would like to have his memory refreshed, we can -- until he comes to testify, we can send him copies of all documents that we have.

THE CHAIRPERSON: May I pose a question to you, Mr. Smith.

Would Mr. Kierluk be amenable to sitting down in a way that, if a lawyer intends to call a witness, he'll meet with his proposed witness and see what recollection that person has, go through the material, and then a lawyer in setting up his case may choose to not call a witness.

I think in the case here of the Commission, they had initially indicated two names from the London Police Department, they've chosen to call only one.

So, would Mr. Kierluk be amenable to meeting with the respondent over a lunch hour or something so that they can look just at the material that the respondent would like to show him to see

indeed for himself whether -- now I'm sort of being a case manager here rather than deciding this issue, but that might be a simple way to resolve this point.

Perhaps Mr. Kulbashian will be satisfied just in discussing with Mr. Kierluk. It's a witness he intends to call, after all, so when he calls him up to the stand, I don't think he would be intending to impugn his credibility or putting questions to him, and so on.

It's a normal course to follow, and perhaps then he would come to the same conclusion that he himself has reached regarding his recollection.

MR. SMITH: Mr. Chair, maybe I'm at the far end of my instructions, but I would expect that having ridden the horse this far, we do not consider -- Mr. Kierluk does not consider himself a proper witness.

We've taken a position and we've brought a motion and we are now sort of in medias res of the motion itself.

And I think that, although the suggestion that also correspondence may have been useful, but at this point we have a motion before the Chair, we're holding the motion in abeyance and there will be a determination made on further evidence.

That's my understanding of your

position -- the Tribunal's position.

THE CHAIRPERSON: That's the one that -- I'm saying the formal position I think will be that. I think that I'm much more comfortable ruling on this once I've heard the evidence that the proposed evidence of Mr. Kierluk would deal with, so...

MR. SMITH: Well, certainly my client would like a resolution to the motion, Mr. Chair.

THE CHAIRPERSON: Okay, that's fine.

MR. ALEXAN KULBASHIAN: We're just hoping at this point that maybe he might even retract his affidavit after we give him --

THE CHAIRPERSON: Well, there's no reason to retract an affidavit.

The affidavit is assumed to be true and, as you said, I think you put it rightfully, that perhaps -- your point of view is that perhaps in presenting documents before him it may trigger some recollection that he has not at this time. That's your position, and I understand that.

No, I think that would be the best resolution of this, that we postpone this matter for a little bit pending the evidence of Mr. Wilson, and I would say the entire Commission case, and at that point we will really have an idea of what the issues are

regarding the Human Rights complaint.

See, because there are many issues I understand in this matter -- in your matters, I should say, both you and Mr. Richardson, that go beyond the scope of the Human Rights complaint, and we can't allow those things to confuse what the true issues are of this case.

So, let's put it off, in the sense that I will hear all this evidence, and through the Registry we will be in touch with you on the dates scheduled, be it if you wish to put in writing in advance of a conference call or just go straight to a conference call, we'll deal with it as it comes.

But we have, I think, six or seven weeks ahead of us before the next set of hearings, so by then we should resolve this point.

Are you okay with that, Mr. Smith?

MR. SMITH: Yes, Mr. Chair.

THE CHAIRPERSON: Are you okay with that, Mr. Kulbashian?

MR. ALEXAN KULBASHIAN: Yes, Mr. Chair.

THE CHAIRPERSON: Yes, Mr. Richardson, did you want to be heard?

I haven't turned to you because it's

not your subpoena.

MR. RICHARDSON: No, that's fine.

I'd like to be included in that conference call.

THE CHAIRPERSON: Well, of course, you would be.

If you recall, the conference call last week or case management, you were invited to participate and you chose not to.

Is that not correct?

MR. RICHARDSON: Yes, that is.

THE CHAIRPERSON: So, all right, that's what we'll do then.

So, that means that you can be excused, Mr. Smith. If you wish to stay, please feel free to do so, otherwise...

MR. SMITH: I wish I could, Mr. Chair, thank you.

I thank everyone for their patience and I'll await your decision, sir.

THE CHAIRPERSON: That's right.

And, as I indicated, you'll be able to receive transcript copies through the internet. We'll get back to you.

So, that brings us back to the case,

unless there are any other preliminary issues for the day.

MS MAILLET: Mr. Chair, in light of the fact that this took most of the morning, I'm going to have to make alternate travel arrangements for Mr. Wilson.

He was initially supposed to leave today at five.

THE CHAIRPERSON: Leave today at five to go...?

MS MAILLET: To go back to Vancouver.

THE CHAIRPERSON: Oh, he's from Vancouver.

MS MAILLET: Yes.

THE CHAIRPERSON: Oh, I wasn't aware of that.

MS MAILLET: Yes. And, so, I'm a bit worried because I anticipated this would take maybe half an hour this morning and it was, you know--

THE CHAIRPERSON: Well, we didn't know the air conditioning system would fail.

MS MAILLET: --I have a hard time guessing these things.

But I have to make sure I call Ottawa to have his travel arrangements changed because, you

know, I'm worried - we're not even done with Mr. Warman - that we won't be finished with Mr. Wilson today.

THE CHAIRPERSON: So, you would rather --

MS MAILLET: So, my suggestion is, perhaps if everybody is in agreement, if we could break at this point for an earlier lunch.

THE CHAIRPERSON: Okay.

MS MAILLET: I could get all of those affairs in order and we could resume again at 1:00.

THE CHAIRPERSON: At 1:00. Is everyone in agreement with that?

MR. RICHARDSON: Mr. Chair?

THE CHAIRPERSON: Yes, Mr. Richardson?

MR. RICHARDSON: I don't think one day will be sufficient to cross-examine Mr. Wilson. I don't think that letting him go home tomorrow --

THE CHAIRPERSON: Well, he doesn't go home until you're through with --

MR. RICHARDSON: She made plans to let him leave at five today. That clearly wouldn't have been in our time frame at all we're planning on with our questioning, so maybe he shouldn't be planning

on going for 5:00 tomorrow either.

Understand what I'm saying?

THE CHAIRPERSON: Perhaps you could discuss it amongst yourselves.

Is there an open ticket or something?

MS MAILLET: No, it needs to be confirmed. These aren't open tickets.

Again, and I guess we're on the floor, but my plan is to finish with Mr. Warman in about 20 minutes--

THE CHAIRPERSON: Okay.

MS MAILLET: --to half an hour. I don't know how long cross-examination of Mr. Warman is, if there's any guess from the respondents as to how long they'll will be with Mr. Warman.

THE CHAIRPERSON: Was that the cross-examination of Mr. Warman or --

MR. RICHARDSON: I'm talking about Mr. Wilson, sorry.

THE CHAIRPERSON: You were talking about Mr. Wilson. He was talking about Mr. Wilson.

MS MAILLET: Yes. So, if we could maybe get an estimate of how long they may be with Mr. Warman, then I will be able to guess how long Mr. Wilson would have.

THE CHAIRPERSON: Mr. Kulbashian, how long do you think you will be with Mr. Warman?

MR. ALEXAN KULBASHIAN: The issue is, we would like to reserve our questioning for after all the witnesses are finished.

THE CHAIRPERSON: You can't.

MR. ALEXAN KULBASHIAN: In that case it might -- it's very hard to say. It depends on what he says up to this point, but it might take us a little over a day, day and a half, it's possible.

THE CHAIRPERSON: A day and a half to cross-examine?

MR. ALEXAN KULBASHIAN: The thing is there's two people. You have to take into account that --

THE CHAIRPERSON: You have to be mindful the cross-examination has to be on issues that relate to this case.

MR. ALEXAN KULBASHIAN: That's right.
That's right.

THE CHAIRPERSON: It can't be -- because I know there are other issues that have arisen in the past --

MR. ALEXAN KULBASHIAN: He's not involved in those other issues, so this is just about

this case.

THE CHAIRPERSON: Okay. Well, I mean it's tough to estimate.

MS MAILLET: In any event --

THE CHAIRPERSON: What they're advising us of is that there will be long cross-examination on both witnesses, I guess.

MS MAILLET: Okay, that's fine.

THE CHAIRPERSON: So, perhaps you should be mindful of that.

MS MAILLET: Yes.

THE CHAIRPERSON: Yes, Mr. Kulbashian?

MR. VAHE KULBASHIAN: Mr. Chairman --

THE CHAIRPERSON: What I'm going to be saying - by the way, I hope no offence, if I say Mr. Kulbashian, Sr. and Jr. for the record - would that be fine?

MR. VAHE KULBASHIAN: It doesn't matter, that's fine.

THE CHAIRPERSON: I don't want to be referring to your first names, it's not formal.

MR. VAHE KULBASHIAN: Actually came out with this huge disclosure, you understand, and we have to go through this disclosure.

THE CHAIRPERSON: Well, this was disclosed -- my understanding is that the entire -- as I said before, the big set was disclosed to you in advance, a month or two.

MS MAILLET: Our initial disclosure was in April.

THE CHAIRPERSON: In April. There you go, okay.

And what you have here are the specific documents from that that they intend to use today.

So, by our disclosure, you've been properly notified of the documentation. You know, I guess you have to work with that material, but it's material that has already been disclosed to you.

They have chosen in fact -- just so you are aware, this is even going beyond what is normally expected of the Tribunal. Normally at the hearing it's very possible for a party to simply hand up individual sheets of paper as each one comes up.

What they've done by putting it in the black book is made it easier for all of us to be able to look at the papers without having to waste time receiving separate sheets, that's all.

MR. VAHE KULBASHIAN: What I was

trying to say is that there are a lot of materials in this.

THE CHAIRPERSON: Yes.

MR. VAHE KULBASHIAN: And it's time.

MR. ALEXAN KULBASHIAN: It takes time to --

THE CHAIRPERSON: You intend to cross-examine on each item?

MR. VAHE KULBASHIAN: Yes.

THE CHAIRPERSON: Okay. I thought you were talking about disclosure.

MR. ALEXAN KULBASHIAN: We're getting confused with the terminology at this point, sorry.

THE CHAIRPERSON: Well, disclosure means what happened before the date, the first day of the case, that's exchange of material in advance.

What's going on now is production, we are producing these documents.

Oh, I should advise you of this, Mr. Richardson and Mr. Kulbashian, Jr., we yesterday put in place a policy whereby, since we have all these tabs, as each document -- we've already produced the entire book, the book officially is in the record as HR-1, but as each document is referred to I require a request from the party - in this case it's the Commission - to

tell me, I would like that document produced, and when that is done it's recorded by Mr. Levac officially. We can all take tick off the page at the top corner of each tab and that way we keep track of what's been produced.

At the end of the hearing if, for instance, tabs 57 and 60 weren't referred to by anyone, Mr. Levac will inform us of that, we'll remove them from our books and that becomes the official exhibit.

All right.

MR. ALEXAN KULBASHIAN: Okay. Thank you very much, Mr. Chair.

THE CHAIRPERSON: So then, I think it's appropriate that we take our break then, make your phone calls and we'll be back at one o'clock.

We'll hear Mr. Warman, we'll go to the cross-examination, see what happens with Mr. Wilson.

REGISTRY OFFICER: All rise.

--- Recessed at 11:35 a.m.

--- Resumed at 1:15 p.m.

REGISTRY OFFICER: Order, please.

All rise.

Please be seated.

THE CHAIRPERSON: Yes.

StenoTran

Mr. Levac has made photocopies of tab 5.

If you recall, there were some photos on the second page of tab 5 that weren't that clear in the original copy, so he made some better photocopies today and he will be passing around replacement sheets.

So, Maître Maillet, are we ready to proceed with Mr. Warman again?

MS MAILLET: Yes, we are, sir.

Sir, before we begin, Mr. Warman was to make some inquiries in terms of copies of tabs that the dates had been cut off at the bottom.

THE CHAIRPERSON: Right.

MS MAILLET: And he verified his copies, and in relation to tab 17 and tab 31, his original copies as well had the dates cut off.

THE CHAIRPERSON: Okay.

MS MAILLET: I can again ask him when or about what time -- I think he had said he believed it was the fall of 2001 that he downloaded these.

I can ask him again orally to confirm when -- or approximately when he thinks these were downloaded.

THE CHAIRPERSON: You can ask any question you want.

MS MAILLET: Just to let you know
that--

THE CHAIRPERSON: There is no better
document?

MS MAILLET: --there is no better
document.

With respect to tab 30, he was able
to find the exact same document, however, it had been
downloaded on a different day, but we would be ready to
put that into evidence.

THE CHAIRPERSON: Can you please
remind me?

MS MAILLET: It is the
"Whois-results" for tri-cityskins.com.

THE CHAIRPERSON: Right. And what
information was missing?

MS MAILLET: The date was also
missing.

THE CHAIRPERSON: The date at the
bottom right corner, you mean?

MS MAILLET: Right.

THE CHAIRPERSON: Right. We could
see "13" and the "1", but we couldn't see the rest.

MS MAILLET: He was able to find a
copy that he downloaded on the 10th of '01, and I'd be

ready to put that in as opposed to the one without a clear date and then I could have him again -- question him about that document.

THE CHAIRPERSON: Go ahead as you wish. It's your case.

MS MAILLET: Okay.

The next document is at tab 34 that a request was made because the URL address at the bottom had been cut off by the computer.

THE CHAIRPERSON: Yes, yes.

MS MAILLET: And he, in fact, was able to find a copy with the date on it.

So, that one I would be prepared to put it.

THE CHAIRPERSON: It's not been photocopied seven times, or six?

MS MAILLET: Pardon me?

THE CHAIRPERSON: Have you photocopied it the number of times that's required?

MS MAILLET: No, no, so...

THE CHAIRPERSON: We'll do that again at a break and Mr. Levac will re-distribute it.

MS MAILLET: Right.

THE CHAIRPERSON: Would you like to

show it to the other parties?

MS MAILLET: Yes.

THE CHAIRPERSON: Mr. Richardson, do you want to go take a look at what she's explaining.

THE CHAIRPERSON: Okay. So, we'll do that at some point.

MS MAILLET: Thank you.

THE CHAIRPERSON: And re-distribute the copies.

MS MAILLET: Mr. Warman, if you could turn to tab 17, please, of the book of documents.

Now, yesterday you gave evidence concerning the fact that you had observed this document on the internet and that you had downloaded it.

The date has been cut off, as you know, and we aren't able to find a better copy.

So, are you able to tell the Tribunal approximately when -- I know that it's hard to pinpoint the exact date, but approximately at what point in time you would have downloaded that site from the internet?

MR. WARMAN: Yes. To the best of my knowledge, the date of download would have been the same as all of the other documents marked with a similar date as to this one, and that would be the 13th of October, 2001.

MS MAILLET: And now, if you could please turn to tab 31.

And, again, that date has been cut off at the bottom.

So, if you are able to tell the Tribunal on approximately what date that was downloaded and printed as well.

MR. WARMAN: Yes, it's my belief that that document as well was downloaded on the 13th of October, 2001.

MS MAILLET: And if you could turn to document 30.

THE CHAIRPERSON: 30?

MS MAILLET: Yes. We were at 31.

THE CHAIRPERSON: Oh, I'm sorry. Oh yes, that's right.

MS MAILLET: And, Mr. Warman, that date as well had been cut off and you provided me with a copy of a different page.

It's the same page, looks like it had been downloaded on a different day. I'm going to have Mr. Levac show you that document.

And then perhaps afterwards we can have -- we can have the Tribunal make copies for the parties.

REGISTRY OFFICER: (handed)

MS MAILLET: Do you recognize that document?

MR. WARMAN: Yes. It is a document I myself had conducted the "Whois-" search for on the website register.com.

This search was conducted on the 9th of October, 2001, and the only difference between the two documents that I would note is that in the copy that we're about to enter, the e-mail for the administrative contact is cut off a little bit.

So, on the initial copy that was entered, it's quite clear that it's totenkopf@wpcect.com and on this one you can just see the totenkopf@ and then the beginning of the w.

MS MAILLET: Right.

MR. WARMAN: But the information otherwise appears to be the same.

THE CHAIRPERSON: The date is October 10th?

MR. WARMAN: The 9th of October, 2001.

THE CHAIRPERSON: 9th of October.

MS MAILLET: So, if I could produce that document.

THE CHAIRPERSON: That's tab...?

MS MAILLET: As tab 30 as well.

THE CHAIRPERSON: So, we would attach it to the back of tab 30.

I'm fine with that. I've put a note back when we entered tab 30 to that effect, so we can keep it that way.

So, for the record tab 30 will comprise two sheets. The first sheet only says 13/1 at the bottom right corner, this newer sheet apparently - let me have a look at it - it's a double-sided sheet, as was the first, yes, the original sheet was also double-sided and when we look at the bottom right corner it says 09/10/01 which means 9th of October, 2001.

MR. WARMAN: Yes.

THE CHAIRPERSON: Okay.

So, copies will be made and distributed later in the day.

EXHIBIT NO. HR-1 (Tab 30): As previously entered with second double-sided sheet attached.

MS MAILLET: Now, before we begin with Mr. Warman's evidence, sir, Mr. Richardson spoke to me briefly before we started today indicating that

he had been advised by somebody that, in fact, there wouldn't be a hearing on Monday, and he was questioning me as to who that person might have been.

So, I'm a bit concerned that he's telling us that otherwise he would have been here. So, I wanted the court to address that issue.

THE CHAIRPERSON: Well, Mr. Richardson, my understanding - and it is hearsay because the Tribunal Chairs do not deal directly with the parties - but my understanding was from the registry, I believe it was Ms Lemoine, that you had said you would not be available Monday.

MR. RICHARDSON: She called me. That wasn't the issue.

THE CHAIRPERSON: Please stand up to use the microphone.

MR. RICHARDSON: The issue just was the fact that I was told there wasn't going to be anything Monday.

When she did call me, I did tell her that I wasn't going to be available anyways. It's not a big issue. I just wanted to --

THE CHAIRPERSON: Perhaps there was a misunderstanding.

MR. RICHARDSON: Yeah.

We did come to that conclusion over lunch, that Mr. Kulbashian got the same phone call and we compared notes and I probably misunderstood what was being told to me.

So, it's not an issue any more.

THE CHAIRPERSON: There was a letter received from Mr. Kulbashian--

MR. RICHARDSON: Yes, yes.

THE CHAIRPERSON: --saying that he would not be available but that the case could proceed.

MR. RICHARDSON: Yeah, it's not an issue.

THE CHAIRPERSON: Okay, thank you.

MS MAILLET: I just wanted to clarify that.

RICHARD WARMAN, Resumed:

EXAMINATION-IN-CHIEF BY MS MAILLET (Cont'd) :

MS MAILLET: Mr. Warman, if you could turn to tab 49, I believe that we had begun to deal with that evidence yesterday, and a question came up with respect to whether or not the respondent had, in fact, received the CD.

My information was, and I contacted the office again this morning early and had them check to see if they could have made a mistake about a copy

of a page like is found in the documents, or if in fact the CDs were copied.

And the information that I received was that the CDs were copied and sent out.

THE CHAIRPERSON: You're saying CD, you mean the actual CD?

MS MAILLET: The actual CD, yeah. I had, as you know, had other copies made because I was concerned that that hadn't been done.

Now, Mr. Kulbashian had advised yesterday that he didn't have that CD.

THE CHAIRPERSON: Senior?

MS MAILLET: Right. So, now if we could just clarify with respect to who has what CDs because I still have the extra copies I had made.

THE CHAIRPERSON: Right.

MR. ALEXAN KULBASHIAN: And I'm not sure, I'd like to comment on that.

THE CHAIRPERSON: Can you speak up, please.

MR. ALEXAN KULBASHIAN: The CD isn't labelled the same way as it is in the picture.

THE CHAIRPERSON: I'm sorry?

MR. ALEXAN KULBASHIAN: The CD isn't labelled the same way as it is in the picture.

THE CHAIRPERSON: Oh.

MR. ALEXAN KULBASHIAN: So, my father had been confused, because they hadn't made copies of the CD. This is the original evidence, the CD I think is what you guys got, so he was actually confused as to which CD it could have been.

But we did go back home and verify that we had the CD after we went home.

THE CHAIRPERSON: You had the CD, it was sent -- we were referring back to a letter that had an inventory of things that were sent to you--

MR. ALEXAN KULBASHIAN: That's right.

THE CHAIRPERSON: --and the second item at the top said CD. That's the same CD that was being handled yesterday here by the Commission.

MR. ALEXAN KULBASHIAN: Looking at the contents, it's the same CD they were referring to.

THE CHAIRPERSON: So, it was disclosed. And that CD was also received by Mr. Richardson?

MR. RICHARDSON: (nodding)

MR. ALEXAN KULBASHIAN: It was just a point of confusion in the labelling of the CD.

THE CHAIRPERSON: Okay, labelling. Right.

So, we've resolved the disclosure problem.

MS MAILLET: And now, we had made hard copies of some of the folders in that CD and that's what is at tabs 50 to 59.

THE CHAIRPERSON: Right.

MS MAILLET: Now, the whole CD wasn't disclosed, but those particular files that are in this document, in the binder were disclosed.

THE CHAIRPERSON: As distinct documents?

MS MAILLET: As distinct. They had all of the information however--

THE CHAIRPERSON: On the CD.

MS MAILLET: That's right, so...

THE CHAIRPERSON: And these documents pertain more to Mr. Richardson; right?

MS MAILLET: Yes, these emanate from Mr. Richardson's hard drive, so he would have at some point had that hard drive.

THE CHAIRPERSON: Yes.

MR. RICHARDSON: Mr. Chairman, at the time I was arrested it was reported by Mr. Wilson in the London Free Press that I lived in London.

I've never been a citizen of London

ever in my life, I've been at the same address for the last 10 years.

In reality it was my girlfriend that lives in London. I've been up there -- I go up there, or went up there, sorry, a couple of times a week. The computer was never mine. Anything that was in that hard drive -- I mean, I never owned the computer. I never lived in London.

This is part of the stuff that we're trying to get out of Terry Wilson.

THE CHAIRPERSON: Okay, so...

MR. RICHARDSON: Excuse me. There is nothing linking me to that computer. I never owned it, as I said. Anything that they get out of there is just all third party.

THE CHAIRPERSON: Okay, all right.

MR. RICHARDSON: And I'd like to state that right off the top.

THE CHAIRPERSON: That's an important statement that you've made and that's significant in terms of our discussion here.

But the second point is, though, the CD was disclosed to you?

MR. RICHARDSON: Yeah, I did get the CD.

THE CHAIRPERSON: Did you look at it when you received it?

MR. RICHARDSON: Oh yeah, I did, yes.

THE CHAIRPERSON: Okay. Because we're dealing here with a very narrow issue right now.

MR. RICHARDSON: Yes, yes.

THE CHAIRPERSON: The narrow issue is, was it sent to you, did you have a chance to look at it.

Because that then just takes us to the next step - we will deal with what's on there in a moment - but did you have chance to see the CD, and that was sent in April?

MR. RICHARDSON: I've seen the CD many times.

THE CHAIRPERSON: You've gone through it, I mean. You didn't just leave it there?

MR. RICHARDSON: No, I went through all the evidence.

THE CHAIRPERSON: All right. Do you recall specifically if you saw these particular documents here?

MR. RICHARDSON: Everything that she submitted I've seen.

THE CHAIRPERSON: You've seen, tabs

50 to 59, you said?

MR. RICHARDSON: I've seen all that, yes.

THE CHAIRPERSON: Okay. That's all this part of our discussion is about.

MR. RICHARDSON: All right.

THE CHAIRPERSON: What you're saying, though, is important and you can bring that up, it certainly has some significance.

But all we're trying to determine at this moment is whether you've had the opportunity to look at this material on the CD, and the answer is yes on that.

From Mr. Kulbashian, had you looked at the CD when you received it?

MR. ALEXAN KULBASHIAN: Yes, I had.

THE CHAIRPERSON: All right. So, as far as I'm concerned then the disclosure issue -- you'll recall, when I use the word disclosure, I'm talking about all that activity that occurred prior to today.

So, the disclosure issue is resolved.

MS MAILLET: Yes.

THE CHAIRPERSON: I consider all these next tabs to have been properly disclosed.

MS MAILLET: Okay, thank you.

Mr. Warman, at tab 49 it's a photocopy of a CD top, looks like on the cover it had James Richardson's hard drive Det/Cst Terry Wilson.

Are you familiar with that CD?

MR. WARMAN: Yes. It's my understanding that that is the CD that -- or a copy of the CD that was disclosed to all of the parties pursuant to the disclosure obligations of the Commission.

MS MAILLET: So, how did you become familiar with that CD?

MR. WARMAN: It was disclosed to me by the Commission in the course of the preparation for the hearing.

And my understanding of it is, is that it is, in fact, the hard drive, as it alleges on the face of it, to be James Richardson's hard drive.

Once the CD itself was disclosed to me, I studied the materials within it very extensively and became familiar with them.

MS MAILLET: If we could produce tab 49.

THE CHAIRPERSON: Well, tab 49 is just a photocopy of the jewel case.

MS MAILLET: That's right.

THE CHAIRPERSON: What should we do?

MS MAILLET: I guess because they've all been disclosed, I have other copies, so I leave it to the Tribunal whether or not you want me to produce the actual CD.

THE CHAIRPERSON: So, I gather that all of the pertinent areas of the CD have been photocopied and printed out -- have been printed out and photocopied?

MS MAILLET: Yes, for the Commission's purposes.

THE CHAIRPERSON: Right. Will the respondents be referring to any other parts of the CD?

MR. RICHARDSON: Oh, yes.

THE CHAIRPERSON: You would.

Parts that are not photocopied?

MR. RICHARDSON: Oh, no.

THE CHAIRPERSON: No.

MR. ALEXAN KULBASHIAN: No.

THE CHAIRPERSON: Well, look, what we'll do is this. I would ask the Commission -- if it's not necessary, we don't need to file the CDs, but I would ask the Commission to keep always on hand those remaining copies in the event that either of the other

parties wishes, or maybe perhaps even the Commission or the complainant wish to refer to another file on those CDs, then we'll file the CDs.

MS MAILLET: I will do that. Thank you.

THE CHAIRPERSON: All right. You understand?

MR. RICHARDSON: (nodding)

THE CHAIRPERSON: There are copies available for you.

MS MAILLET: So, Mr. Warman, when you did receive the CD, did you take a look at what was on that CD?

MR. WARMAN: Yes, I did. I reviewed its contents in a fair bit of detail.

MS MAILLET: Please turn to tab 50.

Do you recognize this document?

MR. WARMAN: Yes, I do. I printed it off.

What it is, it's a listing of the files that were contained on the CD that was disclosed to me.

MS MAILLET: Mark that as tab --

THE CHAIRPERSON: Yes, and the previous one too, in case I didn't mention it.

EXHIBIT NO. HR-1 (Tab 49) :

One-page photocopy of jewel case described as James Richardson's hard drive.

EXHIBIT NO. HR-1 (Tab 50) :

One-page photocopy of inventory of files found on CD described on jewel case filed as Tab 49.

MS MAILLET: Please turn to tab 51.

Do you recognize this document, sir?

MR. WARMAN: Yes, I do. I printed it off.

And what it is, is if you refer between tab 50 -- if you go down to about the sixth item going down the D drive, there's in all capitals the word LOGS, L-O-G-S, and this is then when you enter into that file, this is a print-out of all of the logs that appeared within that file.

MS MAILLET: And now I understand that the documents that are going to follow emanate from this list that's at tab 51; is that right?

MR. WARMAN: Yes.

MS MAILLET: Okay. Could you please, before we move on to those actual documents, just identify at this point from this list which entries, if

you want, under name here, which is the names on the left-hand -- in the left-hand column, can you just identify which ones you will be dealing with so that we can follow along.

MR. WARMAN: Certainly. Just in order to clarify, these are LOGS of internet relay chats that were stored on the hard drive.

So, the IRC logs that I will be referring to, the first one is about 10 or 12 down and it's "#wpcanada".

So, it's the last one that has a number sign beside it on the first page.

Then about eight or 10 below that there is in all capitals the word "BOB-"

THE CHAIRPERSON: B-O-B?

MR. WARMAN: B-O-B or B-0-B.

THE CHAIRPERSON: Yes.

MR. WARMAN: Then below that, about five, there's one called "Bootboy".

The third one below that is "Chloe25".

Then about 10 or 15 below that there's one entitled: "FdajEWS" with 'F' and 'JEWS' all in capitals.

The second one below that is entitled

"Fukmedia".

The sixth or seventh one below that is entitled "IhatJews".

And then turning to the next page, about eight or nine up from the bottom there's one "TankTCS" with TCS and the first letter of Tank all in capitals.

MS MAILLET: If we could mark that as tab 51.

THE CHAIRPERSON: Yes.

EXHIBIT NO. HR-1 (Tab 51) :

Two-page inventory of D drive files from CD represented by Tab 49.

MS MAILLET: If you could turn to tab 52, Mr. Warman.

Do you recognize this document?

MR. WARMAN: Yes, I do. It's a document that I myself printed off and provided a copy to the Commission.

And as I mentioned, it's the internet relay chat log that was stored on the hard drive entitled: "#wpcanada.log".

THE CHAIRPERSON: The number sign, does it appear on this page anywhere?

MR. WARMAN: No.

THE CHAIRPERSON: Yes, #wpcanada.

Okay, right.

MS MAILLET: Okay. Mr. Warman, if you could please for the Tribunal go through the document and identify items of interest, items that you found of interest?

MR. RICHARDSON: Mr. Chairman, may I?

THE CHAIRPERSON: Do you have an objection? Okay, if it's an --

MR. RICHARDSON: It's to do with this directly.

THE CHAIRPERSON: Okay, go ahead and I'll --

MR. RICHARDSON: Well, you --

THE CHAIRPERSON: No, go ahead.

MR. RICHARDSON: Okay.

Two points: (a) the first one, you know, I didn't own the computer, I didn't live up there.

Second is, anybody could have written any of these things that are coming out right now.

THE CHAIRPERSON: Right, but let me interrupt you.

MR. RICHARDSON: And then there

was --

THE CHAIRPERSON: I have to interrupt you.

What you are doing is you're trying to make your case, you're trying to deal with the evidence.

MR. RICHARDSON: I'm trying to strike this out of --

THE CHAIRPERSON: You're going to have your opportunity to do all of that in your cross-examination at the end.

MR. RICHARDSON: So, I'll wait.

THE CHAIRPERSON: You have to take notes.

When we make objections it's on procedural points or it's on the evidence as going in, that it should not go in, you have an objection that the evidence should not go in.

For instance, if it was, as I said, irrelevant, or sometimes in criminal court if it's hearsay, if somebody else told me, I don't know.

That's why you make objections during the course of the evidence.

MR. RICHARDSON: Okay.

THE CHAIRPERSON: Now it's

examination-in-chief, the questions come from one side, we get the answers, you take notes, afterwards you put all your questions, you have lots of latitude, lots of time to pose all your questions, okay.

Go ahead, Ms Maillet.

MS MAILLET: Again, Mr. Warman, if you could just list for the Tribunal the excerpts from this internet related chat which you found of interest when you printed it off and downloaded it?

MR. WARMAN: Certainly.

The first thing is that at the very top of page 1, just underneath the date, there is a topic listed and it is:

"WWW.wpcect.com Join our newsletter list e-mail,"

And then it gives an e-mail address and then C.E.C.T. website.

You'll note as you go through it there is one consistent participant in the internet relay chat and that is a pseudonym of "WPCANADA" and that, on occasion, may be transformed into "WPCaway".

And my understanding is that that usually happens when the person has, you know, left the computer for a short period of time and is absent.

Although you'll note that on occasion

the "WPCaway" in fact continues and comes back and starts chatting again.

So, as you go through the document, page 7, the fourth line down, just beside the heading "WPCANADA" it indicates that:

"WPCANADA changes topic to
www.vinlandvoice.com".

THE CHAIRPERSON: I haven't found that, I'm sorry.

MR. WARMAN: I'm sorry, on page 7.

THE CHAIRPERSON: Yes.

MR. WARMAN: It is the fourth line down.

THE CHAIRPERSON: Okay.

MR. WARMAN: Beside [01:33:46].

THE CHAIRPERSON: I'm going to need some assistance in understanding what the log is here.

I'm not acquainted at all with this chat.

MR. WARMAN: Okay.

THE CHAIRPERSON: So, what's going on here when I see what appears to be times on the left side. "14:20:35", does that mean 14 hours, 20 minutes, 45 seconds?

I'm looking at the first page, "Session Start", it says.

MR. WARMAN: Yes.

Essentially, an internet relay chat is like MSN Messenger or any of the other very common chat programs for the internet where instead of sending e-mail where there's a delay and you hit respond and then you type in your e-mail and send it back to them.

This is kind of instant messaging, what's described as instant messaging.

So, you're essentially typing with however many other participants - there may be one there may be a hundred - onto a common log and then each participant as they type in their message and hit return or whatever it is they need to submit the information, that information is then submitted to that ongoing conversation that's taking place between the participants.

THE CHAIRPERSON: Is this log only recorded on one computer, the central computer, or is everyone that's participating in this chat getting a copy of this ongoing chat log?

MR. WARMAN: My understanding is that you would be certainly able to see the ongoing conversation on your forum if you've joined that particular discussion, and then that that material is then stored on the hard drive of your computer, unless

you erase it.

THE CHAIRPERSON: If you're the person who was participating in the chat?

MR. WARMAN: Yes, whether you're --

THE CHAIRPERSON: So, the host - if I can use the term, I don't know if it's the appropriate term - of the log, it's not just there that it is recorded, anyone who participates in this forum ends up receiving all of that conversation from the moment he joins on, he or she joins into the conversation?

MR. WARMAN: My understanding is that that information would be stored on the hard drive.

THE CHAIRPERSON: So, when it says "Session Start" at the beginning of page 1 on Monday, September 3rd at 14:20, it means that the individual on this computer joined the chat session at that moment?

MR. WARMAN: Or created the chat session.

THE CHAIRPERSON: How do you create a chat session?

MR. WARMAN: See, you can create your own little section.

It's like, let's say you're on a teleconference call and you only want certain people to join.

The person who establishes the particular chat session can control, can usually boot participants that they don't want in it or they can require the people enter a password before they join the chat session, or they can declare it open and, you know, people can join as they will, so, that's -- you would just go on, if you have the privileges or the ability on that particular forum to establish new chats, then you would be able to do that.

THE CHAIRPERSON: Okay. So, when the first entry that you referred to earlier, topic is:

"WWW.wpcect.com Join our newsletter list e-mail"

That was something that was put out?

MR. WARMAN: This would be out on the internet in whatever particular forum, area or website that this chat was being conducted on.

THE CHAIRPERSON: I see. It goes on the forum. So somebody viewing that forum says, I want to join--

MR. WARMAN: Sure.

THE CHAIRPERSON: --and clicks to join.

MR. WARMAN: Yes.

THE CHAIRPERSON: At that moment?

MR. WARMAN: Yes. That's my understanding.

THE CHAIRPERSON: And then the conversation begins?

MR. WARMAN: Yes.

THE CHAIRPERSON: Now, when it says "changes topic to", as you were about to refer here at Vinland Voice at page 7, what does that mean, to your understanding?

MR. WARMAN: To my understanding it is that the forum discusses -- it's like putting a title out there. This is what we're discussing in this particular room.

So, rather than being wpcct.com, it would now appear in the broader forum for people who wanted to join as vinlandvoice.com.

THE CHAIRPERSON: It sounds very formal. Did somebody write:

"WPCANADA changes topic to"
Or is this standard language?

MR. WARMAN: It's just like a computer log kind of thing. So, it's recording what's happening.

It's not someone independent who is going in and typing this out, it's just like the

computer recording commands.

THE CHAIRPERSON: Right.

MR. WARMAN: It's like, you know, if you used to do basic computer programming it would list out--

THE CHAIRPERSON: There was a time.

MR. WARMAN: Yeah. Basically, it would list out what was happening.

So, that it might not be in a language that would be intelligible to everyone and anyone, but, you know, it would record in whatever language was being used what was transpiring.

THE CHAIRPERSON: Okay. I think it's sufficient for me to have some understanding.

Go ahead.

MS MAILLET: Please continue, Mr. Warman, you were at page 7.

MR. WARMAN: Yes. So, on page 7 about a dozen lines below where the topic is changed to "vinlandvoice.com", it changes -- sorry:

"WPCANADA is away [sleep]",

And then it states:

"WPCANADA is now known as
WPCaway".

This is about a dozen lines below the

vinlandvoice.com.

THE CHAIRPERSON: WPCANADA...?

MR. WARMAN: So, it's 02:02:12.

THE CHAIRPERSON: Yes, okay.

MR. WARMAN: And then immediately below that is:

"WPCANADA is now known as
WPCaway"

And "DeadGrl", the person who is engaged in the conversation:

"waves at james and says buh
bye"

WPCaway then replies:

"good night I need sleep"

Then jumping ahead to page 19.

THE CHAIRPERSON: Yes.

MR. WARMAN: About a dozen lines down at 01:00:55.

THE CHAIRPERSON: 01:0, sorry...?

MR. WARMAN: 01:00:55.

MS MAILLET: At one o'clock. It's the time, Mr. Warman is referring to the time.

THE CHAIRPERSON: I wasn't able to find it.

MS MAILLET: On page 8.

THE CHAIRPERSON: Oh, I have page 19.
I'm sorry.

MR. WARMAN: I'm sorry, I have it
marked as page 19 at the bottom.

MS MAILLET: Okay. It says page 8 at
the top, page 19 at the bottom.

MR. WARMAN: Oh, I'm sorry, we're
dealing with different -- so, the numbers when I refer
to them will be the numbers at the bottom right.

THE CHAIRPERSON: They're not all
visible; or were they?

They jump around. Maybe it's better
to work with the top right corner numbers.

MR. WARMAN: Okay. Then I will
cross-reference them with this.

THE CHAIRPERSON: Yes, okay.

THE CHAIRPERSON: So, page 8 top
right corner, yes, so can you give me the time again.
01:05?

MR. WARMAN: No, 01:00:55.

THE CHAIRPERSON: 01:00:55

MS MAILLET: Actually, if I can make
a suggestion, Mr. Warman, if you do refer to the pages,
if you could refer to them at the top because they were
numbered at the top based on the order that they're in

now.

MR. WARMAN: Yes.

MS MAILLET: Thank you.

THE CHAIRPERSON: Okay. Go ahead.

MR. WARMAN: So, WPCANADA types in:

"sheila cops the ex deputy pm
she is from my town"

Sheila Copps, of course, being from Hamilton, Ontario.

Then going down to the last line -- or last three lines of that page, which is page 8, at 01:07:23.

THE CHAIRPERSON: Yes.

MR. WARMAN: WPCANADA states:

"I wish we had something"
"anything that showed hope"
"I wish we had balls..."

And then goes to the next page, which is page 9.

THE CHAIRPERSON: Yes.

MR. WARMAN:

"I wish we had balls"
"as a people"
"balls enough to revolt"
"blow up government buildings"

"take down the jew temples"

"and make this once more our
land"

"with out this government"

Then approximately 15 lines below
that at 01:13:37.

THE CHAIRPERSON: Yes.

MR. WARMAN: WPCANADA states:

"do you know that chretian is
barely gaurded"

"his police <body guards> are
ajoke"

"it would take nothing to..."

And then the persons he's conversing
with, Hauser, interjects:

"absolutely"

WPCANADA enters the little smiley
face and then says:

":)"

"I have been like 2 feet from
him"

"and I never had a gun"

Hauser states:

"just a well organised group,
well planned, lightning

wuick..."

I'm assuming that is quick,

"...action and Boom hes a goner"

WPCANADA:

"I will NEVER make that mistake
again"

"1 person"

Hauser states:

"lol"

Laugh out loud.

WPCANADA:

"thats it"

"maybe a suicide mission"

"but a hero he would be"

Hauser:

"hes the biggest traitor Canada
has even had"

WPCANADA responds:

"yup"

THE CHAIRPERSON: And the smiley face
earlier that we had, that's the symbol for a smile or a
joke; is that it?

MR. WARMAN: Yeah, or happiness or...

Then turning to page 12.

THE CHAIRPERSON: Yes.

MR. WARMAN: At 10:17:19, which is approximately 55 per cent of the way down the page.

THE CHAIRPERSON: 10:17:19?

MR. WARMAN: Yes.

THE CHAIRPERSON: Yes.

MR. WARMAN: WPCANADA states:

"I just sent out this weeks
voice"

Approximately four lines below that
at 10:18:18 WPCANADA states:

"we are opening a BC chapter
this week"

TankTCS, the person he's conversing
with states:

"sweeeet"

WPCANADA responds:

"the voice is getting huge"
"we have over 500 readers right
now"

Turning to page 13, approximately
halfway down at 01:16:24.

THE CHAIRPERSON: Yes.

MR. WARMAN: Totenkopf joins the log
#wpcanada, Totenkopf states:

"hey James"

"wake up"

"okay.. then go to sleep"

THE CHAIRPERSON: So, when it's marked quite often here that WCaway is away, that's an automatic computer entry that that computer is no longer logged on?

MR. WARMAN: No, it's not that it would no longer be logged on. My understanding would be that if they are away for a certain period of time or something it would start showing that, that they hadn't posted in a certain period of time.

THE CHAIRPERSON: Oh, I see. It's a time out advisory that somebody hasn't replied in a certain amount of time?

MR. WARMAN: That's my understanding, although I'm not a hundred per cent.

Then on page 14, approximately 80 per cent of the way down at 00:03:11, WPCaway states:

"the cect one"

"I will e-mail them"

TankTCS responds:

"james, do you like it?"

WPCaway responds:

"yes C.E.C.T. under it"

Turning to page 15, approximately 10

lines down at 17:14:20, TankTCS states:

"i will have a nazi shirt for
you james"

WPCANADA replies:

"ok"

Turning to page 16, approximately
halfway down at 23:05:33, TankTCS states:

"and james, what ones did you
want?"

WPCANADA replies:

"I want both black"

Turning to page 17, almost at the
bottom, at 00:00:40 TankTCS states:

"james"

WPCANADA replies:

"88"

And as I had mentioned in my previous
testimony, 88 in the Nazi parlance is short for Heil
Hitler.

TankTCS responds:

"how are you?"

WPCANADA responds:

"good"

Turning to page 18, at the very top
00:02:37, WPCANADA states:

"Just finishing off the Voice"

"its abiggle"

Turning to page 19, four lines from
the bottom at 01:49:50, TankTCS states:

"you still here James?

WPCANADA replies:

"yup"

Turning to page 21, approximately
seven or eight lines down at 21:13;05, Raptor88 states:

"hey james"

WPCANADA replies:

"hey man"

Turning to page 22, approximately 15
lines down at 00:56:20, WPCANADA states:

"did you guys like this weeks
voice?"

Turning to page 23, approximately
halfway down at 00:12:34, WPCANADA states:

"you should write an article for
us"

"living in ny"

"it would be cool"

Bones2001, the other participant
states:

"that registration thing was a

pain in the ass"

WPCANADA replies:

"hahah"

WPCANADA:

"ok"

Bones2001:

"id be honored"

"what could i write though"

WPCANADA:

"send e-mail to cect@wpcect.com

and put bones subscribe and I

will hook you up"

Turning to page 24, approximately
three quarters of the way down at 00:44:13, WPCANADA
states:

"thew inians will fix it all up
far ya"

I presume that to mean 'the' or
'those' or 'these' indians will fix it all up for you.

Bones2001 replies:

"if you give those prairie
niggers \$20 and a bottle of
listerine that they can get
tanked on, theyll let you dump
toxic waste there"

StenoTran

WPCANADA replies:

"no shit"

"hahah fuck them"

"I hate hugs bad"

Bones2001 states:

"awww is dawn getting all
affectionate ???"

"or do you mean chugs ???"

WPCANADA:

"hahah chugs"

"LOL"

"hugs are ok I guess"

Bones2001:

"theyre at the bottom of my hate
spectrum"

WPCANADA:

"there close to my top"

Bones2001:

"they dont really riot, they
just sit on their reservations
and eat peyote, and drink
listerine all day"

Turning to the next page, 25,

conversation continues, WPCANADA states:

"welll here they riot"

StenoTran

"and stab"

Bones2001:

"do they ???"

WPCANADA:

"and shoot"

Bones2001:

"no shit"

"wow"

WPCANADA:

"I have been stabbed three times
and had my eye shot out"

Bones2001 states:

"they dont do any of that over
here"

"no shit"

"wow"

WPCANADA:

"yupeers"

Bones2001:

"you had a bullet put through
your eye ???"

WPCANADA:

"yep"

Bones2001:

"you're lucky to be alive man"

StenoTran

"holy shit"

WPCANADA:

"it was not really a bullet"

"it was a bottle rocket"

Bones2001:

"ohhh, ok"

WPCANADA:

"blew up in my face"

"like abomb"

Bones2001:

"well... thats bad.... but thank

god it wasnt a bullet"

"do you still have the eye ??"

WPCANADA:

"yes, but it is blind"

Bones2001:

"that sucks man"

WPCANADA:

"yup it does"

Bones2001:

"totally blind ??? or cloudy

kind of blind ???"

WPCANADA:

"totally"

Turning to page 26 --

THE CHAIRPERSON: Nobody has asked for a witness exclusion order. I'm advised by Mr. Levac there's a lot of people in this room.

Are there any witnesses in this room?

MR. WARMAN: Yes, there is.

The gentleman there, Mr. Wilson.

MS MAILLET: Ms Turner is here and Detective Wilson is here.

THE CHAIRPERSON: Right. You know, again, we're in a situation here we don't have people who are represented by legal counsel, they wouldn't have requested it. They may have requested it had they been so.

So, what I'm talking about here, for your interest, is there's -- a Tribunal can issue an order asking that perspective witnesses be excluded from the room during the hearing so that their evidence isn't influenced by what goes on during the hearing.

So, any person who will be testifying can be ordered to remain outside the room during the course of the hearing.

No one has asked me for a witness exclusion order, I don't know if anyone is asking me now, but --

MR. RICHARDSON: Yes. I will

withdraw the application for my mother-in-law to be a witness.

THE CHAIRPERSON: Your mother will not -- is it your mother?

MR. RICHARDSON: I will withdraw.

THE CHAIRPERSON: So, your mother will not be testifying.

That was one of the issues Ms Maillet had brought up last week I believe in a letter.

MS MAILLET: Yes, I wasn't sure who the witness was or what relation and what evidence she was going to give or the nature of the evidence.

THE CHAIRPERSON: That's right. But she will not be testifying; right?

MR. RICHARDSON: I need her here.

THE CHAIRPERSON: No, she can stay --

MR. RICHARDSON: If she has to leave, or she has to stay, I will withdraw that to make everybody happy. It's not fair for one and not the other.

THE CHAIRPERSON: A witness exclusion order is complete, that's right, it's not -- the only exception is for the parties themselves.

So the party -- you, yourself, if you choose to testify you may stay in the room, as Mr.

Kulbashian.

I understand Mr. Kulbashian, Sr. will not be testifying.

MR. VAHE KULBASHIAN: No.

THE CHAIRPERSON: You will just be assisting in the manner you have done until now?

MR. VAHE KULBASHIAN: Yes.

THE CHAIRPERSON: That's okay. And your mother can stay here as well, Mr. Richardson, in the same capacity as Mr. Kulbashian, Sr. but that means she won't be able to testify.

MR. RICHARDSON: That's fair.

THE CHAIRPERSON: But you are okay with that?

MR. RICHARDSON: It's fair.

THE CHAIRPERSON: Well, I mean, it's your choice to make. I'm not going to tell you any more than that.

MR. RICHARDSON: I withdraw her as a witness.

THE CHAIRPERSON: So, that means the witness exclusion order is granted.

I would ask that the witness be excluded from the room.

Thank you.

Are there any other witnesses in the room?

MS MAILLET: No, not for the Commission, sir.

THE CHAIRPERSON: For the complainant or for the respondents?

I'm sorry?

MR. ALEXAN KULBASHIAN: Not that I know of.

THE CHAIRPERSON: No. Okay.

All right. I don't recall where we were. Were you in another question, Ms Maillet?

MS MAILLET: No, I believe Mr. Warman had finished reading the excerpts at page 25.

THE CHAIRPERSON: Okay.

MR. WARMAN: Ms Maillet, I'm sorry, I just realized as I'm going through this, would it be preferable for me to indicate why I believe these passages are important as I go through each one of them separately?

MS MAILLET: You can do that, or I will ask you at the end. I leave that to you, Mr. Warman.

MR. WARMAN: Okay. Well, I'm already three quarters of the way through, so I will finish off

this log and then --

MS MAILLET: And then we can take you back at that point.

MR. WARMAN: Sure, okay.

So, page 26, the third line from the bottom 18:45:16.

THE CHAIRPERSON: Yes.

MR. WARMAN: WPCANADA states:

"brian caldwell called my moms

house today"

"looking to interview me"

"hahahaa"

Turning to page 27, WPCANADA states at the very top line:

"for cect"

Approximately 10 lines below that at 18:47:29 WPCANADA states:

"he asked for totenkjpf...",

t-o-t-e-n-k-j-p-f, which I presume to

be Totenkopf,

"...and my mom was like huh?"

TankTCS :

"HAHAHAHHA"

"where did he get your moms number?"

WPCANADA:

"I called him 5 6 months ago and
he called me back because he had
call display pissed me off"

Which I presume to be 'he had call
display pissed me off'.

Four lines below that at 18:49:48

WPCANADA states:

"I will get alex to call him and
play head games"

Approximately 12 or 15 lines below
that at 18:52:30 WPCANADA types in:

"phone"

TankTCS replies::

"it's BRIAN!!!!!"

WPCANADA:

"no"

"alex"

TankTCS:

"lol, they called him too/"

WPCANADA:

"noo"

"he is on the phone"

Turning to page 28, the fourth line
from the top 17:30:39 WPCaway types:

StenoTran

"do you get the record?"

Loki88:

"umm"

"no.. but I can get it"

"why"

WPCaway:

"make sure you do"

Loki88:

"last time you made the paper I
had to walk in the fuckin rain
to get it"

"now look out your god damn
window"

"its a fucking conspiracy"

WPCaway states:

"man"

"tomorrows will be worth the
walk"

"alex and I did a 45 min.
interview"

Minute being shortened to min.

THE CHAIRPERSON: Okay.

MR. WARMAN: Approximately a dozen
lines below that at 17:35:59 WPCaway states:

"it should be good"

"we lied alot"

Turning to page 29, approximately 50 per cent of the way down at 23:52:34.

THE CHAIRPERSON: Yes.

MR. WARMAN: WPCANADA states:

"wow this weeks voice is gonna
be big again"

"fuck"

Skip over a part of that to 23:59:19 where TankTCS states:

"james, we made the front page
of the news paper"

WPCANADA replies:

"todays"

TankTCS :

"lol"

WPCANADA:

"I seen wed. article"

"tank"

"swith servers doooood"

TankTCS replies:

"White supremacists could become
violent, police fear"

"Wednesday September 19, 2001"

"Brian Caldwell"

StenoTran

WPCANADA:

"yes"

"I read that"

"LOL"

"wait until you see tomorrows"

TankTCS again types in:

"White supremacists could become
violent, police fear"

"Wednesday September 19, 2001"

"Brian Caldwell"

"errr"

And then he types in a URL link to
the actual article which is therecord.com, and then the
rest of the link to the article.

THE CHAIRPERSON: The Record is the
newspaper of--

MR. WARMAN: Kitchener Waterloo
Record.

THE CHAIRPERSON: Kitchener Waterloo,
all right.

MR. WARMAN: Turning to page 30,
conversation continues.

Although there's a page in between
there, a lot of conversation that's been excluded just
because it wasn't relevant.

Four lines down WPCANADA states:

"yesterday he called my mom's
house dood"

"so I called and bitched at him"
"I yelled at him and alex and I
called him at 4:30"

"we also told him that cect was
not involved in any way with
cha"

Approximately seven or eight lines
below that at 00:10:54 WPCANADA:

"hahaha we talked to him a half
an hour"

TankTCS:

"that makes 27 articles, in over
9 newspapers, 4 alone in the
areas biggest one for the
tri-city guys"

WPCANADA, a little bit below that:

"he asked me a bunch of
questions about cect"

TankTCS:

"i hope you didn't tell him shit
about TCS"

WPCANADA:

StenoTran

"nah"

"LOL"

"I admited to being a member"

Turning to page 31, approximately

halfway down at 15:54:11, WPCANADA states:

"LOL, did you read the voice"

"did you like my bush speach"

MS MAILLET: Mr. Warman, would you like at this point to tell the tribunal why you think that these excerpts that you have read out loud are of interest to this case?

MR. WARMAN: Yes. The first excerpt on page 1 indicates a connection to the Canadian Ethnic Cleansing Team obviously with the topic being "wpcect.com" and then "join our newsletter".

Turning to page 7, WPCANADA changes the topic to vinlandvoice.com which I believe establishes a link to the Vinland Voice website and newsletter.

Below that, the other person engaged in the conversation states:

"waves at james and says buh
bye"

WPCaway continues to respond and states nothing to the effect that my name's not James,

I'm sorry, you've got me confused with someone else.

I believe that is a reference to
James Scott Richardson.

Turning to page 8 --

THE CHAIRPERSON: Yes.

MR. WARMAN: --Mr. Richardson, excuse
me WPCANADA indicates:

"sheila cops the ex deputy pm"

"she is from my town"

As Mr. Richardson has just pointed
out he is, in fact, from Hamilton as is Ms Copps.

I believe that establishes a link
that WPCANADA is in fact James Scott Richardson.

Then at the bottom of that page
states:

"I wish we had balls"

"as people"

"balls enough to revolt"

"blow up government buildings"

"take down the jew temples"

"and make this once more our
land"

"without this government"

It's my belief that establishes a
link to the Vinland Voice in which those same

sentiments were expressed with regard to targeting Jewish synagogues, mosques and other religious institutions of Jews and Muslims.

On page 11 -- excuse me, page 12, WPCANADA states:

"I just sent out this weeks voice"

"we are opening a BC chapter"

"we have over 500 readers right now"

I believe that that establishes a link between WPCANADA and the Vinland Voice, and also with the C.E.C.T. in that it states:

"we are opening a BC chapter this week"

And further with the Vinland Voice, in that it states:

"we have over 500 readers right now"

On page 13, Totenkopf signs on. I believe Totenkopf to be Alexan Kulbashian based on his pre-existing use of the pseudonym Totenkopf.

He then states:

"hey james"

"wake up"

StenoTran

"ok.. then go to sleep"

Totenkopf refers to WPCANADA as James, and I believe that further establishes a link between WPCANADA and Mr. Richardson.

On page 14, TankTCS states:

"james do you like it"

With reference to the C.E.C.T. I believe that that further establishes a link both between WPCANADA and the C.E.C.T. and further supports the contention that WPCANADA is, in fact, James Scott Richardson.

On page 15, TankTCS again states something to that effect, says:

"i will have a nazi shirt for
you James"

WPCANADA replies:

"ok"

Again, not stating there's been some mistake, you must be confusing me with someone else.

And, again, I believe that that further establishes a link with James Scott Richardson as WPCANADA.

On page 16, TankTCS states:

"and james"

"what ones did you want?"

WPCANADA replies immediately and continues the conversation.

I believe that further establishes a link that WPCANADA is James Scott Richardson.

On page 17, TankTCS states:

"james"

WPCANADA replies:

"88"

Or Heil Hitler. TankTCS replies:

"how are you"

And WPCANADA responds:

"good"

And it's again further evidence that WPCANADA is in my belief James Scott Richardson.

On page 18 at the very top, WPCANADA states:

"just finishing off the voice"

"its abiggle"

I believe that establishes a link between WPCANADA and the Vinland Voice.

On page 19, TankTCS states:

"you still here james"

WPCANADA replies:

"yup"

I believe that further establishes a

link between WPCANADA and James Scott Richardson.

On page 21, at the top Raptor88 states:

"hey james"

WPCANADA replies:

"hey man"

I believe that that further establishes the link between WPCANADA and James Scott Richardson.

On page 22, WPCANADA writes:

"did you guys like this weeks voice"

I believe that that further establishes a link between WPCANADA and the Vinland Voice newsletter.

On page 23, WPCANADA goes through a conversation in which he attempts to entice another writer to begin writing for that Vinland Voice newsletter and demonstrates in my belief that he has control over subscriptions to that newsletter, or at the very least can add people to the subscription list.

On page 24 and 25 the circumstances that WPCANADA writes about in my understanding are, in fact, the truth with regard to James Scott Richardson.

On page 26 and continuing over to 27, WPCANADA writes about an interview that a journalist sought with him named Brian Caldwell who works with the Kitchener Waterloo Record.

That article has, in fact, already been entered into evidence and it identifies the two people who chose to speak -- or who identified themselves to the reporter in that article.

And on page 27 there are also references to Alex, and it's my belief that that Alex that is being referred to there is, in fact, Alexan Kulbashian.

On page 28, WPCaway makes a number of references to the Kitchener Waterloo Record, again that they had conducted an interview, "both Alex and I", and again I believe that refers to Mr. Richardson and Mr. Kulbashian having conducted an interview with the Kitchener Waterloo Record and that that article has, in fact, been entered into evidence.

On page 29, WPCANADA makes references to the article by Brian Caldwell entitled: "White Supremacists could become violent Police fear".

There's a date on that, and I believe that that article as well has been entered into evidence.

In addition, TankTCS refers to WPCANADA as James and WPCANADA states:

"wow this weeks voice is going to be big"

Again, I believe that that shows fore knowledge on the part of WPCANADA as to the contents of the Vinland Voice newsletter and, again, that WPCANADA is, in fact, James Scott Richardson.

On page 30, WPCANADA makes further references to the journalist having called his mom's house and states that:

"I yelled at him and Alex and I called him back"

It's my contention that WPCANADA is again James Scott Richardson and that the Alex that is being referred to is Alexan Kulbashian.

On page 31, WPCANADA states:

"lol"

"did you read the voice"

"did you like my bush speach"

I believe that that demonstrates that WPCANADA, again, has control over the Vinland Voice newsletter and, in fact, writes content for that newsletter.

MS MAILLET: Mr. Chairman, if we

could produce that as tab 52, please.

THE CHAIRMAN: Yes.

EXHIBIT NO. HR-1 (Tab 52) :

31-page document consisting of
internet relay chat logs.

MS MAILLET: Mr. Warman, if you turn to tab 53, do you want to identify for the Tribunal why you thought this would be of interest, as well explain -- go through the particular sections that you believe would be of interest?

MR. WARMAN: Yes.

Approximately halfway down the page at 17:12:51 WPCANADA states:

"CECT is huge now bro"

BOB replies:

"how big"

WPCANADA:

"HUGE"

BOB:

"i ought to find my way to
canada"

WPCANADA:

"we are all over n. america and
getting big in england as well"

"and we have a weekly

newsletter"

"called the vinland voice"

"you should"

BOB:

"you publish?"

"i couldn't work in canadia"

WPCANADA:

"yup"

"I do"

BOB:

"especially if i go up there

because warran'ts"

WPCANADA:

"www.vinlandvoice.com. the site
just went up"

"and if you se the links section
in www.wpcect.com you will see
all the bpeople we host and
supply service for"

"for free"

Again, it's my belief that WPCANADA
is, in fact, James Scott Richardson and that this
demonstrates control over the C.E.C.T. newsletter the
Vinland Voice, and the Vinland Voice website.

MS MAILLET: Before I ask for this to

StenoTran

be produced. Mr. Warman, you are familiar with this document?

MR. WARMAN: Yes, I am. I downloaded and printed off this document myself pursuant to the CD that was provided to me in disclosure by the Commission.

MS MAILLET: And is this, in fact, the page that was taken from the BOB name in the list of logs at tab 51?

MR. WARMAN: Yes, it is. The BOB-.log.

MS MAILLET: If we could produce that as tab 53.

THE CHAIRPERSON: Okay.

EXHIBIT NO. HR-1 (Tab 53):

One-page document consisting of internet relay chats from BOB-.log.

MS MAILLET: Turn to tab 54, Mr. Warman. Do you recognize this document?

MR. WARMAN: Yes, I do.

I downloaded it and printed it off myself from the "Bootboy.log" on the CD that was provided to me by the Commission.

MS MAILLET: And, again, that is

listed under the log list at tab 51.

MR. WARMAN: It is.

MS MAILLET: Please identify for the Tribunal what is of interest and why in this document?

MR. WARMAN: At approximately seven lines down right after there's a bit of a break it states:

"Session Start: Mon Sep 10
2001."

And three lines below that WPCANADA states:

"its madness, LOL tonight mate,
I havent left et, Iwas finishing
the vinland voice off"

It's my belief that WPCANADA is, in fact, James Scott Richardson and this further demonstrates control over the Vinland Voice newsletter and the website.

MS MAILLET: Produce that as tab 54.

THE CHAIRPERSON: Yes.

EXHIBIT NO. HR-1 (Tab 54) :

One-page document consisting of internet relay chats from Bootboy.log.

MS MAILLET: Mr. Warman, can you turn

to tab 55.

Do you recognize this document?

MR. WARMAN: Yes, I do.

It is the "Chloe25.log" that was identified within the list of logs that were on the CD that was disclosed to me by the Commission.

MS MAILLET: And that's at tab 51?

MR. WARMAN: Yes, and I printed this up myself.

MS MAILLET: Would you identify what is of interest in this document and why?

MR. WARMAN: Yes. Approximately six lines -- five or six lines down at 20:34:49 Chloe25, one of the participants in the conversation states:

"what r --"

And a lot of the conversation uses short forms, but:

"what r ya up to tonite"

WPCANADA:

"finishingthe web page for the
vinland voice, a weekly white
newspaper that I do"

Skips down a bit to 20:36:49, Chloe25 states:

"u must know comp's good then"

WPCANADA:

"ahhh, CECT has three other
directors it is a team thing, we
know our stuff"

THE CHAIRPERSON: What line was that?

MR. WARMAN: Sorry, it's 20:37:26,
it's approximately 10 or 12 lines down from the top.

THE CHAIRPERSON: Oh.

MR. WARMAN: Turning to page 3,
approximately halfway down the page at 01:42:22,
WPCANADA states:

"hahaha, I feel old, getting
tired, been very busy last 8
months"

Chloe25:

"LOL"

"OH MY"

"DOING WHAT"

WPCANADA:

"traveling and doing shit. I
founded CECT and it keeps me
busy"

"we are the biggest wp org. in
Canada"

I believe that the first excerpt is

important because it establishes a link between WPCANADA and the writing of the Vinland Voice, a weekly white newspaper that is the C.E.C.T. newsletter.

And I believe it also establishes that WPCANADA is one of the directors of C.E.C.T.

I believe that the material contained on page 3 establishes that WPCANADA, who I believe to be James Scott Richardson, founded C.E.C.T. or is one of the co-founders and that he believes it to be one of the largest wp, which is usually referred to as white power, organizations in Canada.

MS MAILLET: Produce that as tab 55.

THE CHAIRPERSON: Yes.

EXHIBIT NO. HR-1 (Tab 55) :

Three-page document consisting of internet relay chats from Chloe25.log.

MS MAILLET: Mr. Warman, if you could turn to tab 56.

Do you recognize this document?

MR. WARMAN: Yes, I do. It is from the FdaJEWS log that was disclosed to me by the Commission on the CD and I personally printed this document.

MS MAILLET: Would you identify what

is of interest in this document and, again, explain why you believe that it's of interest.

MR. WARMAN: Yes. On page 1, approximately seven or eight lines down at 01:26:08, FdaJEWS states:

"hows shit with cect"

WPCANADA replies:

"good good, we started a newsletter"

"www.vinlandvoice.com"

Approximately seven or eight lines below that at 01:27:17 FdaJEWS continues, he states:

"i ran into a few old guys in Toronto, and they were wondering about alex. like how he has so much money and shit"

WPCANADA responds:

"too many projects"

FdaJEWS:

"i think it is ok"

WPCANADA:

"not enough time"

FdaJEWS:

"but he is giving all these people web space, po boxes, etc"

StenoTran

Approximately 10 or 12 lines below
that at 01:30:44 WPCANADA states:

"spends a lot of his personal
dough on donating web space"

MR. ALEXAN KULBASHIAN: Excuse me,
what was that?

MR. WARMAN: 01:30:44.

MR. ALEXAN KULBASHIAN: All right.

Thanks.

MR. WARMAN: Turning to page 2, the
fourth line down 01:33:31 WPCANADA states:

"he is the best thing that has
come to this movement in
yyears",

It's misspelled but I believe it to
be years.

Page 3, approximately a third of the
way down, FdaJEWS and WPCANADA are having a
conversation about exchanging links on websites.

WPCANADA states:

"I e-mailed you today to
exchange links with us"

FdaJEWS:

"no shit"

"I didn't look at my E-Mail

StenoTran

today"

FdaJEWS then gives a URL site on the Freedom site that has previously been referred to in evidence.

FdaJEWS says -- then gives the contact list that is given on the link at:

"C.E.C.T."

"P.O. Box 1061",

Which is the same P.O. box, then lists the website:

". . . wpcect.com"

And then gives a link to the Alberta, or what is identified on the contacts page of the C.E.C.T. as the Alberta chapter of the C.E.C.T.

WPCANADA replies:

"sweete"

"sweeet"

"thanx"

For reasons that are contained in other portions of this conversation, I believe FdaJEWS is an individual named Mark Lemire who has previously been referred to in the hero section of the C.E.C.T. website.

WPCANADA, the information contained in this log I believe establishes again a link with the

Vinland Voice newsletter and website.

FdaJEWS states that he was wondering, or he "ran into a few old guys in Toronto and they were wondering about Alex".

I believe that Alex being referred to is Alex Kulbashian.

And I believe that the reference to "giving all these people web space, po boxes, etc" refers to the practice of Affordable-Space hosting these sites for free and linking a number of different sites to that same P.O. Box on Adelaide Street.

When it states "spends a lot of his personal dough on donating web space" and "he is the best thing that has come to this movement in years", it further establishes a link between Mr. Kulbashian and the hosting of other racialist or racial websites.

That on page 3 where WPCANADA replies: "sweete, sweeet, thanx" to the Freedom site having established a link to both their main website and to their Alberta chapter, I believe that that further establishes a link between WPCANADA and the Canadian Ethnic Cleansing Team.

MS MAILLET: Produce this as tab 56.

THE CHAIRPERSON: Yes.

EXHIBIT NO. HR-1 (Tab 56) :

StenoTran

Five-page document consisting of
internet relay chats from
FdaJEWS.log.

MS MAILLET: Turning to tab 57.

Again, are you familiar with this
document, Mr. Warman?

MR. WARMAN: Yes. It was included in
the log entitled Fukmedia and was contained in the CD.

I personally printed it off from the
CD that was provided to me by the Commission.

MS MAILLET: Again, would you please
indicate to the Tribunal what you find of interest in
this document and why?

MR. WARMAN: Yes. Approximately 15
lines down at 20:10:02 WPCaway states:

"LOL, I was just finishing off
the homepage for the vinland
voice, it should be 100%
tonight. www.vinlandvoice.com"

Then approximately four lines below
that, WPCaway states:

"Thanx, we have a huge hosting
now, if you goto www.wpcect.com
and look at the links you will
see the pages we host, supply

domains for and build."

THE CHAIRPERSON: Sorry?

MR. WARMAN: Yes, it's at 20:12:58.

And it's my belief that this further establishes the link with WPCANADA or WPCaway and the Vinland Voice newsletter and website, and also with the hosting of other racist websites through the C.E.C.T. website.

MS MAILLET: Produce that as tab 57, please.

THE CHAIRPERSON: Yes.

EXHIBIT NO. HR-1 (Tab 57):

One-page document consisting of internet relay chats from Fukmedia.log.

MS MAILLET: Turn to tab 58.

Mr. Warman, do you recognize this document?

MR. WARMAN: Yes, I do. I personally printed off this page and downloaded it from the CD provided me by the Commission, and it was on the CD under the heading "IhatJews.log".

MS MAILLET: Advise the Tribunal what you found of interest in this document and why?

MR. WARMAN: The third line down at

01:31:27 "IhateJews" states --

THE CHAIRPERSON: 01...?

MR. WARMAN: Sorry, yes, 01:31:27.

MR. RICHARDSON: What page?

THE CHAIRPERSON: The pages have been entered in reverse. I think it's the flip side of these documents.

MR. WARMAN: Yes, excuse me.

MS MAILLET: I apologize for that.

THE CHAIRPERSON: And you're identifying it as 01:31:27?

MR. RICHARDSON: Where is this?

MR. WARMAN: It's on the flip side of that page, of Exhibit 58.

MR. RICHARDSON: Oh, okay.

MR. WARMAN: At the top, 01:31:27.

THE CHAIRPERSON: Okay.

MR. WARMAN: IhateJews states:

"hey, I just want to say that I saw that C.E.C.T. e-newsletter you put out a couple of days ago and I really appreciated it"

"the support the canadians are showing for our country is wonderful"

WPCANADA replies:

"np..."

My understanding is that is short for no problem,

"...man, wait until you see
tomorrows"

A few lines below that IhateJews replies:

"what's going to be in
tomorrow's?"

WPCANADA few lines below that states:

"a CECT declaration of war
against the B'nai brith, Jews,
Muslims A whole bunch of
theories and people opinions"

I believe this section to be important because the date at the top of it is Friday, September 14th, 2001, it is just following the attacks on the United States and what is referred to by WPCANADA is that the next issue of the Vinland Voice will contain a declaration of war against B'nai Brith, Jews, Muslims, a whole bunch of theories and people's opinions.

I believe that establishes the connection between WPCANADA and the threat that

subsequently appeared in the Vinland Voice newsletter and, again, that WPCANADA is, in fact, James Scott Richardson.

MS MAILLET: Produce that as tab 58.

THE CHAIRPERSON: Yes.

EXHIBIT NO. HR-1 (Tab 58) :

Two-page document consisting of internet relay chats from IhatJews.log.

MS MAILLET: Mr. Warman, if I could have you turn to tab 20 for a moment, the Vinland Voice Newsletter No. 05 dated September 14th, 2001.

MR. RICHARDSON: Where, at tab 20?

MS MAILLET: Yes.

THE CHAIRPERSON: Tab 20, yes.

MS MAILLET: Is this the newsletter that you are referring to that would accord with what they are talking about at this chat session?

MR. WARMAN: Yes. In fact, it replicates the threats.

MS MAILLET: I don't know if I produced that, tab 58.

THE CHAIRPERSON: Yes, it's been produced, yes.

MS MAILLET: Turn to tab 59, please.

THE CHAIRPERSON: I was talking about 20. 58, yes, it's been produced.

MS MAILLET: Mr. Warman, do you recognize this document?

MR. WARMAN: Yes, I do. I downloaded it myself. It was contained on the CD that was provided to me pursuant to the disclosure by the Commission and it was contained on the CD under the heading "TankTCS.log".

MS MAILLET: And could you identify for the Tribunal what you found of interest in this document and, again, indicate why?

MR. WARMAN: Yes.

Approximately three quarters of the way down the page, on Tuesday, September the 11th, 2001 at 23:21:51 TankTCS states:

"i'm going to make the page to sell the shirts on, but I have no address or name for ppl...",
people,

"...to send money orders too"

WPCANADA replies:

"hmmm, e-mail Alex, I am sure he will let you use the po box"

THE CHAIRPERSON: Yes, go ahead.

MR. WARMAN: It's my belief that that is important because I believe that WPCANADA is referring to the P.O. Box on Adelaide Street, P.O. Box 1061, and that the Alex he is referring to is Alex Kulbashian, and that this indicates that Mr. Kulbashian has control over the P.O. Box.

MS MAILLET: Produce that as tab 59.

THE CHAIRPERSON: Yes.

EXHIBIT NO. HR-1 (Tab 59) :

One-page document consisting of internet relay chats from TankTCS.log.

MS MAILLET: If I may have a moment.

Those are all of the documents I would like to produce through Mr. Warman, however, I'd like to consult with him, seeing as he is a separate party, to see if there is anything else that he'd like to touch on.

THE CHAIRPERSON: Fine. We'll take our afternoon break at this time.

MS MAILLET: Thank you.

REGISTRY OFFICER: All rise.

--- Recessed at 2:45 p.m.

--- Resumed at 3:20 p.m.

REGISTRY OFFICER: Order, please.

All rise.

Please be seated.

THE CHAIRPERSON: Right.

So, I understand we have the sheets that you referred to earlier?

MS MAILLET: That's correct.

THE CHAIRPERSON: So, I have at tab 30, right, that's the one that you already showed to us. I'm inserting it into my, with the existing document, so we will have two sheets now at tab 30.

EXHIBIT NO. HR-1 (Tab 30) :

Revised with additional page added to it.

THE CHAIRPERSON: And the other one is tab 34.

Now, I was informed there was the handwriting portion in the existing exhibit, right, which we didn't even refer -- to which we didn't even refer in Mr. Warman's evidence; right?

MS MAILLET: We did refer to it a bit. He was explaining why it was written.

THE CHAIRPERSON: Why it was there. I don't recall we actually looked at it.

MS MAILLET: That's right.

THE CHAIRPERSON: So, this newer, or

call it an additional copy, it's marked additional copy, tab 34, we will add right after that, we will keep both.

EXHIBIT NO. HR-1 (Tab 34) :

Revised with additional copy of tab 34 added to original exhibit.

MS MAILLET: That's right.

THE CHAIRPERSON: Yes. The second page, the newer page having the --

MS MAILLET: The URL address.

THE CHAIRPERSON: The URL address. So, are there any further questions

for Mr. Warman?

MS MAILLET: There are no further questions for Mr. Warman.

Mr. Warman, if you could just please remain there and answer any questions that the respondents have.

THE CHAIRPERSON: Do we begin with Mr. Kulbashian or -- would you like to begin, Mr. Kulbashian.

MR. VAHE KULBASHIAN: Sure.

THE CHAIRPERSON: Mr. Kulbashian, plural.

You're indicating, Mr. Kulbashian,
that your father will ask the questions?

MR. ALEXAN KULBASHIAN: That's right,
yeah, my father will start.

THE CHAIRPERSON: All right.

CROSS-EXAMINATION BY MR. VAHE KULBASHIAN:

MR. VAHE KULBASHIAN: How do you do,
Mr. Warman?

MR. WARMAN: Very well, thank you.
And yourself?

MR. VAHE KULBASHIAN: The first
question that I would like to ask --

THE CHAIRPERSON: Please, a little
louder, your voice.

MR. VAHE KULBASHIAN: Yes.
For how long have you been working
for the Canadian Human Rights Commission?

MR. WARMAN: I no longer work at the
Canadian Human Rights Commission.

I worked there for a total of
approximately a year and a half to two years.

MR. VAHE KULBASHIAN: Which years
please? Which years?

MR. WARMAN: I left in the end of
March of this year, so approximately a year and a half

to two years before that.

MR. VAHE KULBASHIAN: What was your position there, please? Can you describe as much as possible?

MR. WARMAN: I was employed as an investigator and I was also at times seconded as counsel.

MR. VAHE KULBASHIAN: Excuse me, counsel?

MR. WARMAN: Legal counsel.

MR. VAHE KULBASHIAN: Legal counsel?

MR. WARMAN: Lawyer.

MR. VAHE KULBASHIAN: Lawyer?

MR. WARMAN: For the Commission.

MR. VAHE KULBASHIAN: In what issues? Let's say, is it particularly -- what I'm talking about, your lawyer thing job?

MS MAILLET: I'm sorry, Mr. Chair.

THE CHAIRPERSON: One moment.

MS MAILLET: I just wanted to establish the relevance of this line of questioning in terms of what issues he worked at as counsel for the Commission.

I'm not sure how it relates to the issues before us.

THE CHAIRPERSON: Yes, okay.

So, it's not the questions about his Commission work, but rather a specific question of what issues he dealt with.

What's the relevance of those questions?

MR. VAHE KULBASHIAN: The relevance is that he's been -- you know, in his testimony he's talking about legal issues of the Human Right Act as well as, you know, I would like to know whether he's well informed about those things.

THE CHAIRPERSON: The nature of his expertise?

MR. VAHE KULBASHIAN: Yes, nature, of his --

THE CHAIRPERSON: Well, instead of debating this maybe -- I think your question perhaps was a little broad. Maybe we could just focus -- the question being asked is, as legal counsel, what matters did you deal with.

You still have an objection to that, Ms Maillet?

MS MAILLET: I'm just not sure about the relevance of that. I mean, are they interested in knowing his expertise in terms of --

MR. VAHE KULBASHIAN: After all, he's a material witness. This is the minimum we would like to know about his past jobs and such things.

THE CHAIRPERSON: Well, why? What's the relevance to the case?

MR. VAHE KULBASHIAN: It might be credibility issue or anything else.

THE CHAIRPERSON: The thing about credibility --

MR. VAHE KULBASHIAN: I understand, I'm sorry, I'm withdrawing it.

THE CHAIRPERSON: No, I mean, it doesn't --

MS MAILLET: If I just may, it's the Commission's position that these questions are limited to what was in the direct examination and I'm just --

THE CHAIRPERSON: Well, no, no, no, I'm not going to say that, I mean, it's cross-examination, they can go wherever they want as long as it's relevant to the case, not to your questions.

You may have limited your questions to only a few issues.

But my question is: How is it relevant to the case?

But I think I gather from your points that you made -- repeat to me again what the relevance is, Mr. Kulbashian, according to you?

MR. VAHE KULBASHIAN: Relevance is that there has been -- from the start of the case we have, let's say, we have noticed a few irregularities of the way of approach to the whole, you know, from the time, you know, that he contacted the Commission, as well as, you know, why they prepared the first complaint and on.

I want to know if he knew the procedures, how well he knew the procedures that, you know, he had to follow to file this complaint.

THE CHAIRPERSON: Irregularities. Excuse me, I realize that you don't have the benefit of legal counsel, I'm trying to understand. I believe -- are you saying there's a bias then in how he's presented the evidence?

MR. VAHE KULBASHIAN: I'm not saying it's bias because, you know, what we saw in their documents, in their exhibits certain irregularities that for the moment, unless he in a way - how should I say - explains, we found out those irregularities which over all this case was based on the first report.

THE CHAIRPERSON: Right. I want

to -- you know, perhaps, I was going to say exclude the witness, I can't exclude the witness because he's a party.

MS MAILLET: Perhaps he could just put the irregularities of what he saw in the documents through Mr. Warman's testimony to him.

MR. VAHE KULBASHIAN: That's okay. I can go later. That's fine. I'm withdrawing my question.

THE CHAIRPERSON: I do want to focus you on one thing though. There may have been -- I mean, if there are irregularities, I don't know what they are, but what I do want to bring out to you, and this is something that was discussed with Mr. Kulbashian in one of the earlier -- your son that is, in one of the earlier phone calls, if you really try to focus on the evidence that is being led here, the complaint is a section 13 complaint under the Act.

I believe it was Ms Maillet -- no, Mr. Warman at the beginning who read the excerpts from the Act, or was it you Ms Maillet?

MS MAILLET: Yes.

THE CHAIRPERSON: And it sets out what needs to be proven to make a case under section 13.

It is in your interest to focus yourselves on the evidence that is being presented and whether it meets the standards set out under the Act and under that provision in the Act.

It would not be in your interest, I think, to start drifting into areas that don't deal with those issues. That's what I'm trying to say here.

I mean, if process wasn't followed it may or may not have some bearing to the case, but at the end of the day it's what is the evidence in front of me that counts.

So, it's in your interest to focus your energies on the evidence that is being produced by the Commission and the complainant against the respondents.

Those are general statements.

So now, with respect to that question, you're saying -- do you want the answer to that question or not?

MR. VAHE KULBASHIAN: It doesn't matter any more. Thank you.

THE CHAIRPERSON: It doesn't matter. So, the question is withdrawn.

Proceed to your next question.

MR. VAHE KULBASHIAN: Did Mr. Steacy,

I guess -- am I pronouncing right?

MR. WARMAN: I believe so.

MR. VAHE KULBASHIAN: Did he work in your office during that time?

THE CHAIRPERSON: Can you spell that, please?

MR. WARMAN: The spelling is S-t-e-a-c-y, first name Dean, D-e-a-n.

THE CHAIRPERSON: So, this is the Commission investigator; right?

MR. VAHE KULBASHIAN: Yes.

THE CHAIRPERSON: So, your question is: Did he work in...?

MR. VAHE KULBASHIAN: Yes, in the same office with you?

MR. WARMAN: He worked in the national capital regional headquarters, yes.

MR. VAHE KULBASHIAN: You mean in the same building, same --

MR. WARMAN: Yes, in the same building.

MR. VAHE KULBASHIAN: In the same building, okay.

So, in a way, you knew him, let's say?

MR. WARMAN: It may be helpful for you if I clarify that. In fact, at the time that I filed the complaint I was not working at the Commission.

MR. VAHE KULBASHIAN: You were not?

MR. WARMAN: I was not at the time that I filed the complaint, and only subsequently did I join the Commission.

MR. VAHE KULBASHIAN: Okay.

MR. WARMAN: Just if that's of any assistance to you.

MR. VAHE KULBASHIAN: That's fine. Then what I understand from you, that you didn't know him?

MR. WARMAN: Not when I filed the complaint, no.

MR. VAHE KULBASHIAN: No, okay. Now, we have -- if we go to appendix III

THE CHAIRPERSON: You are referring to exhibit -- so, this is the book of documents that --

MR. VAHE KULBASHIAN: Yes.

THE CHAIRPERSON: Is it common between both respondents, or is it only for Mr. Kulbashian?

MR. VAHE KULBASHIAN: This is

something I prepared. When I prepared those documents I wasn't in touch with Mr. James, so I don't know.

THE CHAIRPERSON: This blue binder that has been handed up is Mr. Kulbashian's book of documents.

We could approach -- have you put tabs between each document, Mr. Kulbashian?

MR. VAHE KULBASHIAN: I have. I'm not as elaborate as Ms Maillet, but I tried my best.

THE CHAIRPERSON: I occasionally see two or three or four different documents under one tab; is that correct?

MR. VAHE KULBASHIAN: Yes.

THE CHAIRPERSON: Are there -- the page numbers at the bottom, are they in sequence?

MR. VAHE KULBASHIAN: Actually I tried as much as possible to start from, you know, chronologically, as much as possible.

THE CHAIRPERSON: Not the chronology.

MR. VAHE KULBASHIAN: Because we were expecting so many witnesses, now it turns out that some of them they have dropped out.

THE CHAIRPERSON: What I'm noticing is - correct me if I'm wrong - but at the bottom of each -- the pages under each tab at the bottom bear

numbers in sequence, one handwritten with a circle.

MR. VAHE KULBASHIAN: Yes, drawn with a circle.

THE CHAIRPERSON: So, what we could do then, and it will put perhaps a bit more strain on Mr. Levac, is, as each document is referred to, we will identify the pages under that tab that have been identified, and then if there are any pages within each tab that haven't been referred to, we'll remove them, okay?

Do you follow what I've been saying Mr. Kulbashian?

MR. VAHE KULBASHIAN: Yes.

THE CHAIRMAN: Okay. So, we'll enter in the same manner we did with the book of documents of the Commission and the complainant this exhibit and it's --

REGISTRY OFFICER: The book of documents of the respondent Alexan Kulbashian will be filed as the respondent Exhibit R-2.

THE CHAIRPERSON: Okay. So, this is R-2.

EXHIBIT NO. R-2: Book of Documents of respondent Alexan Kulbashian.

THE CHAIRPERSON: And you wish to take us to what page, Mr. Kulbashian?

MR. VAHE KULBASHIAN: Page 3, please.

THE CHAIRPERSON: Of which tab?

MR. VAHE KULBASHIAN: Tab 3, and page 3.

THE CHAIRPERSON: The tab marked appendix III at page 3.

MR. VAHE KULBASHIAN: Mr. Warman, do you recognize this document?

It was filed in your exhibits.

THE CHAIRPERSON: Oh, it's the complain form; is it not?

MR. VAHE KULBASHIAN: Disclosure.

MR. WARMAN: I believe, in fact, it was an earlier draft of the complaint form and not, in fact, the complaint form that was signed.

THE CHAIRPERSON: All right. So, we're dealing -- because of the way your book has been structured, you will always have to tell us what the last page of the document is.

So, we're looking at page 3 and page 4; right?

MR. VAHE KULBASHIAN: It's page 3, page 4, page 5, goes...

THE CHAIRPERSON: Is it something else, page 5, or is it the same thing?

MR. VAHE KULBASHIAN: No, no, no, it's just the one document, it's just page 3.

THE CHAIRPERSON: Just page 3?

MR. VAHE KULBASHIAN: Yes.

THE CHAIRPERSON: Okay. So, just page 3, okay. Okay.

Is not page 4 part of it as well?

MR. VAHE KULBASHIAN: Page 4, no, it's not the continuation, no.

THE CHAIRPERSON: It's not. Okay, fine. Page 3.

MR. VAHE KULBASHIAN: It is, yes, it is the continuation this one, yes.

THE CHAIRPERSON: Okay. So, page 3 and 4.

So, we're looking at page 3 and 4. For the record page 3 and 4 are the documents that have been referred, I'll say they're produced.

EXHIBIT NO. R-2 (Page 3 & 4):

Draft complaint form filed with Commission.

THE CHAIRPERSON: You have identified it as being the previous version?

MR. WARMAN: It appears to be an earlier draft of the complaint form.

MR. VAHE KULBASHIAN: Could you please mention who wrote it?

MR. WARMAN: At the time the Commission practice was that the investigators would draft the complaint form for signature by the complainant.

So, it was the investigator Dean Steacy. That's my understanding.

MR. VAHE KULBASHIAN: That's your understanding.

So, how did you file your complaint; did you go see Mr. Steacy yourself or how does it work, the procedure?

MR. WARMAN: At the time what I would have done was submitted -- to the best of my recollection, what I would have done was submitted written material in the form of perhaps a letter along with accompanying material indicating examples of the kinds of material that was present on the websites in the question to the Commission, not to a specific investigator, but to the Commission as a whole.

MR. VAHE KULBASHIAN: Okay. So, this whole was presented to the Commission and the letter

that you sent was presented to the Commission, I understand, and then most probably they must have sent this letter to the investigator to prepare it, you mean?

MR. WARMAN: Either that, or it could have been I met with the intake -- what are called intake officers.

MR. VAHE KULBASHIAN: Mm-hmm.

MR. WARMAN: So, intake officers are responsible for meeting -- or at the time were responsible for meeting with complainants, having an initial discussion about the nature of the complaint and then, you know, based on whether they felt that it was within the Commission's jurisdiction, they would discuss the matter with the complainant and whoever else they wished to within the Commission and then a complaint form would subsequently be drafted.

So, it's possible as well that what originally happened was that I met with intake officers instead and they determined that they felt that it was within the jurisdiction of the Commission and then, based on information that was exchanged, Mr. Steacy subsequently drafted the complaint form that was ultimately signed.

MR. VAHE KULBASHIAN: So, I

understand that Mr. Steacy prepared this first, this document?

MR. WARMAN: Yes, pages 3 and 4.

MR. VAHE KULBASHIAN: Can you confirm that he was the person that prepared this?

MR. WARMAN: That's my understanding.

MR. VAHE KULBASHIAN: That's your understanding. That's fine, thank you.

Now --

MR. WARMAN: I'm sorry, but I would just specify as well that it was based on information that I had submitted to the Commission.

MR. VAHE KULBASHIAN: Yes.

So, my understanding is that whatever information was supplied to them, they should follow that information and prepare this form.

They're not allowed to add something on their own?

MR. WARMAN: I'm not -- I couldn't comment on that. I wouldn't comment on behalf of the Commission. I think that's within the realm of the knowledge of the Commission and I wouldn't want to misstate their rules or practices.

MR. VAHE KULBASHIAN: In this first, let's say, complaint form which is not the signed one,

which is not the official one; do you see any mistakes?

MR. WARMAN: Yes, I do and, in fact, that was the reason why it was an early draft.

MR. VAHE KULBASHIAN: Yes. And what is the mistake according to you?

MR. WARMAN: One of the mistakes that is easily identifiable is within the particulars the first three works are "I am Jewish", and in fact I'm not Jewish.

MR. VAHE KULBASHIAN: And how someone -- this was my dilemma, if you didn't know that person, if I would have gone and placed a complaint on which I haven't even written this, I'm Jewish, you know, I have written nothing, how come that someone would put this, on what basis?

This is my main concern.

MR. WARMAN: I'm afraid you'd have to ask Mr. Steacy, who it's my understanding drafted the document.

THE CHAIRPERSON: You're not aware of the reason why they wrote "I am Jewish" there?

MR. WARMAN: No. At no point did I indicate to the Commission or Mr. Steacy that I was Jewish.

MR. VAHE KULBASHIAN: Would you

consider this mistake --

MR. WARMAN: I'm sorry, if I could just finish that. In fact, I corrected the Commission and that's the reason why the complaint form was subsequently redrafted.

MR. VAHE KULBASHIAN: Would you consider this a sort of negligence from Mr. Steacy's part?

MR. WARMAN: No.

MR. VAHE KULBASHIAN: Why? He's adding something that you haven't mentioned and suddenly you see...

This is not a simple error of date or, shall I say, spelling of a name, we're talking something very serious here, you know.

THE CHAIRPERSON: What's your question?

MR. VAHE KULBASHIAN: My question is that --

THE CHAIRPERSON: Remember, you recall in my introduction that I made yesterday that it's important that in cross-examination you ask all the questions to point out -- to make the points that you wish to make, but it's not appropriate to argue with the witness.

MR. VAHE KULBASHIAN: I understand.

Thank you.

THE CHAIRPERSON: So --

MR. VAHE KULBASHIAN: Thank you.

THE CHAIRPERSON: You are bordering on that, that's why I'm asking you, what's your question.

MR. VAHE KULBASHIAN: I understand.

Thank you.

Now, if we go to page 8.

THE CHAIRPERSON: Page 8 of appendix III still?

MR. VAHE KULBASHIAN: Yes, still appendix III, yes.

THE CHAIRPERSON: All right.

You know what I am going to do, I'm going to ask you that each time we go to some page you give me the first page and the last page of the document before you ask your questions, so we'll know.

MR. VAHE KULBASHIAN: So then, it's 8 to -- we're going all the way to 17.

THE CHAIRPERSON: All right. 8 to 17.

MR. VAHE KULBASHIAN: Yes.

THE CHAIRPERSON: Note that.

Please ask your question.

MR. VAHE KULBASHIAN: Yes. Is this the, how should I say, the exact document that you think that you signed, is this the appropriate one?

THE CHAIRPERSON: The complaint form?

MR. VAHE KULBASHIAN: Yes, complaint form.

MR. WARMAN: I would have to compare it with the document that was entered previously that was, in fact, the complaint form that was signed by the Commission as evidence.

THE CHAIRPERSON: That would be tab 1 of HR-1.

MR. WARMAN: No, I believe what you have done is amalgamated -- made two separate documents.

MR. VAHE KULBASHIAN: Mm-hmm.

MR. WARMAN: I believe the first two pages -- excuse me, the first page is in fact the first page of the complaint.

MR. VAHE KULBASHIAN: Yes.

MR. WARMAN: And I believe that the subsequent pages are, in fact, from the investigator's report prepared by Mr. Steacy for the Commission, or they would appear to be.

MR. VAHE KULBASHIAN: Yes.

THE CHAIRPERSON: Please go off the record for a second.

--- Discussion off the record

MR. VAHE KULBASHIAN: Now - are you hearing?

Now, what I see in this document it's not just one word that you are a Jew - I'm sorry - you know, the whole document has been changed.

THE CHAIRPERSON: But there was a point made earlier -- I just want to be clear which document are we talking about?

The suggestion was made in the previous answer that these are two different documents.

Page 8 is part of one document and 9 and following are of another document.

MR. VAHE KULBASHIAN: I'm talking about page 8.

THE CHAIRPERSON: Only page 8?

MR. VAHE KULBASHIAN: Yes, only page 8, so...

THE CHAIRPERSON: So, let's change that to page 8, okay.

Your question, please?

MR. VAHE KULBASHIAN: Shall I ask the

question again?

Now, what I've noticed in those two documents, it's not only just one word, the whole picture has been changed, it's a completely new document, it's not just one mistake and because there isn't the word that you are Jewish, the whole sentence has been adjusted accordingly.

THE CHAIRPERSON: Yes.

MR. VAHE KULBASHIAN: Were you aware of this change?

MR. WARMAN: That the words "I am Jewish" were taken out?

MR. VAHE KULBASHIAN: No, no, what I'm trying to say that, I understand that because there was this mistake, which it is stated, that you are Jewish, this thing, you didn't accept this formal complaint and you asked them to redraft it.

MR. WARMAN: I pointed out that it was an error.

MR. VAHE KULBASHIAN: Yes.

MR. WARMAN: And then the Commission redrafted it, yes, to remove the error.

MR. VAHE KULBASHIAN: Yes. And what I've noticed here is that it's not only the wording of being a Jewish or not, the whole redraft has been

adjusted accordingly.

THE CHAIRPERSON: Where? Can you demonstrate.

MR. VAHE KULBASHIAN: Now, if you continue in -- here it says, "I am Jewish", and then under the second, let's say, now if you go to the second -- fifth line of the paragraph you will see that it says:

"They contain a wide variety of material which is exposing people of Jewish faith and people of other faiths and ethnic origins to hatred and contempt".

THE CHAIRPERSON: That's on the page 3 version?

MR. VAHE KULBASHIAN: Yes.

THE CHAIRPERSON: And on the page 8 version it says:

"Non-Christian, non-caucasian and individuals of other religions."

That's the change you are referring to?

MR. VAHE KULBASHIAN: Yes.

THE CHAIRPERSON: So, your question is...?

MR. VAHE KULBASHIAN: My question is that was he -- are you, how should I say, can you explain to us what would be the reason for so much change suddenly of these allegations?

THE CHAIRPERSON: So, why did this change come about in the text?

MR. WARMAN: It was Mr. Steacy who, in fact, redrafted the document and I can only presume that it was on the advice -- either on his own initiative or on the advice of his supervisors that the words be changed, although I personally don't believe it to be a substantive change.

MR. VAHE KULBASHIAN: So, you say that on his own initiative.

What I understand that he wasn't following exactly your directions.

MR. WARMAN: I did not use the word non-Christian. I would have in speaking, in essence, described the individuals that I felt were targeted within the materials, but it's possible that Mr. Steacy felt that this was broader and more encompassing and would evade any problems that might be perceived to exist in that.

MR. VAHE KULBASHIAN: Mm-hmm.

Now, if we go to page 18 --

THE CHAIRPERSON: As far as I'm concerned only page 8.

MR. VAHE KULBASHIAN: Page 18, yes.

THE CHAIRPERSON: Yes. Only page 8 was used, although it seems to be a copy of what was at tab 1 of HR-1.

The remaining pages were not produced yet. There was an error that we referred to as one document before; correct?

MR. WARMAN: That's right.

THE CHAIRPERSON: That's right.

EXHIBIT NO. R-2 (Page 8): Copy of tab 1 of Exhibit HR-1.

THE CHAIRPERSON: So now page 18, yes?

Mr. Kulbashian?

MR. VAHE KULBASHIAN: Now, this is a procedural issue. In this fax --

THE CHAIRPERSON: The letter, it's a letter.

MR. VAHE KULBASHIAN: In this letter or fax which is written by the manager Bob Fagan he says in the second paragraph:

"Your complaint has been assigned to Dean Steacy who will prepare a report on the investigation findings for consideration by the Canadian Human Rights Commission."

And he gives you his contact numbers.

My understanding is that already you have been in contact with Mr. Steacy, and if we didn't receive this letter we would have assumed that Mr. Steacy was an independent investigator in this case.

I would like to know whether Mr. Bob Fagan -- had you been in touch with Mr. Bob Fagan at that stage?

MR. WARMAN: Not to the best of my recollection.

MR. VAHE KULBASHIAN: Not.

MR. WARMAN: It's possible, but not to the best of my recollection.

MR. VAHE KULBASHIAN: So, is this a special form just written for you for your case or do you think this is just simple, you know, how should I say, general form that they would send to anyone?

MR. WARMAN: It appears to be a form letter. It's my understanding that it's a standard

notification form letter.

THE CHAIRPERSON: I consider page 18 produced. I think it has been identified sufficiently.

EXHIBIT NO. R-2 (Page 18) :

Standard notification form
letter.

MR. VAHE KULBASHIAN: Mr. Warman, I understand that - correct me if I'm wrong - that from the beginning of the investigation that you started you were in contact with Mr. Steacy and not to say, let's say, all of the times, but most of the times you were supplying him with documents relevant to this case?

MR. WARMAN: Apart from the initial stages when I contacted the Commission, it's possible that I did speak, like I mentioned, with intake officers.

And -- but apart from that, Mr. Steacy was designated as the investigation officer then, yes, any document I supplied to the Commission, I put to his attention.

MR. VAHE KULBASHIAN: So, what I understand that most of the time you were, let's say, communicating documents or any facts working together on this case?

MR. WARMAN: No, Mr. Steacy is an

investigator and I was the complainant.

MR. VAHE KULBASHIAN: He's an investigator on his own, what I understand.

MR. WARMAN: Mr. Steacy is employed -- my understanding is that Mr. Steacy is employed by the Canadian Human Rights Commission.

MR. VAHE KULBASHIAN: Okay. Now, can we go to his report now which is from page 9 to --

THE CHAIRPERSON: Which tab?

MR. VAHE KULBASHIAN: Which goes all the way to page 17.

MR. ALEXAN KULBASHIAN: Appendix III.

THE CHAIRPERSON: Appendix III?

MR. VAHE KULBASHIAN: Appendix III, please. 17 or 16. Sorry, appendix III.

THE CHAIRPERSON: Page 9.

It says page 2 at the bottom, where's page 1?

MR. ALEXAN KULBASHIAN: The pages are at the very bottom.

THE CHAIRPERSON: No, no, at the top it says page 2 of 12.

MR. VAHE KULBASHIAN: I understand. I didn't -- I just...

THE CHAIRPERSON: You didn't

photocopy the first page?

MR. VAHE KULBASHIAN: Which were -- the pages which were irrelevant, I didn't put them.

THE CHAIRPERSON: You're not supposed to do that.

MR. VAHE KULBASHIAN: I will do next time. I'm sorry. I will do that next time.

THE CHAIRPERSON: This is an excerpt then, basically pages 2 -- let me just see.

So, you wish to refer to I guess what is pages 9 through 13.

Is 14 part of it too?

MR. VAHE KULBASHIAN: I would go even further to page 19, because these are all in the same.

THE CHAIRPERSON: 18 we've already looked at, it's a separate --

MR. VAHE KULBASHIAN: 17, sorry.

THE CHAIRPERSON: So, 9 to 17--

MR. VAHE KULBASHIAN: Yes.

THE CHAIRPERSON: --are excerpts from the investigator's report?

MR. VAHE KULBASHIAN: Yes. So, should we separate them, do you think?

THE CHAIRPERSON: Well, for the time being I think we can keep them together, but I'm

getting an objection here or comment.

MS MAILLET: If this document is to be filed, my request would be that - I really think that they maybe weren't aware that they should produce the whole document - but I would ask that they do bring the whole document to the Tribunal at some point because it is incomplete.

THE CHAIRPERSON: Okay. So, you're not objecting to production of the document?

MS MAILLET: No.

THE CHAIRPERSON: So, I think what I will do is for the time being I will allow you to make your questions based on pages 9 through 17.

I'm assuming the Commission and the complainant are aware of the Commission investigator's report, so...

MS MAILLET: Yes, it's simply that we don't have it with us because it wasn't produced.

THE CHAIRPERSON: I know. That's right.

Oh, you don't have it at all with you if you want to consult it?

MS MAILLET: No. I could get it, unless Mr. Warman has a copy.

MR. WARMAN: I believe I do have a

copy, yes, in my...

THE CHAIRPERSON: I don't want it up here yet.

You can ask your questions on these excerpts.

All I'm saying is that maybe at some point - we'll assume by tomorrow, let's say - we'll make photocopies of the missing pages and they can be introduced. Well, I don't want to change the sequence of all these pages at the bottom.

So, maybe we'll put the entire investigator's report in as a separate exhibit, we'll give it another number altogether.

MR. VAHE KULBASHIAN: I'm sorry. I was assuming that because this was sent to us by the Tribunal that in a way they should have a copy of it. That's why I didn't put the whole thing.

THE CHAIRPERSON: Well, it seems a lot of people are making this mistake lately.

The Tribunal is an independent body, the only thing we ever receive from the Commission is the one letter that says here is the Human Rights complaint that's been referred to, that's all.

We don't have anything that's been exchanged between the parties.

Never assume that there's any knowledge on the Tribunal's part of any other information than what gets presented right here at the hearing.

So, I will let the questions get answered on this.

Do you have --

MR. WARMAN: Yes, there is a further issue in relation to the document.

THE CHAIRPERSON: Yes.

MR. WARMAN: It's that it appears that this is, in fact, a draft copy because it is not, in fact, signed on the last page, which is page 13, and the final copy of the investigation report that would have been disclosed to the parties would have been a signed copy, it's my understanding.

THE CHAIRPERSON: Okay. So, what do we make of it?

Do you wish to look at the final copy? I mean, if you have that, Mr. Kulbashian, maybe you should look at the final copy.

MS MAILLET: If I may assist, Mr. Chair.

THE CHAIRPERSON: Yes.

MS MAILLET: I believe that the first

page may contain the signature.

THE CHAIRPERSON: That's the one that usually contains the recommendation whether--

MS MAILLET: That's correct.

THE CHAIRPERSON: --the case should be -- recommendation of the investigator.

MS MAILLET: Sometimes.

THE CHAIRPERSON: Oh.

MR. ALEXAN KULBASHIAN: We have the first page here, it does have the signature on the first page.

THE CHAIRPERSON: There you go.

MR. WARMAN: Mr. Chairman, may I obtain my copy of the investigator's report?

MR. VAHE KULBASHIAN: This is the original I guess, which I received.

MS MAILLET: This is the same -- I don't know, it could have been, however it doesn't have the first page on it, but it does look like the original.

THE CHAIRPERSON: Hold on, Mr. Warman seems to have something in his hand.

MR. WARMAN: Unfortunately, the copy I have is unsigned.

MR. ALEXAN KULBASHIAN: We have the

first page.

MS MAILLET: They do, they have found the first page.

THE CHAIRPERSON: Okay. Is the entire document there?

MR. VAHE KULBASHIAN: This is all.

MS MAILLET: It seems to be amalgamated with the complaint form.

So, I can take a look at that, maybe at some point.

THE CHAIRPERSON: Why don't you just ask your question and -- I mean, if we have an issue we can deal with it later.

MR. VAHE KULBASHIAN: That's fine.

THE CHAIRPERSON: And we'll get the full document filed later. If it's one question, perhaps we needn't spend so much time trying to find the document.

MR. VAHE KULBASHIAN: I understand, sorry.

THE CHAIRPERSON: Ask the question with respect to this document and we'll deal with the exhibit later.

MR. VAHE KULBASHIAN: Do you agree with this report, Mr. Warman, that said if it were --

THE CHAIRPERSON: The actual report, the one that was finally signed and sent to the party?

MR. VAHE KULBASHIAN: Yes. Would you agree.

THE CHAIRPERSON: Were you in agreement with it, Mr. Warman?

MR. WARMAN: It's been quite a long time since I read the report. If I were to re-read it, then I would be able to give a more elaborate response.

But, in general, it was my belief that the investigation report substantiated the material that was contained in the complaint that I filed.

MR. VAHE KULBASHIAN: So, can you be more specific?

So, are you -- because I have a letter, I have a fax or -- it's appendix III, page 21.

THE CHAIRPERSON: Okay. This seems to be an e-mail.

This e-mail seems to say that, it's signed by you, Mr. Warman, it seems to suggest that you agree with the findings of the investigation report, addressed to Mr. Steacy, dated February 23rd, 2003.

Do you recall this document?

THE WARMAN: Yes, I do. It's an

e-mail that I sent to Mr. Steacy.

THE CHAIRPERSON: I consider it produced, 21. Go ahead.

EXHIBIT NO. R-2 (Page 21) :

E-mail from Richard Warman to Dean Steacy dated February 23, 2003 - page 21, Appendix III.

THE CHAIRPERSON: Ask the question.

MR. VAHE KULBASHIAN: So, I understand that you agree with this document?

MR. WARMAN: I agreed with the recommendations, the findings of the investigator which were that the matter should be referred to Tribunal for further inquiry.

MR. VAHE KULBASHIAN: How about the contents, what I mean --

MR. WARMAN: I'm not the author of those contents.

MR. VAHE KULBASHIAN: If I'm not mistaken he had sent this document to you--

MR. WARMAN: It was disclosed to all of the parties.

MR. VAHE KULBASHIAN: --with a letter asking you whether you had -- you needed to do any changes on it or if you agree, and what I understand

that you have sent him back answering that you agree with the --

MR. WARMAN: No, that's incorrect.

MR. VAHE KULBASHIAN: Why?

MR. WARMAN: Because, in fact, the investigation report is disclosed to all of the parties, the complainant and the respondents and, in fact, what they are asked is if you wish to make any comments you must do so, and then usually a deadline is given by which they may make further comment if they so desire.

It's the final investigation report that is disclosed to the parties, all the parties.

MR. VAHE KULBASHIAN: All the parties.

I would be needing your help now.

THE CHAIRPERSON: Yes, sir.

MR. VAHE KULBASHIAN: So, this issue, how can we open it later, because in a way I cannot speak with him because we find numerous faults in this report.

THE CHAIRPERSON: Well, I was going to get to that, because I see you're referring to the report.

I want to tell you something. The

investigation report is essentially of little or no value at the Tribunal at this stage.

The investigation report is something that is an internal investigation that's conducted by one of the parties that's before me, the Commission.

The Commission investigates the complaint that's filed by the individual complainant and they draw their own conclusions based on that.

That report, investigation report then ultimately gets submitted to the Human Rights Commission itself and the Commission consists of a Board of Directors, if you will - commissioners - and they sit around the table, and my understanding is, they decide based on the material that's before them, including the investigator's report, whether to refer the case on to the Tribunal, all right.

So, and I can tell you from experience that there are occasions when the investigator's report recommends that a case not proceed to a hearing and that it nonetheless is referred by the Commission to the Tribunal.

So, my conclusion from that is that the investigator's report is not binding on the decision that the actual decision-makers of the Human Rights Commission make.

They work, if I can use the term, independently of whatever the investigator's report may say.

This is all based on information that I've seen come before me in other hearings. I'm not saying anything that I have no inside knowledge on how the Commission works, this is what I have observed.

This is all to say, that once the complaint has been referred to the Tribunal, which is an independent body, that is me in this case, we start with a clean slate, if you will.

I do not know what the investigator investigated. I'm not concerned with what he investigated or how he investigated, I am only concerned here with what evidence is brought before me.

So, and what conclusions the investigator drew and how he interpreted the facts, that's his opinion, it's not binding on me.

And, in fact, in most cases the investigator's report is not handed up in evidence.

The only occasion that I have seen it entered into evidence - and the reasons for which I usually allow it - is if there is some specific issue related to the activities of the investigation.

Let me be perhaps more specific with

an example. If, for instance, it becomes an issue: when did someone do something, and the evidence is I did this right after the investigator made his report.

So then we'll say: Well, let's allow the investigator's report for the purposes of looking at the date of the report and then try and affix a date over the last few years in order to determine that specific issue.

But as for the proof of what's in that investigator's report, as to its evidence -- evidential weight, nothing, because the only investigation that counts right now is the inquiry that is being conducted right now at the hearing; do you understand?

So, if you have some issues with the findings of the investigator, you think the investigator made conclusions that were erroneous, it doesn't matter; what's important is the evidence that's being presented today.

If you have issues with what Mr. Warman said yesterday and today, those are what you should be focussing on, not what the investigator said back then.

MR. VAHE KULBASHIAN: So, what I understand that because our concern -- the main concern

was that after all this decision to go to trial--

THE CHAIRPERSON: Yes.

MR. VAHE KULBASHIAN: --was based on this report.

THE CHAIRPERSON: It was, and if you had a problem with the decision that was made by the Human Rights Commission to send this case to court, as you say, or the Tribunal, the recourse that was available to you was to take the decision of the Human Rights Commission to be judicially reviewed before the Federal Court.

You see, as the statute is structured, there are two decision-makers in this process. There is one initial decision made by the Human Rights Commission to take the complaint and advance it to the Tribunal.

I don't want to belittle it - but it's sort of a basic decision, that the Commission decides to refer a case on does mean that the case is well founded, but it's just that under the standards that they have to follow the case is considered appropriate to be sent to the Tribunal.

And if a person, be it -- well, usually it's the respondent, if the decision is made to send it up, if the respondent disagrees with that

decision at that moment, then the respondent can go to the Federal Court and say: Federal Court, we disagree, this case has no business being referred to the Tribunal, there is no foundation whatsoever for the Commission to have sent the case on to the Tribunal.

And, you know, the opposite can occur too - if you're listening to me, Mr. Kulbashian - the opposite can occur.

If the Commission says that this case is, in our opinion, unfounded, the complaint is unfounded and we do not wish it to go to the Tribunal, the complainant - if that were to occur here - Mr. Warman, would have also had the right to go to the Federal Court and say that the decision of the Commission be quashed for error.

Now, that did not happen here, you did not do that here, nor did Mr. Richardson.

So, the decision to send the case on stands. There's a decision from the Human Rights Commission that has been taken and, as I say, it's a basic level decision.

I can go to the Act to tell you exactly what their standard is, but it's not equivalent to what's going on here.

The case has been referred to the

Tribunal, we have a whole new case before us here, it's being heard essentially anew.

I mean, you haven't gone through an inquiry, this is the official inquiry, this is the court.

Focus on the court, not on the decision to send it on. If you had issues with the fact the Human Rights Commission reached a certain conclusion back in, I don't know, I guess it was the winter, you should have gone to the Federal Court and dealt with it then.

That's behind us now. You're here in front of us now, so you have to defend the case that's being put forth right now with the evidence of Mr. Warman, the police investigator who's outside, the expert.

That's what you have to focus on.

MR. VAHE KULBASHIAN: I understand.

Thank you.

THE CHAIRPERSON: Let's take a five-minute break, please.

REGISTRY OFFICER: All rise.

--- Recessed at 4:10 p.m.

--- Resumed at 4:20 p.m.

REGISTRY OFFICER: Order, please.

All rise.

Please be seated.

MR. ALEXAN KULBASHIAN: I'm sorry,
Mr. Chairperson.

Actually we have our thoughts
together now. We were just going on the wrong track
before and getting a little confused.

THE CHAIRPERSON: Okay.

MR. WARMAN: Sorry, I just need to
get my --

MR. ALEXAN KULBASHIAN: Go ahead.

We were kind of concentrating on the
wrong idea in the beginning because we weren't sure
what to expect, so we did get kind of lost in the
beginning.

CROSS-EXAMINATION BY MR. ALEXAN KULBASHIAN:

MR. ALEXAN KULBASHIAN: I have -- I
will be asking a few questions to Mr. Warman.

First of all, when did you first
notice the sites?

MR. WARMAN: Sorry, just give me one
second, please.

MR. ALEXAN KULBASHIAN: Okay. Sorry
about that.

THE CHAIRPERSON: Can you speak up a

little bit, Mr. Kulbashian?

MR. ALEXAN KULBASHIAN: Okay.

MR. WARMAN: To the best of my recollection, it was in the fall of 2001.

MR. ALEXAN KULBASHIAN: Fall of 2001?

MR. WARMAN: Yes.

MR. ALEXAN KULBASHIAN: Okay. Do you know when they started, when the sites started up by any chance?

MR. WARMAN: At least one of the registration forms indicates that it was March of 2001.

MR. ALEXAN KULBASHIAN: For --

THE CHAIRMAN: When, do you know?

MR. WARMAN: No, I'm sorry. I can refer back to the "Whois" lookups, if that's helpful.

THE CHAIRPERSON: So, it will appear there?

MR. WARMAN: Yes, it indicates date registered.

MR. ALEXAN KULBASHIAN: Can I go ahead?

THE CHAIRPERSON: Yes, please.

MR. ALEXAN KULBASHIAN: Okay. So when you first noticed the content that you believed would violate the Human Rights Act, did you complain to

the server or to the other sites about the content that was on there?

MR. WARMAN: I did not complain directly to the websites and I complained on a number of occasions to the internet service providers.

THE CHAIRPERSON: In this case?

MR. WARMAN: In relation to subsequent materials that appeared.

Like, at the time when there was an attempt to resurrect the Tri-City Skins website, I went to the domain registrar, godaddy, and complained to them.

MR. ALEXAN KULBASHIAN: Actually, that's just getting ahead of me a bit.

MR. WARMAN: Sorry.

MR. ALEXAN KULBASHIAN: The question was: Did you complain about the content of the sites to either the hosting provider, because the registrars are not responsible for the content that's hosted, they don't even have access to the content that's hosted, all they are in charge of is to provide a name and a link to the internet.

So, I'm just wondering --

THE CHAIRPERSON: So, who is the content provider here?

MR. ALEXAN KULBASHIAN: In this case it's affordablespace.com.

THE CHAIRPERSON: Did you file a complaint with affordablespace?

MR. ALEXAN KULBASHIAN: Did you file a complaint with the site at all?

MR. WARMAN: No, it was my understanding that you, in fact, were in control of that company.

MR. ALEXAN KULBASHIAN: So then, can you say for sure that I was aware of the content on some of the sites, especially Tri-City sites?

MR. WARMAN: It's my belief that you were.

MR. ALEXAN KULBASHIAN: And how would you know that, like?

MR. WARMAN: Based on all of the documents that I submitted to the Commission, my study of the websites, my study of the material contained in the hard drive that was disclosed to me by the Commission, and my discussion with other members of the Human Rights community in Canada.

MR. ALEXAN KULBASHIAN: Okay. In this case then, but you had -- in going back to the Kiebers case that you were handling before, you had

complained to both the internet service provider as well as the owner of the site about the content on numerous occasions, as well this Commission had complained to the site from what I saw from the old documents.

THE CHAIRPERSON: Can you rephrase the question, I just missed it.

MR. ALEXAN KULBASHIAN: Okay. I'm going back to a previous case that Mr. Warman was involved in, it's the Kiebers case. I'm not sure exactly --

THE CHAIRMAN: Kiebers.

MR. ALEXAN KULBASHIAN: Kiebers, I guess.

MR. WARMAN: That's my understanding of how it was.

MR. ALEXAN KULBASHIAN: Okay. I'm sorry about the pronunciation.

And in the case he had complained directly to the internet service provider as well as to the owner of the site, as well the Commission had complained to the owner of the site, from what I can see in the documents.

And so I guess him saying something along the lines, I didn't know it was there is

different, but in this case --

THE CHAIRPERSON: Ask the question,
you don't have to argue with him.

MR. ALEXAN KULBASHIAN: Okay, I'm
just questioning -- that's what I'm saying, so you had
complained then to the Kiebers site on numerous
occasions?

MR. WARMAN: In the Kiebers case I
complained to the internet service -- well, the initial
internet service provider, yes.

MR. ALEXAN KULBASHIAN: And did you
complain to him directly?

MR. WARMAN: The internet service
provider?

MR. ALEXAN KULBASHIAN: No, to
Kiebers?

MR. WARMAN: No, I did not.

MR. ALEXAN KULBASHIAN: Because I
think -- okay.

In that case we'll get back to that
in a bit.

Did you check the ownership of the
company affordablespace.com, the actual ownership of
the company itself, not ownership of the domain?

MR. WARMAN: It didn't indicate that

it was an incorporated company or that it had any formal legal status.

So, no, I didn't go search the business records or anything like that of the Province of Ontario.

MR. ALEXAN KULBASHIAN: Okay. Also did you check to see who owned the account that the servers were hosting, in down in the co-location in the U.S?

Would you happen to have any information registered to the account itself for the hosting?

Because there is basically California regional internets that you had brought up I think yesterday, because my Dad was talking, which provided the connection for the servers that affordablespace.com ran.

Did you check -- did you complain to them or did you check with them to find out who owned affordablespace.com?

MR. WARMAN: In fact, cari.net was mentioned only in the context of the judicial decisions and the bail order that was in relation to you, so that was -- or could have been the first time I heard of them.

But, no, in any event I did not, in fact, contact cari.net, the California regional internet service.

MR. ALEXAN KULBASHIAN: Did you inquire as to how many sites were actually hosted on affordablespace.com.

MR. WARMAN: With whom?

MR. ALEXAN KULBASHIAN: With affordablespace.com, just in general?

MR. WARMAN: No, I had no contact with affordablespace.com directly.

THE CHAIRPERSON: You have no knowledge?

MR. ALEXAN KULBASHIAN: You have no knowledge of the number of the sites that it hosted?

MR. WARMAN: Only what I seen indicated both in the press, on Mr. Kulbashian's resume, and the individual sites that I personally had knowledge of by virtue of having done "Whois" searches on them that indicated that the server was affordablespace.com.

MR. ALEXAN KULBASHIAN: So, how many sites do you believe were actually hosted, I guess from what you read?

MR. WARMAN: I'm aware of at least,

you know, three to four, and then after that I would have to say that I'm not sure how many as a total were being hosted by the company.

MR. ALEXAN KULBASHIAN: Because they had different numbers and different places, I guess, since -- do you know what it said on my resume as far as how many sites were being hosted?

MR. WARMAN: It said a thousand plus, I believe.

MR. ALEXAN KULBASHIAN: That's right, okay.

And so do you remember how many sites I said were hosted during the interview with Detective McKinnon?

MR. WARMAN: No, I'm sorry, I don't.

MR. ALEXAN KULBASHIAN: Okay. We'll get back to that when we go through papers.

So, do you believe I managed, designed or added content to the Tri-City Skins site?

MR. WARMAN: It's my belief that you were involved with the Tri-City Skins group as a group in the communication of hate messaging within the meaning of section 13(1) of the Act?

MR. ALEXAN KULBASHIAN: How was I involved then with the group?

MR. WARMAN: I believe that I spelled it out with the evidence that I provided how I believed that you were involved.

MR. ALEXAN KULBASHIAN: Indirectly you mean, in association?

MR. WARMAN: I'm sorry?

MR. ALEXAN KULBASHIAN: Through association with the group or through directly managing the content?

MR. WARMAN: My understanding is, at the very least, that you were involved as the host provider for that neo-Nazi group through affordablespace.com.

MR. ALEXAN KULBASHIAN: So, you wouldn't contest if I told you that I -- well, getting back, I'll just rearrange my question.

So, you don't believe that I was directly involved with the coding or the content management of the site itself?

MR. WARMAN: I do not know that.

MR. ALEXAN KULBASHIAN: Okay.

Just getting back to affordablespace, did you read the terms of service that affordablespace had as far as making complaints about content on the site, or making abuse of the service?

MR. WARMAN: I don't recall exactly, but I may have.

MR. ALEXAN KULBASHIAN: So, you still didn't go through and complain to affordablespace.com?

MR. WARMAN: I felt that considering my evidence was that you were, in fact, in control of that and that you were, in fact, affiliated with these groups, that that would be inopportune and just not effective.

MR. ALEXAN KULBASHIAN: And so where did you get your information from as far as the ownership of affordablespace, like as in, how did you know I owned it, or how do you know who owned it, for that matter?

MR. WARMAN: It's my belief that you were one of the owners or one of the controlling minds of that corporation, based on the information that was published in newspapers, based on the information that I witnessed in terms of the Totenkopf being the contact address for a number of the sites, and them all being related to the same P.O. Box including affordablespace.

MR. ALEXAN KULBASHIAN: So, aside from --

MR. WARMAN: Sorry. And I should add as well, the Zoom Festival where it states:

"Thanks to Alexan Kulbashian
(server hosting) ..."

And then all of the P.O. Boxes trace back to you and, in fact, that site was in fact controlled, or the server provision of that website was through affordablespace.com.

MR. ALEXAN KULBASHIAN: So, you're talking about the Zoom Festival?

MR. WARMAN: Yes, the Zoom Festival, zoomfestival.com website.

MR. ALEXAN KULBASHIAN: Okay. So, do you know -- so, there was nothing wrong with the Zoom Festival site itself, it was just a way of, I guess, grabbing contents to associate with me?

MR. WARMAN: Simply verifying what I suspected.

MR. ALEXAN KULBASHIAN: Okay. So, it wouldn't be possible that maybe I had donated space as opposed to controlled the server itself?

For example, when you put names of certain companies, like United Way sponsored by, does that mean they own United Way, or does that mean they own the train where the ad is, or I'm not sure I'm exactly --

THE CHAIRPERSON: I'm not sure I

understand your question.

MR. ALEXAN KULBASHIAN: Okay. Well, basically he was saying that because there was my name on the Zoom Festival site he would conclude, aside from the fact that the media - which I can't exactly say at this point is a credible, reliable source of information - but aside from that, the fact that my name was on the Zoom Festival site which is section -- just let me find it here, section 34 I think.

In section 34 it says:

"Special thanks..."

THE CHAIRMAN: Tab 34?

MR. ALEXAN KULBASHIAN: Yes, sorry, that's what I meant.

THE CHAIRPERSON: Yes.

MR. ALEXAN KULBASHIAN: Tab 1. It says:

"Special thanks goes out to
Alexan Kulbashian..."

THE CHAIRPERSON: "...(server
hosting)".

MR. ALEXAN KULBASHIAN: In brackets,
(server hosting).

Now, that couldn't possibly mean that I paid for the space or that I donated the space

without having to own the server entirely myself?

That was my question.

MR. WARMAN: I'm sorry, I have no knowledge as to what your arrangements were with Zoom Festival.

MR. ALEXAN KULBASHIAN: Okay. Just because, like I mean, you did infer a little bit that the fact that my name was up there would add to the suspicion that I owned and controlled the entire server as opposed to just possibly donated the space to them and I could have paid any company to donate the space to them ultimately.

MR. WARMAN: That's not my belief.

MR. ALEXAN KULBASHIAN: Now, getting -- still staying on affordablespace.com, what makes you believe that affordablespace.com falls under section 13(1) of the Human Rights Act?

MR. WARMAN: Because it is an internet service provider within -- that was my belief, controlled within the bounds of Canada, from within the bounds of Canada within the meaning of section 13(1) of the Canadian Human Rights Act.

MR. ALEXAN KULBASHIAN: So, the section -- I'm just going to get the copy of the Human Rights Act right now.

MR. WARMAN: Sorry, Mr. Chairman, is it acceptable if I get my copy as well?

MR. ALEXAN KULBASHIAN: It would be a good idea actually, so I wouldn't have to read all that.

So, turn to section 13. And now turning to section 13(3) it says --

THE CHAIRMAN: I have a preliminary question I wanted to bring up here.

This complaint was filed in 2002 was it?

MS MAILLET: That's right, February.

THE CHAIRPERSON: It was filed--

MS MAILLET: February, 2002.

THE CHAIRPERSON: --but the acts took place, the webpages are, the copies that we've seen are from October, 2001.

MS MAILLET: That's right.

THE CHAIRPERSON: The statute amending section 13 came into force in December, 2001; did it not?

MS MAILLET: I would have to check that. I do believe it was December, 2001.

THE CHAIRPERSON: So, what is the position of the Commission then in terms of, it will

assist I think the respondent in dealing with this issue.

What is the Commission and the complainant's position with respect to the provision that applies to this case?

Is it section 13 as we know it today post the amendments under Statutes of Canada 2001 chapter 41, section 88 as referenced at the bottom of the updated version of the Act; or is it 13 as it existed prior?

And I'm not necessarily saying that it may have some relevance to the case, but certainly I know at least one or two cases that reference the old version of the Act and apply it in cases of internet usage, but those are two cases from the Human Rights Tribunal.

MS MAILLET: Maybe it's best to leave that for legal closing argument.

THE CHAIRPERSON: Right, but I would like to know the position of the Commission and the complainant at this point.

MS MAILLET: My position will be that this -- the latest version of the Act applies, however, if the Tribunal should find that it's the last version, nothing turns on that.

THE CHAIRPERSON: Okay. Mr. Warman?

MR. WARMAN: Yes, that's the same position of the complainant.

MR. ALEXAN KULBASHIAN: So, basically agree with this version, or the one that --

THE CHAIRPERSON: Well, their position is that they feel this case - we're getting a bit into the law but I think it's important for you to understand this - this case seems to fall in that transitional period post September 11th when the law was amended, because the amendments that took place to this part of the Act came about as part of the package of amendments that were made after September 11th, 2001, and the new provisions are the ones that you find in the second paragraph, the one with references to the internet and so on.

The prior provision had no specific mention of the internet.

The webpages that were produced yesterday, they're before the date of October, which is before the amendments came into force.

The amendments came into force I believe in December, and the complaint was filed in February, 2002.

So, we have sort of two operative

dates perhaps here: One is when the webpages were recorded, if you will, or snapshots were taken of the webpages that have been introduced into evidence; and the other is the date when the complaint was filed.

And one is before; one is after the amendments.

The position of the Commission and the complainant is that, I guess, the operative period is the date of the complaint. The complaint was filed post the amendments, hence this version of the Act applies.

Perhaps I might -- am I misrepresenting your position there?

MS MAILLET: No, no, I just wanted to clarify, that the complaint states and Mr. Warman's evidence is that the content--

THE CHAIRPERSON: Please come right up to the microphone.

MS MAILLET: --was observed in the fall of 2001, the complaint form indicates that the events include October, 2001 and ongoing.

THE CHAIRPERSON: Ongoing.

MS MAILLET: (nodding)

THE CHAIRPERSON: So, is that ongoing beyond the amendment date?

MS MAILLET: That's correct, ongoing to the time that the complaint was filed, which is February, 2002.

THE CHAIRPERSON: February, 2002, Mr. Warman, was that your understanding?

MS MAILLET: Or ongoing until today.

MR. WARMAN: Yes.

MS MAILLET: But the events that formed the basis of the complaint -- I'm speaking for Mr. Warman here, but that was my understanding.

THE CHAIRPERSON: Mr. Warman?

MR. WARMAN: The only other thing that I'd add is that my understanding of the three previous internet cases where the issue has arisen probably surrounding whether, in fact, the Act applied to the internet or not, and that has since been settled.

THE CHAIRPERSON: I will say this much, two things:

First of all, if there was a series of questions that were going to come on the Act, I want the ground rules to be set on what version of the Act we may or may not be talking about (a); and (b), yes, there are three decisions from the Tribunal -- it's not from a higher court, they are from Tribunal decisions

and nothing certainly prevents a party from making an argument that may change the opinion of this Tribunal.

So, yes, there have been decisions from Kiebers...

MR. WARMAN: Kiebers, Schnell v. Machiavelli and Zundel.

THE CHAIRPERSON: Yes. So, all three of those refer back to the internet as being subject to the older version of the Act as being the instrument of telepathy.

But now that's all said to lay the groundwork for whatever question you may wish to make about the Act.

MR. ALEXAN KULBASHIAN: Okay, I understand. Actually my question isn't about whether or not the internet can be touched.

Actually my question is about --

THE CHAIRPERSON: I just wanted you to know about the issue.

MR. ALEXAN KULBASHIAN: Thank you very much, Mr. Chairperson.

My question is about section 13(3) which reads:

"For the purpose of this section, no owner or operator of

a telecommunication undertaking
communicates or causes to be
communicated any matter
described in subsection 1 by
reason only that the facilities
of the telecommunication
undertaking owned or operated by
that person are used by other
persons for the transmission of
that matter."

THE CHAIRPERSON: Okay. Which was
there before.

MR. ALEXAN KULBASHIAN: Meaning in
the sense that affordablespace.com, as much as you can
read in the media - I guess they have a lot of
documents here from the media, which I don't believe to
be a credible source at this point - was not purely a
server that held sites that they can say, I guess,
violated the Canadian Human Rights Act.

They also had serious business sites
on them. There is over a thousand of which only 22
have been labelled to be hate sites.

THE CHAIRPERSON: You have to be
careful to not testify yourself in asking the
questions.

MR. ALEXAN KULBASHIAN: Oh no, I'm just talking -- allow me just --

THE CHAIRPERSON: Ask questions to the witness.

MR. ALEXAN KULBASHIAN: Oh, sorry I thought we were back to the thing before.

So, in that case, so what makes you believe that affordablespace.com is liable under the Canadian Human Rights Act despite of what the content the sites held?

MR. WARMAN: It's not my belief that affordablespace.com nor yourself fall within the meaning of exemption contained in section 13, sub 3 of the Canadian Human Rights Act.

MR. ALEXAN KULBASHIAN: And why do you believe that?

MR. WARMAN: Because I don't believe that you or the company's sole providership affordablespace.com constitutes an operator of a telecommunication undertaking within the meaning of the Act.

Nor do I believe it would be a case where it was only by virtue of the fact that this material was being transmitted by other persons.

MR. ALEXAN KULBASHIAN: Okay. In

this case, so what do you believe to be telecommunications undertaking, since now telecom has fallen under -- internet has fallen into telecom range as far as, like, the amendment goes for internet.

Since internet is now being treated as a telecom, I guess, a telecommunications entity, so the Canadian Human Rights Act does have authority over, you know, judging people in tribunal over internet infractions.

So, what makes you believe that affordablespace.com is not a broadcasting undertaking?

MR. WARMAN: Because it's my belief that would apply to companies, for example, say, Bell Canada, Telus or Cogeco, large-scale enterprises that were involved, say, as a telephone company, where their sole provision is providing the wires through which conversations are being conducted and that hate messages that were conducted through that, for an example, would not, therefore, render Telus liable.

And it's my belief that affordablespace.com was not solely involved in that capacity in this case.

--- Discussion off the record

MR. ALEXAN KULBASHIAN: Okay.
Basically take this a little farther then.

So, you believe the fact that Telus and Bell and Cogeco have land line phones makes them a telecommunications broadcasting undertaking and the fact, and also their size; is what you commented before; right?

MR. WARMAN: In this case I believe that's a relevant factor, yes.

MR. ALEXAN KULBASHIAN: A relevant factor.

So, do you see a statute in here that says possibly that over a certain number of accounts or a certain user base in the statute?

I don't actually see a statute here that governs the size of a telecommunications broadcasting undertaking.

I don't see a difference between what I have, what I had and what Bell has right now.

So, basically my comment is --

THE CHAIRPERSON: The problem is you shouldn't be making comments, it's questions.

MR. ALEXAN KULBASHIAN: Okay. My question is -- that's what I meant. My question --

THE CHAIRPERSON: You're sort of falling into the area of making an argument here.

Remember, you will have the

opportunity to argue your case and comments will be addressed to me and then I will hear other points of view from each side and we'll deal with it as it comes.

MR. ALEXAN KULBASHIAN: Sorry about that. This is my first day here, so I'm getting kind of--

THE CHAIRPERSON: That's why I'm advising you.

MR. ALEXAN KULBASHIAN: --on the wrong side.

THE CHAIRPERSON: Stick to questions.

MR. ALEXAN KULBASHIAN: I will.

So, do you consider that now that the internet has been amended into the Canadian Human Rights Act, do you consider internet to be amended as a telecommunications method, or do you consider it being amended as a third party, I guess, domain that now the Canadian Rights Act now has authority over?

THE CHAIRPERSON: One moment please.

MS MAILLET: I'm sorry, I hate to interrupt, but my only concern with the line of questioning is I believe what Mr. Kulbashian is doing is seeking Mr. Warman's legal opinion about liability.

That will be left for you to decide, Mr. Chair, at the end of this case.

And I'm concerned that maybe he should -- I'm suggesting that maybe he lead the questions kind of more with respect to the substance of what we're talking about in terms of the elements -- under the elements of the Act and the evidence that's come out.

THE CHAIRPERSON: I think you harken back to what I said earlier. The issues of the interpretation of the Act is something for me to decide.

MR. ALEXAN KULBASHIAN: Okay.

THE CHAIRPERSON: And when I decide that, it will be as a result of the arguments that you will make and that Mr. Warman may make at that time, and at that point you won't debating with Mr. Warman, you will be talking to me and Mr. Warman will have his points to make, as will Mr. Richardson.

MR. ALEXAN KULBASHIAN: I understand.

THE CHAIRPERSON: And the Commission. So, we can deal with that later. That is not really the kind of questions that should be addressed at this time.

MR. ALEXAN KULBASHIAN: Okay.

Then getting to the next part. Give me a sec.

Do you know of any articles on wpcect.com that would be found to be, I guess, liable for prosecution under the Human Rights Act?

THE CHAIRPERSON: Articles of...?

MR. ALEXAN KULBASHIAN: Articles on the wpcect.com site directly.

THE CHAIRPERSON: wp --

MR. ALEXAN KULBASHIAN: wpcect.

THE CHAIRPERSON: Maybe you should slow down a bit.

MR. ALEXAN KULBASHIAN: That's whiskey, papa, charlie, echo, charlie, tango, so...

THE CHAIRPERSON: wpcect site. So, are there any articles...?

MR. ALEXAN KULBASHIAN: .com. Are there any articles on there that you would consider to be in violation of the Human Rights Act?

THE CHAIRMAN: Articles for -- what do you mean, newspaper articles?

MR. ALEXAN KULBASHIAN: No, any article.

I mean, any content on the site itself. This is a question to him.

THE CHAIRPERSON: Okay. So, is there any content on the site of wp...

MR. ALEXAN KULBASHIAN: I guess the Canadian Ethnic Cleansing Team site itself.

THE CHAIRPERSON: Which is called wpcect.com?

MR. ALEXAN KULBASHIAN: That's right.

THE CHAIRPERSON: So, is there any content under wpcect.com which he interprets as being in violation of the Act; is that what your question was?

MR. ALEXAN KULBASHIAN: Yes, that's right.

MR. WARMAN: Yes.

MR. ALEXAN KULBASHIAN: Do you have an article in here somewhere, because I wasn't here yesterday. If you'd just like to point me to it.

THE CHAIRPERSON: Well, we had -- this is where I was hoping you would get some assistance from your father.

MR. ALEXAN KULBASHIAN: Okay.

THE CHAIRPERSON: There were many excerpts from the wpcect.com filed yesterday. Basically every tab--

MR. ALEXAN KULBASHIAN: Okay.

THE CHAIRPERSON: --up to tab 60 has been filed.

Perhaps if the witness can answer.

Is there one you wish to draw our attention to specifically?

MR. WARMAN: No. I mean, the reason why the material was entered as exhibits was because it was felt that that contributed in some way to the substantiation of the complaint, either in the fact that it was in violation of the Act or it assisted in the identification of those who were responsible for either its communication directly or were part of a group that was responsible for its communication.

MR. ALEXAN KULBASHIAN: See, this is the reason why I was asking that question is because I don't know sometimes whether or not the article has been included in order to identify the person, or identified as an article that violates the Canadian Human Rights Act.

THE CHAIRPERSON: Well, yesterday in his evidence -- I must say, I'm not going to allow us to go back into it.

MR. ALEXAN KULBASHIAN: Okay.

THE CHAIRPERSON: Yesterday in his evidence Mr. Warman would refer to each document and say for what purpose that he was producing it. He was quite explicit on that.

MR. ALEXAN KULBASHIAN: In that case I will refer you to the "Whois" records, the lookups that you had done.

No. 1, I guess it's --

THE CHAIRPERSON: Which tab?

MR. ALEXAN KULBASHIAN: Tab 30, page 1.

Now, referring your attention to where it says "administrative contacts".

I'm not sure if you have ever done domain registration. Do you know what the administration contact is on domain?

MR. WARMAN: My understanding of it is, that it's the person who is responsible for the administration of the site and that information is then registered with the domain name registrar.

So that if people have administrative issues regarding the site, that gives information that they can contact.

MR. ALEXAN KULBASHIAN: Do you know what else administrative contact has access to, by any chance, what other -- what other...

I guess, what is the level of authorization for the administrative contact on the domain itself?

MR. WARMAN: I'm sorry.

MR. ALEXAN KULBASHIAN: Okay. So, basically I guess people would talk to technical contact about technical issues obviously, billing contact - which I don't see here - for billing-related issues.

Do you know what -- I wish I could put it in a different way just so I wouldn't have to, like, explain the concept so I wouldn't be, like, testifying.

Okay. In a sense, that administrative contact, let's say you lost your password on line, right, and you happen to -- well, you want to get your password back to be able to get into your domain and make modifications to the contact information or what is being hosted.

--- (Reporter appeals)

THE CHAIRPERSON: Slow down, Mr. Kulbashian. Slow down.

MR. ALEXAN KULBASHIAN: Okay, sorry about that.

Basically let's say you wanted to go -- you wanted to get the information on your domain, you lost your password --

THE CHAIRPERSON: Slow down.

MR. ALEXAN KULBASHIAN: Okay.

And actually after you've tried to log in obviously to try to get your password back, you would come back to the administrative contact if it was sent back to e-mail address, it wouldn't go to billing or technical or any other contact information.

See where I'm going here, by any chance?

MR. WARMAN: I'm not sure.

MR. ALEXAN KULBASHIAN: Okay.

MR. WARMAN: I'll wait until there's a question and then I'll give you my best answer.

MR. ALEXAN KULBASHIAN: Basically the reason why I'm bringing this up is--

THE CHAIRPERSON: Slow down.

MR. ALEXAN KULBASHIAN: Oh.

--because you've included a lot of domain names where the administrative contact has been this P.O. Box, the names and e-mail address, am I right, when you did the "Whois" searches on many domains.

MR. WARMAN: More than one, yes.

MR. ALEXAN KULBASHIAN: Okay. On more than one.

In which case now, do you know what reseller is as far as domains go, reseller accounts,

turnkey accounts; ever heard of them?

MR. WARMAN: Reseller I've heard of.
I couldn't give you a definition of it.

MR. ALEXAN KULBASHIAN: So, do you believe that having an administrative contact in the administration section means it's ownership of domain, or could it possibly mean that it was part of a block, like reseller accounts?

I wish, like I'm getting my wording a little mixed up here. I just don't know how to exactly refer to the question.

So, you know what, maybe I should just skip this section for now, I'll get it fixed in my head for tomorrow.

Okay. Just getting back to one other thing that you were testifying before.

This is a copy of the CD that you were given by the police I think.

THE CHAIRPERSON: You're holding up the copy that was handed out again today, I believe.

MR. ALEXAN KULBASHIAN: That's right.

THE CHAIRPERSON: It's not been produced into the record, but it's what was referred to for exhibits 49 and following, yes. Okay.

49 is where the photocopy -- all

that's been entered into the record, Mr. Kulbashian, is a photocopy of the jewel case.

MR. ALEXAN KULBASHIAN: So, section 49 that's the CD that the police had given you; right?

MR. WARMAN: The police didn't give me anything.

MR. ALEXAN KULBASHIAN: Had given the Commission, like, I'm not sure where --

THE CHAIRPERSON: Slow down, please.

MR. ALEXAN KULBASHIAN: I'm not sure where that CD would have come from.

Do you happen to know where that CD came from?

MR. WARMAN: I have already explained that my understanding is that that CD was provided to the Canadian Human Rights Commission by Terry Wilson of the London Police Hate Crimes Unit.

MR. ALEXAN KULBASHIAN: Okay. My question is: Do you believe the integrity on the data -- the integrity on the CD is proper, I guess the data integrity, I would say?

MR. WARMAN: Sorry, I don't understand your question.

THE CHAIRPERSON: Do you have any reason to question the integrity of the data--

MR. ALEXAN KULBASHIAN: Of the data on the CD?

MR. WARMAN: No, there's nothing --

THE CHAIRPERSON: --reflecting what was recorded from the computer from which Terry Wilson copied the CD?

MR. WARMAN: I have nothing within my knowledge that would lead me to believe that, that there's any problem with the integrity of the material.

MR. ALEXAN KULBASHIAN: Okay.

Because now, knowing computers myself, do you believe that this was a copy of the directory structure that was taken and copied on the CD, or was it collected from different parts of the computer and compiled into one CD?

THE CHAIRPERSON: Slow down.

MR. ALEXAN KULBASHIAN: Just the end of the day is coming, so...

THE CHAIRPERSON: Slow down. Pace yourself.

MR. ALEXAN KULBASHIAN: Okay.

So, basically do you believe that the data was collected through many parts of what's alleged to be James' computer, or was it just grabbed from one directory and copied exactly onto the CD just

maintaining its structure?

MR. WARMAN: I'm afraid that's not within my knowledge.

MR. ALEXAN KULBASHIAN: Okay. This is actually a question I had to ask you.

THE CHAIRPERSON: Don't forget, according to the witness list, Mr. Wilson will be testifying, right, he's here.

MR. ALEXAN KULBASHIAN: Okay.

THE CHAIRPERSON: So, I think that might be a more appropriate question for Mr. Wilson.

MR. ALEXAN KULBASHIAN: Okay.

Another question: Did you happen to view the source code on the other pages when you downloaded the pages or when you viewed them on the Tri-City or Vinland Voice or C.E.C.T.?

MR. WARMAN: I downloaded the material as it appeared on my website browser.

MR. ALEXAN KULBASHIAN: Would you say there is a difference between the style of coding and, I guess, image of the sites between Tri-City and the C.E.C.T.-related sites?

THE CHAIRPERSON: The C.E.C.T.-related sites?

MR. ALEXAN KULBASHIAN: That's right.

MR. WARMAN: I'm sorry, I don't have an understanding of source code.

MR. ALEXAN KULBASHIAN: Aside from source code, just verbally, would you consider sites to have similar theme or--

MR. WARMAN: Yes.

MR. ALEXAN KULBASHIAN: --or same quality of content?

MR. WARMAN: I believe they had a similar theme, yes.

MR. ALEXAN KULBASHIAN: Would you consider them to have similar, I guess visual theme as well as, like graphical theme?

MR. WARMAN: In that they both represented neo-Nazi insignia and Nazi era insignia, yes.

MR. ALEXAN KULBASHIAN: Visually. So, commenting on -- trying to find the...

So, when you looked at the sites you didn't notice anything, I guess, less professional on one, more professional on the other as far as the way they were designed or put together, in your opinion, I guess?

MR. WARMAN: Well, you know, my personal opinion as to whether they were well designed

or not, I mean -- I'm just not sure how to answer that.

I mean, you know, neither of them jumped out at me and said this is something I find aesthetically pleasing.

MR. ALEXAN KULBASHIAN: So, turn to section -- to tab 17, page 1.

So, just going back to what you were testifying about yesterday--

THE CHAIRPERSON: Tab 17 you said?

MR. ALEXAN KULBASHIAN: Tab 17, page 1.

THE CHAIRPERSON: Okay, yes.

MR. ALEXAN KULBASHIAN: So, do you believe that I wrote this article here, the Intro to Racial Woes article?

THE CHAIRPERSON: Intro to...?

MR. ALEXAN KULBASHIAN: Intro to Racial Woes.

MR. WARMAN: I believe that there's a strong possibility that, yes, in fact, you did write this article.

MR. ALEXAN KULBASHIAN: And what gives you that possibility?

Like, what gives you that idea that I wrote that article?

MR. WARMAN: The fact that there is a skull and cross bones and a Totenkopf at the side of it.

MR. ALEXAN KULBASHIAN: Do you know what a template is, by any chance?

THE CHAIRPERSON: A what?

MR. ALEXAN KULBASHIAN: A template.

THE CHAIRPERSON: A template?

MR. ALEXAN KULBASHIAN: Yeah, a template.

MR. WARMAN: In its usual meaning, yes.

MR. ALEXAN KULBASHIAN: Okay. Do you know what a site template is?

MR. WARMAN: If I extrapolate the usual meaning of template to a website, I would hazard a guess, yes.

MR. ALEXAN KULBASHIAN: Okay. So, you believe that the fact that that symbol was found on every single page of every site that you say I had something to do with, that means I wrote every article that that symbol shows up beside?

MR. WARMAN: No, in fact, and that wasn't my evidence.

MR. ALEXAN KULBASHIAN: Okay. So,

but basically you're saying that the reason why you think I wrote that article is because the skull is beside it?

MR. WARMAN: I'm saying that it's an indicia.

MR. ALEXAN KULBASHIAN: Was that skull on every page that you viewed?

MR. WARMAN: No. There are many pages that I believe you were responsible or involved in that do not have that skull and cross bones and the word Totenkopf.

MR. VAHE KULBASHIAN: On the C.E.C.T. site?

MR. WARMAN: I believe that material that appeared under the pseudonyms that I believe you were using Totenkopf and also Alex Krause, that you were also responsible for.

MR. ALEXAN KULBASHIAN: So, I'm just asking did you find any pages on the C.E.C.T. site that did not have that skull and cross bones on there?

MR. WARMAN: I'm sorry, I don't recall.

MR. ALEXAN KULBASHIAN: You don't recall.

Now, is it possible that that's

actually part of the template to peg the designer as opposed to peg the author of the article?

MR. WARMAN: It would be my opinion that that would not affect the liability of the person under the Act, in that they would still be involved with the group of persons that are responsible for transmitting hate messages within the meaning of section 13 of the Act.

MR. ALEXAN KULBASHIAN: So, your opinion, somebody who makes a design for a site, some code for a forum and somebody downloads it off their site, when that forum has a threat on it, he should be found responsible?

MR. WARMAN: I don't believe that was your involvement in this group.

MR. ALEXAN KULBASHIAN: I understand.

Well, what I was asking is: Do you know, like, would you believe that someone who designed -- let's say somebody hired a professional web designer and if the web designer created a layout and they modified their own site and they added content -- rule of content, something was found to be illegal, do you believe that the designer would also be liable for the content on the site?

MR. WARMAN: If the website was

called the Canadian Ethnic Cleansing Team and I believe that that person was involved with the members and associated with them, then yes, I believe that they would have some responsibility under the Act.

MR. ALEXAN KULBASHIAN: That's right.

But, so I guess for you there is no distinction as to whether or not they are involved with the group as opposed to whether or not they are involved with the site itself either.

So, meaning any member that was part of our group could be responsible for this content or should be held responsible for its content just because he was part of the group?

MR. WARMAN: If they were involved with the group that was communicating hate messages under section 13(1) of the Act, yes, I believe they do have responsibility.

MR. ALEXAN KULBASHIAN: So you mean that -- let me get you here then.

So...

MR. WARMAN: But I should emphasize that I don't believe that to have been your role.

MR. ALEXAN KULBASHIAN: Oh, I understand that. I didn't ask you that, though.

My question is that, so you believe

that, let's say, there was "x" number of members and one member created a site for the group, that all "x" members are responsible for content that appears on that site?

MR. WARMAN: I believe that people that are involved in a group that communicate hate messages are, in fact, responsible under section 13(1) of the Act.

MR. ALEXAN KULBASHIAN: But my question was: If there is, I guess let's say, for randomly 10 members and two members are involved in creating the site, and maybe another couple of other ones might not even know there is a site for the group, do you believe that all 10 members are responsible for the content posted on the site?

MR. WARMAN: I think that's a question of the level of responsibility and the level of liability under the Act.

THE CHAIRPERSON: I think we're, again, getting into areas of law.

MR. ALEXAN KULBASHIAN: Okay.

THE CHAIRPERSON: This is something for argument. I've let it go on for a while here.

But that's, again, something for you to argue.

What you would have to establish in order to make that kind of argument, Mr. Kulbashian, is that - if I understand your premise - that you or Mr. Richardson were not part of the group, if the group is the group that's as alleged by the complainant.

MR. ALEXAN KULBASHIAN: No, basically what I was asking --

THE CHAIRPERSON: What I'm trying to say is that the focus, if that's an argument you intend to make, should be on establishing that you are not the person who drafted the document as Mr. Warman is suggesting in his evidence, that you are outside, and then once you've established that factual premise, then you can make the legal argument afterwards to the effect that, on the evidence that you are not the person who drafted the document and in the hypothesis that you are still a member of this group, there is no liability under the Act, you see.

But if you don't establish the factual premise, you can't make these legal arguments.

MR. ALEXAN KULBASHIAN: Okay.

THE CHAIRPERSON: I shouldn't say that you establish the factual premise, but simply it doesn't arise from the facts.

The burden of proof rests on the

complainant to make the case...

MR. ALEXAN KULBASHIAN: Sorry about that. Sorry, Mr. Chair.

THE CHAIRPERSON: Go ahead.

MR. ALEXAN KULBASHIAN: Okay.

So, did you by any chance happen to try or even see any indication on whether or not the sites were manually updated, automatically updated through scripts or whether or not they were monitored, or whether or not this site was just statically uploaded to the site and the content was just statically uploaded?

MR. WARMAN: I'm sorry, that's not within my knowledge.

MR. ALEXAN KULBASHIAN: Okay.

THE CHAIRPERSON: We're approaching 5:05. Do you have long?

MR. ALEXAN KULBASHIAN: I might be quite a bit longer actually.

THE CHAIRPERSON: Would it be a good time for us to end for the day?

MR. ALEXAN KULBASHIAN: Possibly, yes.

THE CHAIRPERSON: And to continue tomorrow?

MR. ALEXAN KULBASHIAN: It would give me time to get my thoughts together because we hadn't planned for this kind of line of questioning initially.

THE CHAIRPERSON: Well, no, I meant -- again, I have to be fair here. I have been making these statements...

I have made the point from our first conference call, Mr. Kulbashian, which ended up perhaps on a bit of a sour note, but perhaps you should --

MR. ALEXAN KULBASHIAN: Sorry about that.

THE CHAIRPERSON: I have made the point from the first day that you should be focusing on the factual case that's being put before you.

If I recall, you had made some suggestion in that first conference call about how you felt you were disassociated from the material that was alleged in the complaint.

I did point out to you that instead of dealing with -- at one point you said that you wanted to call upon 50 witnesses, FBI and so on, I said focus on the complaint, that's your interest.

MR. ALEXAN KULBASHIAN: Right.

THE CHAIRPERSON: So, this is not the first time that I've said it. I've said it again

today.

Take the opportunity this evening to do that.

MR. ALEXAN KULBASHIAN: I will.

THE CHAIRPERSON: That's where your focus should be. It's a brand new case. All we're dealing with is the evidence that's being presented over the next few days.

MR. ALEXAN KULBASHIAN: Okay.

THE CHAIRPERSON: I hope I don't have to repeat that. It seems that you understand that now.

MR. ALEXAN KULBASHIAN: Thanks.

THE CHAIRPERSON: Okay. Yes?

MS MAILLET: I know I asked this earlier, but we're going to have witnesses that are scheduled, and if I can get a little bit of a better feel, if they know, from the respondents as to how much longer they will be with Mr. Warman.

THE CHAIRPERSON: See, in light of what I've explained to you, you've already indicated you eliminated a portion of your line of questioning as not being material to the case.

So, would your cross-examination still be as long as you expected for Mr. Warman?

MR. ALEXAN KULBASHIAN: I could tell

you more detail tomorrow morning.

THE CHAIRPERSON: Tomorrow morning.

MR. RICHARDSON: I expect at least two hours, Mr. Chairman.

THE CHAIRPERSON: Two hours.

MR. RICHARDSON: At least.

THE CHAIRPERSON: Mindful of everything I have said today with respect to Mr. Kulbashian?

MR. RICHARDSON: Yes.

THE CHAIRPERSON: Right.

So, the afternoon it sounds like, at least, at the earliest, at the earliest.

MS MAILLET: Thank you.

THE CHAIRPERSON: I was going to say start earlier, but I realize people are coming in from two different directions, Hamilton and Toronto, so we will start at 9:30 as today.

REGISTRY OFFICER: All rise.

--- Whereupon the hearing adjourned at 5:15 p.m.,
to Wednesday, September 1, 2004, at 9:30 a.m.

I HEREBY CERTIFY, to the best of
my skill and ability, that the
foregoing is a true and accurate
transcript of the proceedings



Beverley R. Dillabough, C.S.R.

StenoTran