

**CANADIAN
HUMAN RIGHTS
TRIBUNAL**



**TRIBUNAL CANADIEN
DES DROITS
DE LA PERSONNE**

BETWEEN/ENTRE:

RICHARD WARMAN

Complainant

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

Respondents

BEFORE/DEVANT:

ATHANASIOS HADJIS

THE CHAIRPERSON/
LE PRÉSIDENT

ROCH LEVAC

REGISTRY OFFICER/
L'AGENT DU GREFFE

FILE NO./N° CAUSE: T869/11903

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

HEARING HELD IN THE LAKESHORE ROOM OF THE HILTON GARDEN INN, 2774
SOUTH SHERIDAN WAY, OAKVILLE, ONTARIO, ON WEDNESDAY, FEBRUARY 23,
2005, AT 9:30 A.M. LOCAL TIME

CASE FOR HEARING/CAUSE DEVANT ÊTRE ENTENDUE

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 Alexan Kulbashian, James Scott
Richardson, Tri-CitySkins.com, Canadian Ethnic Cleansing Team and
AffordableSpace.com. The 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

Richard Warman	on his own behalf as Complainant
Monette Maillet	on behalf of the Canadian Human Rights Commission
Alexan Kulbashian	on his own behalf as Respondent
Vahe Kulbashian	on behalf of Respondent (Alexan Kulbashian)
James Scott Richardson	on his own behalf as Respondent

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1 Oakville, Ontario

2 --- Upon commencing on Wednesday, February 23, 2005
3 at 9:30 a.m.

4 REGISTRY OFFICER: Order, please.

5 All rise.

6 Please be seated.

7 THE CHAIRPERSON: Good morning.

8 MR. WARMAN: Good morning.

9 MS MAILLET: Good morning.

10 THE CHAIRPERSON: Okay. So, I
11 understand that there is some issue with the
12 documentation, that it's not being exchanged and no one
13 wants to exchange it; is that my understanding?

14 Well, I will hear from you first.

15 MS MAILLET: No, Mr. Chair, I have no
16 problem exchanging my closing arguments, we just were
17 under the impression that the e-mail from the Tribunal
18 was that they would not be exchanged and they would
19 simply go to the Tribunal.

20 But I have extra copies, so, I have
21 no problem.

22 THE CHAIRPERSON: Mr. Kulbashian?

23 MR. A. KULBASHIAN: Ditto.

1 THE CHAIRPERSON: Sorry?

2 MR. A. KULBASHIAN: Ditto.

3 THE CHAIRPERSON: Sorry. And ditto?

4 MR. RICHARDSON: Same.

5 THE CHAIRPERSON: I mean, it's a
6 public document once it's filed anyway, so there is no
7 reason to -- and it will make it easier for everyone.

8 And I was going to say, particularly,
9 all of them refer to extracts from transcripts and so
10 on, so it's important for the other side to be able to
11 view it.

12 So, let's do what needs to be done.

13 They have extra copies because a copy
14 gets sent, it had a little draft written on it; right?

15 MS MAILLET: That's correct and I had
16 made final copies.

17 THE CHAIRPERSON: That's right. And
18 so we had made print-outs, but we won't use those.

19 --- Short pause

20 THE CHAIRPERSON: I'm quite
21 impressed. It will be easier for me to follow you. I
22 will probably be working with your documentation, all
23 three of you, rather than that, so...

1 --- (technical problems)

2 --- Upon recessing at 9:45 a.m.

3 --- Upon resuming at 9:50 a.m.

4 REGISTRY OFFICER: Order, please.

5 All rise.

6 Please be seated.

7 MS MAILLET: Mr. Chair, I think Mr.

8 Warman will begin and then I will follow.

9 THE CHAIR: Mr. Warman.

10 MR. WARMAN: Member Hadjis, if it
11 pleases the Tribunal, perhaps it would be easiest if we
12 handed out the books of authority now at this point.

13 THE CHAIRPERSON: Yes.

14 MR. RICHARDSON: The what, sorry?

15 THE CHAIRPERSON: The books of
16 authorities, it means the books that have photocopies
17 of decisions of courts and so on.

18 MR. RICHARDSON: Oh, okay.

19 THE CHAIRPERSON: Yes.

20 ARGUMENT BY MR. WARMAN:

21 MR. WARMAN: Good morning.

22 Words and symbols can wound just as
23 surely as any weapon.

1 Words marshalled together to form the
2 name of a neo-Nazi group such as the Canadian Ethnic
3 Cleansing Team are designed to terrorize their targets,
4 that in this case included Muslims, Jews, blacks and
5 other non-whites.

6 Symbols such as nooses and swastikas
7 present on websites were designed to evoke memories of
8 lynchings and the Holocaust, they're designed to
9 imprison people's lives within walls of fear.

10 After witnessing the horrors of the
11 Holocaust in World War II, Canada and the international
12 community came together in an attempt to establish a
13 legal framework through documents such as the Universal
14 Declaration of Human Rights, and later agreements like
15 the International Convention on the Elimination of all
16 Forms of Racial Discrimination to ensure that such
17 carnage would never again take place.

18 Article 1 of the Universal
19 Declaration of Human Rights states:

20 "All human beings are born free
21 and equal in dignity and
22 rights."

23 Article 7 holds that:

1 "All are equal before the law
2 and are entitled without any
3 discrimination to equal
4 protection of the law. All are
5 entitled to equal protection
6 against any discrimination in
7 violation of this Declaration
8 and against any incitement to
9 this discrimination."

10 Concerned with the enduring plague of
11 racism, the United Nations later enacted the
12 International Convention on the Elimination of all
13 Forms of Racial Discrimination.

14 Under Article 4 of the Convention,
15 Canada as a party;

16 "Shall declare an offence
17 punishable by law all
18 dissemination of ideas based on
19 racial superiority or hatred,
20 incitement to racial
21 discrimination, as well as all
22 acts of violence or incitement
23 to such acts against any race or

1 group of persons of another
2 colour or ethnic origin, and
3 also the provision of any
4 assistance to racist activities,
5 including the financing
6 thereof;"

7 And (b):

8 "Shall declare illegal and
9 prohibit organizations and also
10 organized and all other
11 propaganda, which promote and
12 incite racial discrimination,
13 and shall recognize
14 participation in such
15 organizations or activities as
16 an offence punishable by law;"

17 For the purposes of this case, part
18 of Canada's efforts to fulfil these obligations has
19 been the enactment of s. 13 of the Canadian Human
20 Rights Act.

21 Section 13 prohibits the
22 dissemination of hate messaging via the Internet that
23 is likely to expose persons to hatred or contempt on

1 the basis of their race, religion and national or
2 ethnic origin.

3 Having heard the evidence presented
4 by myself and Terry Wilson and that of the expert
5 witness, Dr. Henry, I am confident that the material
6 before you is sufficient to find that it constitutes
7 matters that are likely to expose members of the Jewish
8 and Islamic faiths, as well as blacks and other
9 non-whites to hatred or contempt and that the
10 respondents were part of groups of persons acting in
11 concert to communicate them.

12 No segment of our society should have
13 to suffer the kind of vilification present in this case
14 as an impediment to their ability to make for
15 themselves the lives that they are able and wish to
16 have.

17 For my own part, I wish to reiterate
18 that I believe that the message addressed to me by Mr.
19 Kulbashian contained in Vinland Voice No. 12, coupled
20 with his posting of my home address, would be taken by
21 any reasonable person as a threat.

22 Given the history of violence within
23 the neo-Nazi movement, this targeting of me on the

1 basis of the belief that I was Jewish, along with the
2 references to the Holocaust, caused me alarm and
3 concern for my personal safety.

4 I believe that this concern was
5 substantiated both by the subsequent actions of the
6 Ottawa police in response and the testimony of Det.
7 Terry Wilson who indicated that his reaction as a
8 police officer would have been to conduct a threat
9 assessment for the person had it happened in his
10 jurisdiction.

11 If the Tribunal upholds the complaint
12 in this case, when considering the appropriate
13 remedies, I believe it is important to remember that
14 the respondents have expressed no remorse and made no
15 apologies for their actions, instead the respondents
16 have sought to evade any responsibility.

17 There have been suggestions that
18 jokes mocking the murder of blacks and the Holocaust
19 should be seen as humour. That the purported intent of
20 such material is irrelevant, is demonstrated by the
21 Tribunal's finding in the Canadian Liberty Net hate
22 messaging case where the decision noted, quote:

23 "it matters not that the intent

1 of the speaker was humorous if
2 the effect is likely to expose a
3 person or persons to
4 discrimination under s. 13(1)
5 CHRA.

6 The purpose of the legislation
7 is to prevent discriminatory
8 effects rather than punish those
9 who discriminate."

10 In addition, there were reprehensible
11 efforts on the part of Mr. Kulbashian and Mr.
12 Richardson in their cross-examination of Dr. Henry to
13 resurrect historical canards such as that perhaps Jews
14 were in fact responsible for the Communist Revolution
15 in the Soviet Union, and that Judaism and its
16 scriptures are based upon religious supremacy and
17 permissive of any evil towards non-Jews.

18 Overall, given the presence of a
19 strong case against the respondents, I submit that it
20 is open to and would be appropriate for the Tribunal to
21 draw an adverse inference from the decision of the
22 respondents not to testify.

23 The respondents have made no effort

1 to take responsibility for their deeds and they have
2 not sought to make amends for the harm caused to the
3 community.

4 With this in mind, Martin Luther King
5 Jr. once said:

6 "Morality cannot be legislated
7 but behaviour can be regulated.
8 Judicial decrees may not change
9 the heart, but they can restrain
10 the heartless."

11 I realize that neither persistent
12 human rights work, nor the Tribunal will ever likely
13 fully eradicate the scourge of hatred.

14 Despite this, I believe that it is
15 imperative for all of us to stand in solidarity with
16 those who are targeted because history has taught us
17 that the cost of silence and inaction whenever any
18 group within our community is under attack is
19 ultimately far greater still.

20 And I believe that this is a message
21 that the Tribunal has a unique role in fulfilling.

22 I'm hopeful that the Tribunal will
23 send a strong message that in Canada today both the

1 groups targeted and those within the community who
2 stand with them will receive the full protection of the
3 law.

4 Although they were written in 1965,
5 the words of the Special Committee on Hate Propaganda
6 in Canada are as apropos now as they were then, and
7 sadly deal with many of the same themes as this hearing
8 today.

9 The Committee was comprised of then
10 McGill Law Dean Maxwell Cohen, Professors Mark
11 MacGuigan and Pierre Trudeau. They wrote:

12 "Canadians who are members of
13 any identifiable group in Canada
14 are entitled to carry on their
15 lives as Canadians without being
16 victimized by the deliberate,
17 vicious promotion of hatred
18 against them. In a democratic
19 society, freedom of speech does
20 not mean the right to vilify.
21 The number of organizations
22 involved and the number of
23 persons hurt is no test of the

1 issue: the arithmetic of a free
2 society will not be satisfied
3 with oversimplified statistics
4 demonstrating that few are
5 casting stones and not many are
6 receiving hurts. What matters
7 is that incipient malevolence
8 and violence, all of which are
9 inherent in "hate" activity,
10 deserves national attention.
11 However small the actors may be
12 in number, the individuals and
13 groups promoting hate in Canada
14 constitute a 'clear and present
15 danger' to the functioning of a
16 democratic society."

17 In closing, I wish to thank the
18 Tribunal and staff for your time and consideration and,
19 barring any questions from the Tribunal, those are my
20 submissions.

21 THE CHAIRPERSON: The final page
22 consists of the remedies being sought?

23 MR. WARMAN: It does, yes. And that

1 is identical to the material that was submitted in the
2 questionnaire to the Tribunal.

3 MR. A. KULBASHIAN: I would like to
4 object to that because there was a total of 10,000 for
5 me, 10,000 for James and 20,000 extra for me.

6 Over here there's a list of 50,000 in
7 total which I believe is different and it wasn't laid
8 out in this manner, which is a problem which I'd like
9 to get into, sorry.

10 THE CHAIRPERSON: First them, then
11 you.

12 MR. A. KULBASHIAN: Okay.

13 THE CHAIRPERSON: I have my
14 questions, but no debates. So, raise all that later,
15 okay.

16 So, your submission is that this
17 reflects what was set out in the material that was
18 submitted to the Tribunal questionnaire.

19 MR. WARMAN: To the best of my
20 knowledge this is in fact, just having cut and pasted
21 this from my submissions in response to the
22 questionnaire from the Tribunal, and if there is any
23 difference, then I would adopt these as an amended, but

1 I don't believe that there is.

2 THE CHAIRPERSON: Okay.

3 ARGUMENT BY MS MAILLET:

4 MS MAILLET: Good morning, sir.

5 Unfortunately, I'll be a little
6 longer than Mr. Warman.

7 THE CHAIRPERSON: Mm-hmm.

8 MS MAILLET: The first thing I'd like
9 to do, I apologize to the Tribunal and the parties for
10 the incredible number of typos that are found in my
11 closing argument. These were done mostly after hours
12 and using my typing technique of three or four fingers
13 and a lack of time to do a spell check.

14 I read it on the plane on the way
15 here and realized it's full of typographical errors, I
16 apologize for that.

17 However, the gist of my argument
18 still is understandable I believe.

19 The evidence in this case rests
20 solely or rests mostly on the testimony of Mr. Warman
21 and Det/Cst. Terry Wilson, two people I submit who are
22 incredibly committed to the eradication of hate in our
23 society.

1 Mr. Warman testified he's been
2 reading and researching in this area of white supremacy
3 and hate for the past 15 years, he's been heavily
4 monitoring hate sites on the Internet for the past five
5 years.

6 He's spent countless hours,
7 sacrificed personal finances and may well be risking
8 his safety often times in these pursuits.

9 Det. Wilson began investigating hate
10 crimes and was mandated to do so by the province for
11 the London Police Service in 1995.

12 During that time he indicated he had
13 taken numerous seminars and lectures on extremism as
14 well as hate crimes.

15 He's lectured to well over a thousand
16 police officers, probation officers and teachers on how
17 to recognize hate crimes, especially as how they relate
18 to the white supremacy movement.

19 It was suggested during
20 cross-examination by these respondents that his actions
21 in the criminal cases that we heard about were over
22 zealous and that he acted beyond the call of duty.

23 As I indicated in my argument here,

1 it's understandable that the respondents would perceive
2 his actions as such, but to the potential victims of
3 hate crime he was investigating, such as people in the
4 Jewish and Muslim communities, I'm certain that his
5 actions were viewed by them as admirable and as an
6 effort to protect the citizens he's there to protect.

7 In 2002 Mr. Wilson was awarded the
8 national award for combatting hate crime by the Simon
9 Weisenthal Centre because of his efforts, specifically
10 for this criminal investigation that he discussed
11 during his testimony.

12 In deciding on whether or not s. 13
13 of the Act breached the Charter's guarantee of freedom
14 of expression, in the Supreme Court of Canada case of
15 Canada v. Taylor, the court first looked at the
16 Canadian Human Rights Act as it's stated in s. 2.

17 That section states, and I'm
18 paraphrasing:

19 "The purpose of this Act is to
20 extend to the present laws in
21 Canada to give effect to the
22 principle that every individual
23 should have an equal opportunity

1 with other individuals to make
2 for himself or herself the life
3 that he or she is able and
4 wishes to have without being
5 hindered in or prevented from
6 doing so by discriminatory
7 practices based on race,
8 national or ethnic origin,
9 colour, religion...",

10 And so on.

11 The court then notes - and this is at
12 the Taylor case at tab 5 of the books of authority -
13 that Parliament has indicated that it views the
14 activity described in s. 13, that is communicating
15 messages that are likely to expose people to hatred
16 based on certain characteristics,

17 "...as contrary to the
18 furtherance of the equality."

19 And as Mr. Warman stated, the
20 Tribunal must always keep in mind that it's the effect
21 that these messages have on these victims that is
22 important.

23 The court also refers and cites the

1 Cohen Committee Report which Mr. Warman talked about,
2 as well as many other studies which identify the
3 serious harm caused by messages of hatred, noting that
4 individuals subjected to racial or religious hatred may
5 suffer substantial psychological distress. The
6 damaging consequences including a loss of self esteem,
7 feelings of anger and outrage and strong pressure to
8 renounce cultural differences that mark them as
9 distinct.

10 This intensely painful reaction
11 undoubtedly detracts from an individual's ability to,
12 in the words of s. 2 of the Act, make for himself or
13 herself the life that he or she is able or wishes to
14 have.

15 At the Court of Appeal in the Taylor
16 case, Justice Mahoney states that in his view,

17 "Canada is a multicultural
18 country ..such multiculturalism
19 represents a positive
20 characteristic of its national
21 persona. While racial and
22 religious strife were not
23 rampant in Canada, the great

1 upheaval and damage caused by
2 intolerance in certain other
3 nations amply illustrated the
4 potentially serious impact of
5 these prejudicial ideas."

6 It is my submission, sir, that the
7 material that is the subject of this complaint no doubt
8 would cause pain to the people it targets and likely
9 would be very disturbing to most others as well.

10 It is contrary to the values of
11 equality and multiculturalism that make Canada the great
12 country that it is.

13 I'd like to say that it's a shame
14 that we have young Canadians that feel they should
15 contribute to society by disparaging, ridiculing and
16 treating people as sub-human merely for being who they
17 are based on their ancestry, which is of course not
18 chosen.

19 There are five issues that need to be
20 determined by the Tribunal in this case. Firstly, did
21 the respondent, acting alone or within a group of
22 persons acting in concert with others, communicate or
23 cause to be communicated the material which is the

1 subject of this complaint.

2 And the material which is the subject
3 of this complaint was found in HR-1, mostly on the
4 websites of Tri-City Skins and Canadian Ethnic
5 Cleansing team.

6 Secondly, was the material
7 communicated telephonically or by Internet, and both of
8 these are by means of the facilities of a
9 telecommunication undertaking within the legislative
10 authority of Parliament.

11 Third, is the material likely to
12 expose persons to hatred or contempt based on those
13 persons being identifiable on a prohibitive ground and,
14 of course, that is the critical question. As stated in
15 my opening statement, the prohibited grounds in this
16 case are particularly Jewish, black and Muslim.

17 The next issue which must be
18 determined by the Tribunal is, is the respondent,
19 Affordable-Space exempt from liability under s. 13(3)
20 of the Act.

21 And then, of course, should the
22 Tribunal find that there's been a breach of s. 13,
23 damages will have to be considered.

1 There are five respondents in this
2 case: Alexan Kulbashian, Affordable-Space, James
3 Richardson, Tri-City Skins and the Canadian Ethnic
4 Cleansing Team.

5 And the Tribunal must determine for
6 each of these respondents whether or not they acted
7 alone or in concert with others and caused the material
8 in question to be communicated.

9 Beginning with Mr. Kulbashian, I'm
10 going to go through the evidence as it was brought out
11 at the hearing and I've cited the tabs where that
12 evidence can be find, however, it wasn't my intent to
13 go back to the documentary evidence, unless the
14 Tribunal wishes that I do so.

15 Most importantly is the evidence of
16 Terry Wilson. Both in his oral evidence as well as
17 what was supported by the transcript interview of Mr.
18 Kulbashian which was found at tab 62 of HR-1.

19 The evidence shows that Alexan
20 Kulbashian is Alex Krause is Totenkopf.

21 How do we know that? Firstly, in his
22 interview with Det. Wilson he admits to being so. He
23 says a couple of times that he is Alex Krause. He says

1 specifically, I identify myself as Alex Krause.

2 He also tells Det. Wilson that he's a
3 member of the Canadian Ethnic Cleansing Team since
4 either late 2000 or early 2001.

5 He tells him that he is part of the
6 group that started the Canadian Ethnic Cleansing Team
7 with James Richardson, that he was one of the founders
8 of the Canadian Ethnic Cleansing Team.

9 He told Terry Wilson that Canadian
10 Ethnic Cleansing Team got started when the website came
11 about.

12 Therefore, this was a group, in our
13 submission that existed mainly on-line.

14 He told Mr. Wilson that he was the
15 webmaster for the Canadian Ethnic Cleansing Team and
16 that, in fact, corresponds with the Vinland Voice
17 article which is found at tab 18 of HR-1.

18 He told Det. Wilson that he made the
19 template, that he created the layouts for the websites
20 and that he also designed the scripts.

21 He told Terry Wilson that he created
22 the symbols for the Canadian Ethnic Cleansing Team
23 which were found on the websites, and I believe they

1 were the half Canadian flag, half Celtic cross symbol
2 and to him Celtic cross meant white pride.

3 He told Det. Wilson that Totenkopf is
4 the brand name and that it is him.

5 He then distinguishes however, he
6 says, well, Totenkopf with the death head beside it is
7 him, but Totenkopf alone is not him, however, he admits
8 to submitting content under the name of Totenkopf and
9 there are actually a couple of articles that were
10 written which he admitted to writing and were signed
11 simply Totenkopf.

12 He told Det. Wilson that everyone
13 knows that Totenkopf is him. He also told Det. Wilson
14 that he made it public that he was leaving the Canadian
15 Ethnic Cleansing Team in December of 2001. This
16 corresponds with the message on the website that stated
17 that Alex Krause is leaving the Canadian Ethnic
18 Cleansing Team. That was in the Vinland Voice article
19 at tab 26 of HR-1.

20 He told them that any articles that
21 are sarcastic are him but he cannot recall which
22 articles he wrote because he writes a lot articles.

23 He did admit to writing two articles

1 for the Vinland Voice and signed them Totenkopf.

2 He told him that after James
3 Richardson was arrested he wrote and posted an article
4 in the Vinland Voice where he urges supporters to call
5 the phone number provided and ask for Terry Wilson,
6 dial star 67 to mask their caller ID and express their
7 disgust with him. That article is found at HR-3.

8 In my submission this shows that he
9 was able to post himself directly articles onto the
10 Vinland Voice or Canadian Ethnic Cleansing Team
11 website.

12 He also told Det. Wilson that he
13 requested that the article be edited to remove the
14 reference to Det. Wilson and to Det. McKinnon as it was
15 suggested at that point that that article may be
16 considered harassment of these police officers.

17 He told Det. Wilson he did this by
18 contacting the editors; however, the evidence in the
19 material will show that he was likely one of the
20 editors. My belief is that he removed the reference to
21 Det. Wilson and to Det. McKinnon himself.

22 He also indicates he arranged to have
23 the threatening article which James Richardson wrote on

1 September 14th in the Vinland Voice taken off of the
2 website. He again states he did this by contacting the
3 editors.

4 THE CHAIRPERSON: These statements
5 are all from?

6 MS MAILLET: Det. Wilson's testimony.

7 THE CHAIRPERSON: From his testimony
8 or from the transcript? Have we left--

9 MS MAILLET: This is all in the
10 transcript but he also testified. He read the
11 transcript in pretty much though.

12 Mr. Kulbashian also told Det. Wilson
13 that when he phoned him that he identified himself on
14 the phone as Alex Krause.

15 Mr. Kulbashian told Mr. Wilson that
16 when he phoned Mr. Richardson's apartment to speak with
17 Det. Wilson after James had phoned him to get rid of
18 the stuff after he was arrested, that that was in fact
19 him.

20 THE CHAIRPERSON: Again, this is an
21 admission that occurred in the interview that took
22 place --

23 MS MAILLET: That's right.

1 THE CHAIRPERSON: -- when Mr.
2 Kulbashian was interrogated by Mr. Wilson?
3 MS MAILLET: Exactly.
4 THE CHAIRPERSON: Okay.
5 MS MAILLET: Yes. And that was --
6 all of this evidence he gave orally, however he took it
7 from tab 62.
8 THE CHAIRPERSON: The witness Mr.
9 Wilson here was consulting --
10 MS MAILLET: That's correct.
11 THE CHAIRPERSON: -- that document?
12 MS MAILLET: That's correct.
13 THE CHAIRPERSON: Remind me again,
14 that document was -- the interview was tape recorded or
15 was it video recorded? Tape recorded?
16 MS MAILLET: It was both. I believe
17 it was both and he said he then reviewed the transcript
18 that had been typed up.
19 THE CHAIRPERSON: A secretary typed
20 it up.
21 MS MAILLET: That's right. And
22 assured himself that it was, in fact, representative of
23 what had been said. And, again, there is no evidence

1 to the contrary.

2 Now, the oral evidence of Det.
3 Wilson was again supported by tab 60 of HR-1 which was
4 his crown brief, indicates that as a result of an
5 article written by Mr. Kulbashian wherein he targets
6 Det. Wilson by urging supporters to contact him, an
7 investigation starts in order to identify who else Mr.
8 Richardson was working with.

9 And he believed that Mr. Richardson
10 was working with somebody else as a result of the phone
11 calls from Mr. Richardson's residence at the time of
12 his arrest, that included an in-coming call to the
13 residence of Mr. Richardson by a gentleman identifying
14 himself as Alex Krause who is the person that -- and
15 that is when Mr. Kulbashian in the interview with Mr.
16 Wilson admitted to doing so.

17 The officers also checked the phone
18 log which lists the last number called for Mr.
19 Richardson's residence and retrieved the phone number
20 of the person who had identified himself as Alex
21 Krause.

22 When Det. McKinnon contacted Alex
23 Krause, contacted t he same person at that phone

1 number, he also admitted that he was Alex Krause,
2 identified himself in that way.

3 Alex Krause then supplies Det.
4 McKinnon with a phone number where he could reach him
5 at any time. This was a different phone number than
6 initially used by the officers but in this one he was
7 advised that he could be reached 24 hours a day.

8 When the investigators, or the
9 officers conducted a background investigation into that
10 phone number it revealed it was registered to Alexan
11 Kulbashian 816 Grandview Way, North York.
12 At that point Det. Wilson testified he was convinced
13 that Alex Krause and Alexan Kulbashian were the same
14 person.

15 Det. Wilson also testified that he
16 spoke with a reliable confidential human source in the
17 white supremacist movement who told him that Alex Krause
18 and Totenkopf were, in fact, Alexan Kulbashian.

19 There was also an e-mail received by
20 the Toronto Police Department by a woman named Carol
21 Miles who advised that her daughter, which was Nicole
22 Taylor, was corresponding with Alexan Kulbashian and
23 that he was using the name Totenkopf CECT when they

1 communicated by e-mail.

2 On December 14th Cst. Jim Hogan of
3 the Metro Toronto hate crimes forwarded another e-mail
4 to Det. McKinnon involving this investigation. The
5 e-mail was authored Totenkopf CECT public/press
6 relations and that is, in fact, the same name that was
7 found in the business cards that were seized at Mr.
8 Kulbashian's residence.

9 THE CHAIRPERSON: Of which we have
10 photocopies; right?

11 MS MAILLET: Yes, we do. I believe
12 it's HR-9 or 10.

13 THE CHAIRPERSON: Why don't we just
14 take a look. HR-10 are photos of business cards.

15 MS MAILLET: In that e-mail Totenkopf
16 advises he's Alex Krause and he's sending this e-mail
17 to explain about the police action as a result of
18 another investigation that was happening in the United
19 States.

20 In that e-mail he states he can be
21 reached any time on his cell phone and produces a cell
22 phone number. It's the same phone number that's
23 supplied to Det. McKinnon back in October which came

1 back when they did a trace to Mr. Kulbashian.

2 December 16th Det. Wilson observed a
3 notice on the Canadian Ethnic Cleansing Team website
4 that again, as admitted by Mr. Krause, he was leaving
5 the Canadian Ethnic Cleansing Team, starting another
6 organization with the same goals.

7 Then there's a Cst. Sam Sam on
8 December 20th relayed information to Det. Wilson that
9 he had gone to speak to Alexan Kulbashian at his home
10 regarding an assault.

11 Cst. Sam advised Det. Wilson that
12 during this conversation Alexan Kulbashian admitted to
13 being Totenkopf as well as Alex Krause.

14 December 28th, Det. Wilson again
15 reviewed the Canadian Ethnic Cleansing Team website and
16 an updated notice appeared that Alex Krause or
17 Totenkopf is the web master of the website and that the
18 Canadian Ethnic Cleansing Team is going into a
19 transitional period.

20 With all of this information, on
21 January 29th Det. Wilson testified there was no doubt
22 in his mind that Alexan Kulbashian was using the name
23 Alex Krause and Totenkopf and that he was involved in

1 the threat communicated in the Vinland Voice by Mr.
2 Richardson on September 14th, 2001.

3 A search warrant was then issued for
4 Mr. Kulbashian's residence where a computer was seized
5 as well as T-shirts with swastikas on them, again the
6 business card of the Canadian Ethnic Cleansing Team as
7 well as a business card of Tri-City Skins.

8 We also saw a scrap book with racist
9 names and drawings. I believe that's at HR-10.

10 So, that's the evidence of Det.
11 Wilson.

12 Then we have the evidence that's on
13 the material in the websites.

14 Tab 18:

15 "Thanks to Totenkopf our web
16 master."

17 And again that corresponds with Mr.
18 Kulbashian's information given to Det. Wilson that he
19 is the web master of the websites.

20 Tab 21 is an article signed WPCANADA,
21 which it's our submission is Mr. Richardson.

22 Indicates:

23 "For those of you who are not

1 aware, Tri-City Skins are active
2 in the Kitchener Waterloo and
3 Hamilton area. This past week
4 crimes against Muslims has been
5 on the rise. Below you will see
6 an interview myself and
7 Totenkopf did earlier this week.
8 As I'm sure you can all be aware
9 of the police presence
10 surrounding us, we basically
11 denied everything and anything."

12 What was denied in that article, Mr.
13 Chair, was that they were involved in any violence or
14 that they were intending any violence.

15 "So take what you will from what
16 he said, just keep in mind this
17 doesn't necessarily reflect our
18 views and the war we are
19 fighting in our own backyards."

20 That was signed WPCANADA.

21 Then if you look at the copy of the
22 newspaper it was Mr. Richardson and Alex Krause who
23 were interviewed. So, on the website itself signed by

1 WPCANADA there's an article that WPCANADA and Totenkopf
2 are interviewed.

3 Go to the newspaper article it's Alex
4 Krause and James Scott.

5 There's another note from Totenkopf
6 at tab 22, there's another article from Totenkopf at
7 tab 24. That one states:

8 "Alex Krause's name has appeared
9 in NOW Magazine. He's been
10 "exposed". Oooh, another CECT
11 member has been "exposed" too
12 however his name wasn't
13 mentioned..."

14 Then, if you look at the article it
15 was "Skinheads On The March" which states:

16 "Alex Krause, a member of the
17 Canadian Ethnic Cleansing Team
18 who runs the server that the
19 Tri-City Skins et al uses to run
20 their websites, is reluctant to
21 get into detailed discussions of
22 the activities of any other
23 groups expect to say that they

1 use the Internet to network."
2 Alex Krause also wrote an article at
3 tab 25 concerning the Vox Candidi Project which
4 "...is striving to be the online
5 white nationalist update
6 headquarters. The project is a
7 monthly update board, open to
8 all groups worldwide, which will
9 work to keep everyone updated on
10 the status of our movement."

11 Then at tab 26 Alex Krause
12 (Totenkopf) writes another article stating he,
13 "...is leaving the Canadian
14 Ethnic Cleansing Team..."

15 Which corresponds with what he told

16 Terry Wilson:

17 "...and is bringing certain
18 projects to a stop, such as the
19 Vinland Voice and recruitment.
20 Web hosting however and National
21 Security and Intelligence
22 database will not be affected by
23 this.

1 One of the projects that will be
2 affected is any and all updates
3 to the sites."

4 He indicates he's:

5 "...creating a new organization
6 dedicated to the same cause."

7 Then Alex Krause states:

8 "This decision was extremely
9 difficult as it has been more
10 than a pleasure working with
11 CECT. As I stop the projects, I
12 am in the process of creating a
13 new organization by the name of
14 North American Culture and
15 Heritage Party. This will be
16 based on a completely
17 independent concept and
18 structure however still
19 dedicated to the same ultimate
20 cause..."

21 Of course white supremacy.

22 Tab 27, another article by Alex

23 Krause, it's requested that it be forwarded to everyone

1 on your list, and it's signed Totenkopf.

2 That article refers to the Human
3 Rights Tribunal indicating that:

4 "The Canadian Ethnic Cleansing
5 Team and Tri-City Skins may
6 possibly get the honour of
7 showing up in front of judges
8 that get paid to piss on the
9 constitution."

10 Article 8 then states -- or the
11 article at page 8, I'm sorry, then states:

12 "Please forward this to everyone
13 on your list...", an it
14 discusses the anti-racist
15 database, and it's my belief
16 that that relates to the
17 National Security and
18 Intelligence database that Mr.
19 Kulbashian indicated that would
20 not be affected by him leaving
21 the Canadian Ethnic Cleansing
22 Team."

23 What that database was, he indicates:

1 "...wants to build it into a
2 massive publicly accessible
3 database to warn and educate
4 people about the presence of
5 danger and trash in their cities
6 and communities.
7 That database was initially a
8 Canadian Ethnic Cleansing Team
9 project that grew into a
10 collaborative project with
11 contributions from other groups
12 in Canada.
13 Even though C.E.C.T. was no
14 longer solely in charge of the
15 project, we are still going to
16 be active in promoting it. To
17 accommodate growth and
18 advancement we are giving it a
19 facelift. The new name for the
20 project is the National Security
21 and Intelligence database. Send
22 any information you have on
23 anti-racist members, organizers,

1 supports or events or anything
2 you can find to submit..."

3 And at tab 28 you have another
4 message from Alex Krause, that's at Vinland Voice No.
5 14, he indicates:

6 "As most of you are aware by now
7 this will be my last broadcast
8 from the Vinland Voice and my
9 last few days with the CECT as
10 the group's directorship gets
11 transferred.

12 An intro by the new director can
13 be read in this week's issue of
14 the Voice."

15 He then says:

16 "This was Alex Krause reporting
17 from the Vinland Voice. You can
18 visit the site for my new
19 organization the Canadian
20 National Front...For those of
21 you e-mailing me at
22 krause@wpcect.com or
23 totenkopf@wpcect.com..."

1 And it shows the old and the new
2 e-mail addresses where he can be reached.

3 The Editor's Voice in that article
4 was signed by Alex Krause.

5 Then there's a message from the new
6 editor of the Vinland Voice that says:

7 "The editorship of the Vinland
8 Voice has once again exchanged
9 hands."

10 Tab 39 another article signed Alex
11 Krause with the Totenkopf symbol at the bottom, it's
12 called the voice of the white race, indicates that:

13 "The C.E.C.T. has been operating
14 a hosting server for the past
15 year and offers cheap space for
16 racialist hosting."

17 That's also what he told Det. Wilson,
18 was that Affordable-Space was cheap and that's why a
19 lot of people were going to him.

20 That article also states:

21 "C.E.C.T. is closely affiliated
22 with the Tri-City Skinheads and
23 at that moment C.E.C.T is facing

1 some hardship due to the arrest
2 of one of its leaders."

3 At that time James Richardson had
4 been arrested.

5 Mr. Kulbashian is also connected to
6 the groups and by the evidence of the mailing
7 addresses.

8 At tab 30 you'll find a Whois search
9 result for the Tri-City Skins. Mr. Warman testified he
10 personally performed this search and downloaded it from
11 the Internet.

12 The administrative contact there is
13 listed as:

14 "Totenkopf can be reached at
15 totenkopf@wpcept.com..."

16 And the mailing address is P.O. Box
17 1061-31 Adelaide Street, Toronto, Ontario.

18 The domain server listed for the
19 Tri-City Skins is Affordable-Space.

20 Then at tab 31 you have a Whois
21 search for the Canadian Ethnic Cleansing Team
22 administrative contact and billing contact is Totenkopf
23 and WPCANADA and you have the same P.O. Box as the

1 Tri-City Skins at 1061-31 Adelaide Street East.

2 Domain server listed for C.E.C.T is
3 affordable-space.com.

4 At tab 32 there's an article in the
5 materials that indicates:

6 "C.E.C.T has a P.O. Box."

7 Again, as confirmed by the Whois
8 search performed by Mr. Warman at the same P.O. Box on
9 Adelaide Street.

10 Now, Mr. Warman did a Google search
11 on Alexan Kulbashian which was downloaded on November
12 20th and there was a special thanks on there to Alexan
13 Kulbashian for the server hosting of the Zoom Film
14 Festival.

15 At tab 35 there's a Whois search,
16 again performed by Mr. Warman, for the Zoom Film
17 Festival and the server is Affordable-Space.

18 Mr. Warman also did a search for
19 Affordable-Space and the address listed for the
20 administrative contact is again P.O. Box 1061 on
21 Adelaide Street.

22 At tab 40 there's a Vox Candidi
23 website, Canadian National Front, that indicates:

1 "As most of you know, CNF
2 co-director and ex-C.E.C.T.
3 director Alex Krause has been
4 arrested for facilitating the
5 commission of an offence."

6 We know that Mr. Kulbashian was
7 arrested by Det. Wilson for just that.

8 And indicates:

9 "Send money to P.O. Box 1061-31
10 Adelaide Street East."

11 At tab 51 there is an article by Alex
12 Krause, it's called Pulling the Race Card Where Race
13 Isn't The Issue, and it's for EAN News c/o of C.E.C.T.
14 P.O. Box 1061, again, 31 Adelaide Street.

15 The article states:

16 "Blacks worry that their people
17 are suddenly being persecuted
18 with little or no evidence to
19 justify, in our minds at least,
20 the posting of a new flyer that
21 I have created."

22 And then it gives an URL address on
23 the Canadian Ethnic Cleansing Team website referring to

1 the place where someone could find that article as well
2 on the C.E.C.T. website authored by Alex Krause.

3 The last paragraph of that article by
4 Alex Krause states:

5 "It's ironic and hypocritical
6 that the black community which
7 produces the majority of violent
8 criminals, rapists and sex
9 offenders in our society, as
10 well as gangs that use identical
11 violent tactics, should feel
12 threatened and feel victimized
13 by this isolated incident."

14 There were also numerous newspaper
15 articles, Mr. Chair, and I recognize that you know,
16 that goes to weight, however, it's my submission that
17 in light of all the evidence that I have just
18 summarized and the fact that there are many newspaper
19 articles that consistently report the same thing that
20 greater weight should be given to it than would
21 otherwise.

22 At tab 37 the Toronto Star newspaper
23 article entitled: Racist Site Mocks Police Web Page

1 indicates:

2 "The website is the 23rd site
3 with racist content that has
4 been linked to a downtown
5 Toronto post office. Sgt. Don
6 McKinnon of London's Hate Crime
7 Unit has called it the Grand
8 Central Station of hate
9 propaganda. McKinnon heads the
10 three-man London unit that has
11 been investigating the websites
12 for a year. He's been trying to
13 shut down the server, the
14 physical point of origin where
15 the web pages are stored, but
16 it's in California. It's
17 difficult to shut down because
18 American freedom of speech laws
19 are different.
20 In yet another incident
21 involving a site hosted on the
22 server, London police have
23 arrested and charged two men

1 after a declaration of war
2 against the Jewish and Arab
3 communities was posted in a
4 newsletter from a site on the
5 server soon after September
6 11th. James Richardson, a
7 26-year-old Hamilton man,
8 formerly of London, and Alexan
9 Kulbashian, a 20-year-old North
10 York man are each facing a total
11 of six charges."

12 There is again another article at tab
13 45 in the Kitchener/Waterloo Record: Racist Charged
14 with Making Death Threats. Again it deals with the
15 interview that was addressed in the article in Vinland
16 Voice.

17 "James Richardson identified
18 himself as both the leader the
19 Canadian Ethnic Cleansing Team
20 and a member of the Tri-City
21 Skins and openly expressed
22 extreme racist views. "My
23 ultimate goal is a totally white

1 country", he said. "Most of the
2 problems in society stem from
3 immigration. I will not be happy
4 until every non-white person is
5 gone from this country."
6 But in an interview yesterday
7 another man claiming to be a
8 leader of the Canadian Ethnic
9 Cleansing Team said police are
10 over reacting. Alex Krause said
11 he and Richardson are actually
12 the only formal members of the
13 Canadian Ethnic Cleansing Team
14 which they created as an
15 information network for white
16 supremacists around the
17 country."

18 Again, that also corresponds with
19 what he told Det. Wilson, was that he and Mr.
20 Richardson were the founders.

21 "As the only other formal member
22 of the group he said he has
23 never considered murder or any

1 violence against Muslims or Jews
2 in retaliation for the terrorist
3 attacks by suspected Islamic
4 extremists.

5 Krause agreed that the Tri-City
6 Skins has many more members and
7 is growing like wild fire."

8 I won't read all of the articles,
9 there's another one at tab 46 which cite both Mr.
10 Krause and Mr. Richardson for their extreme racist
11 beliefs.

12 Again at tab 27 there was a NOW
13 Magazine article which I referred to earlier.

14 THE CHAIRPERSON: Tab 47.

15 MS MAILLET: 47, I'm sorry.

16 It's my submission, sir, that there
17 is no doubt that Alexan Kulbashian was a person and was
18 part of a group acting in concert that was
19 communicating or causing to be communicated the
20 material which forms the basis of this complaint which
21 was posted on the Canadian Ethnic Cleansing Team and
22 the Tri-City Skins websites.

23 It's our position as well that the

1 newsletter the Vinland Voice which was a link on the
2 Canadian Ethnic Cleansing Team site was also actually
3 part of that site, even though both Mr. Warman and Mr.
4 Wilson testified they could get to it by going to the
5 site directly, it had its own address, but it was
6 accessible as a newsletter link on the Canadian Ethnic
7 Team site.

8 THE CHAIRPERSON: Sorry, I want to be
9 clear on that on.

10 Which sites were accessible as a
11 link?

12 MS MAILLET: The Vinland Voice
13 newsletter, the link was on the Canadian Ethnic
14 Cleansing Team site under newsletter, however, the
15 evidence was that you could also -- it had also its own
16 address that you could go directly to the Vinland
17 Voice.

18 THE CHAIRPERSON: Now, I just want to
19 be clear. What is the connection?

20 Much of the material, if my
21 recollection is correct, and the material that was
22 referred to in the complaint for instance, including
23 the photographs and the jokes and so on, were on the

1 Tri-City Skins website; right?

2 MS MAILLET: Right.

3 THE CHAIRPERSON: Now, I see a lot of
4 reference to Vinland Voice. Where is the linkage with
5 the Tri-City Skins, those web pages?

6 MS MAILLET: With Mr. Kulbashian?

7 THE CHAIRPERSON: With Mr.

8 Kulbashian?

9 MS MAILLET: It's mainly through his
10 hosting the site.

11 He indicates -- Det. Wilson did
12 indicate that Mr. Kulbashian had told one of the
13 officers he was a member of the Tri-City Skins and
14 there was also the business card of the Tri-City Skins.
15 There was also I believe under the Canadian Ethnic
16 Cleansing Team one of the articles that indicated they
17 were closely connected with the Tri-City Skins.

18 THE CHAIRPERSON: The legislation
19 that I am dealing with here deals with the publication
20 through the Internet in this particular case of this
21 information, membership is not what's in issue here.

22 MS MAILLET: That's correct, as long
23 as they cause to be communicated.

1 THE CHAIRPERSON: So, the cause to be
2 communicated, in your submission, is the web hosting.

3 MS MAILLET: For the Tri-City Skins
4 material, yes.

5 THE CHAIRPERSON: I'm referring only
6 to the Tri-City Skins material at this moment.

7 MS MAILLET: Yes.

8 THE CHAIRPERSON: We have several
9 types of material. I'm just looking at the Tri-City
10 Skins material.

11 MS MAILLET: Yes, there is some
12 evidence, albeit I will admit weak evidence, that he
13 was involved more than that, but most of the evidence
14 points to him hosting and possibly providing some
15 technical support to the website.

16 THE CHAIRPERSON: And I'm making this
17 question in the sense that from what I have just heard
18 in your submissions, you were making connections with
19 the name Krause and Totenkopf with signatures as
20 editors and so on.

21 MS MAILLET: Yes.

22 THE CHAIRPERSON: You do not have
23 similar type of evidence or indication in the Tri-City

1 Skins website? What I just said was referring to
2 something on Vinland Voice; right?

3 MS MAILLET: That's right.

4 THE CHAIRPERSON: That's where you
5 saw references to Mr. Krause signing the document;
6 right?

7 MS MAILLET: That's right, other than
8 I believe it was the administrative and billing contact
9 for that website was Totenkopf.

10 MR. A. KULBASHIAN: For which
11 website, sorry?

12 THE CHAIRPERSON: I think we're
13 talking about Tri-City Skins.

14 MS MAILLET: Yes.

15 MR. A. KULBASHIAN: I think she's --

16 THE CHAIRPERSON: Don't. You will
17 have your opportunity. I'm just asking questions here.

18 MS MAILLET: At tab 30 we have the
19 Whois search result for the Tri-City Skins.

20 THE CHAIRPERSON: Yes.

21 MS MAILLET: The administrative
22 contact I believe is listed as public/press relations,
23 C.E.C.T Totenkopf. It's our submission that that is

1 Mr. Kulbashian.

2 THE CHAIRPERSON: Okay.

3 MS MAILLET: Again, it's the same
4 post office box as his company, Affordable-Space has,
5 Canadian Ethnic Cleansing Team and Tri-City Skins.

6 THE CHAIRPERSON: Okay.

7 MS MAILLET: How are we doing for
8 time?

9 THE CHAIRPERSON: Well, it's 10:40,
10 we began a bit late.

11 Is there a need for a break?

12 MS MAILLET: I'm okay.

13 THE CHAIRPERSON: Can you keep going?

14 MS MAILLET: Sure.

15 The next respondent Affordable-Space.

16 This company was owned and solely
17 operated and solely owned by Mr. Kulbashian. It's our
18 submission that company caused to be communicated hate
19 messages as part of a group of persons acting in
20 concert under s.13.

21 It's our submission that they should
22 not be protected from liability by the exception for
23 telecommunication undertakings under s.13(3).

1 THE CHAIRPERSON: I have a question
2 here.

3 You say this company was owned. Do
4 we have evidence that it was a corporation?

5 MS MAILLET: We have evidence that he
6 owned a company, I'm not certain if we have any
7 incorporation documents, but -- and we'll get to that
8 evidence. There was also a bail condition that he
9 transfer ownership.

10 There was a document that Mr. Wilson
11 observed that he had transferred ownership of the
12 company.

13 It's our submission as well that it
14 does not need to be an incorporated company for an
15 order of this Tribunal.

16 Affordable-Space was an Internet
17 service provider, more specifically a host server,
18 which caused to be communicated the materials which
19 were found on the website of Tri-City Skins and
20 Canadian Ethnic Cleansing Team.

21 Richard Warman was trying to help us
22 in describing what a service like a server would offer.
23 A server or service provider like Affordable-Space how

1 these groups gain access to the Internet.

2 So, first a group would register a
3 domain name, such as cect.com or tri-cityskins.com,
4 which is the website name, with a domain name
5 registrar, and there was evidence that Affordable-Space
6 was providing that service as well, the domain name
7 registrar.

8 And then you go to an Internet
9 service provider or a server who will provide Internet
10 access for the website.

11 Now, sir, there's a case at tab 16,
12 Supreme Court of Canada, it's called the SOCAM case,
13 Society of Canadian - I can't remember the whole name
14 right now - and it explains in that case fairly easily
15 what a host server is and explains its role in terms of
16 getting material onto the Internet for its clients.

17 MR. A. KULBASHIAN: Which tab?

18 MS MAILLET: That's at tab 16.

19 THE CHAIRPERSON: Tab 16 of your
20 authorities?

21 MS MAILLET: Yes.

22 THE CHAIRPERSON: Which is Volume 2?

23 MS MAILLET: That's right.

1 THE CHAIRPERSON: And the case is
2 called SOCAM which is an abbreviation acronym for
3 Society of Composers, Authors and Music Publishers of
4 Canada --

5 MS MAILLET: That's correct.

6 THE CHAIRPERSON: -- of Canada. And
7 that was the case from last year --

8 MS MAILLET: That's correct.

9 THE CHAIRPERSON: -- that dealt with
10 copyright legislation.

11 MS MAILLET: That's correct. If
12 you'd like to go to it now, it's at paragraph 8, page
13 8, as well as paragraph 9, paragraph 18.

14 I thought that might be helpful.

15 THE CHAIRPERSON: Right, okay.

16 So it describes how the Internet
17 process works.

18 MS MAILLET: That's right, and it
19 accords with the explanation as well that Mr.
20 Kulbashian gave to Det. Wilson in his interview when he
21 was explaining how it works.

22 I believe the evidence at the hearing
23 shows that Alexan Kulbashian owned and operated

1 Affordable-Space and that he not only had knowledge of
2 the material on the websites, which were its clients,
3 but Mr. Kulbashian personally caused these materials to
4 be communicated and, in fact, through Affordable-Space,
5 had control over which websites were hosted based on
6 the contents of those websites. That was the evidence
7 that he gave to Det. Wilson.

8 He tells Det. Wilson that
9 Affordable-Space is a server, specifically a hosting
10 server, and that he runs and manages the server.

11 He also told Terry Wilson that he
12 registers domains, which is website names and that
13 everybody registers to his account because it's secure.

14 He tells Det. Wilson that people
15 contact him in order to have an account to host a
16 website; i.e., people want space on the Internet. He
17 tells him that Tri-City Skins is on his server and pays
18 \$10 a month, however, he donates the space to Canadian
19 Ethnic Cleansing Team because he's a part of it.

20 He also provided space to the Vinland
21 Voice and he indicates he manages 80 sites, 20 of which
22 are racist. Tells Terry Wilson he doesn't agree with
23 anti-racist sites and he would never knowingly sell

1 them space. He tells him he always has control over
2 the people he sells space to and can choose who not to
3 sell space to.

4 He tells Terry Wilson that he
5 wouldn't sell space and then Mr. Wilson gave him a
6 bunch of examples, Southern Poverty Centre, B'Nai Brith
7 and so on, I believe he said because he doesn't agree
8 with them.

9 He indicates that when companies or
10 groups indicate what the domain name that they want is
11 then that gives him an idea of who they are and he can
12 pick choose to sell space to depending on what he
13 thinks their website is about.

14 He also told Terry Wilson that if
15 someone told him it was a white supremacist site and
16 then he realized it was an anti-racist site, he would
17 refund them and tell them to get lost.

18 Terry Wilson also testified that
19 ownership of Affordable-Space was transferred from Mr.
20 Kulbashian to a man by the name of Steve Weigand I
21 believe -- I don't know if I'm spelling it properly.

22 Mr. Wilson had stated he observed a
23 document that was put forth at some point in the

1 criminal proceedings confirming that Mr. Kulbashian had
2 transferred ownership of Affordable-Space to Mr.
3 Weigand and during his questioning, his
4 cross-examination by Alexan Kulbashian, Mr. Kulbashian
5 did talk to him about that document.

6 Again --

7 THE CHAIRPERSON: One second I just
8 want to be clear. That last phrase, you are referring
9 to the cross-examination by Mr. Kulbashian of Det.
10 Wilson in this hearing?

11 MS MAILLET: That's correct. And at
12 one point they're discussing the document which
13 transferred ownership. Unfortunately the document was
14 not produced.

15 Again, the domain server for Tri-City
16 Skins, Canadian Ethnic Cleansing Team is
17 Affordable-Space as we saw at tab 30 and 31, the domain
18 server is listed there is affordable-space.com, same
19 address as Canadian Ethnic Cleansing Team and the
20 Tri-City Skins.

21 Again, affordable-space.com has an
22 address listed under the Zoom Film Festival for which
23 they thanked Mr. Kulbashian and the P.O. Box is again

1 on Adelaide Street, same address as the groups.

2 In another newspaper article at tab
3 36, 22 Racist Sites Linked to Toronto, it indicated:

4 "22 white supremacist websites
5 are all hosted by the server
6 affordable-space.com registered
7 to a P.O. Box 1061 Adelaide
8 Street.

9 Again at tab 38 we have Mr.
10 Kulbashian's resume where he indicates: President of
11 affordable-space.com which offers website hosting,
12 design and technical support.

13 Then we have got some court documents
14 at tab 43, there's a bail recognizance document that
15 was requested from the criminal court by Mr. Warman,
16 which are the bail release documents for Mr.
17 Kulbashian, conditions of bail: 1) shut down the
18 websites Canadian Ethnic Cleansing Team and Tri-City
19 Skins as well as the American Nazi party, and he was
20 required to cancel affordable-space.com's contract with
21 the California Regional Internet Inc., also known as
22 Cari Net.

23 It's our submission that by knowingly

1 hosting websites that had the content which are likely
2 to breach s. 13, Affordable-Space was part of a group
3 of persons acting in concert that caused to be
4 communicated the material in question.

5 And I'll get to our submissions
6 concerning why they are not exempt from liability
7 under s. 13(3) later on in my submissions.

8 The next respondent is James Scott
9 Richardson.

10 It's my submission that the evidence
11 clearly shows that in his capacity as a white
12 supremacist and in his involvement with the Canadian
13 Ethnic Cleansing Team and Tri-City Skins James Scott
14 Richardson is WPCANADA, he's also referred to himself
15 as James Scott to the media.

16 Evidence shows that Mr. Richardson
17 was one of the founding members of the Canadian Ethnic
18 Cleansing Team. It's my submission he was also a
19 director, editor, author and a member of both groups
20 and, therefore, he acted in concert with a group of
21 persons and caused to be communicated the hate
22 messages.

23 The evidence also shows that Mr.

1 Richardson communicated hate messages directly and
2 personally by authoring articles written under
3 WPCANADA.

4 Most of this evidence came from Det.
5 Wilson and, again, I'll list briefly how he came to
6 conclude that Mr. Richardson was, in fact, WPCANADA
7 on-line.

8 Mr. Wilson testified that in 2001
9 police were notified of a white supremacist gathering in
10 Woodstock. Among the identified participants was a
11 male known as James Scott Richardson of Hamilton. He
12 proudly identified himself as a member of the Canadian
13 Ethnic Cleansing Team to Det. Cst. Longworth. This
14 information was then relayed to Det. Wilson who
15 commenced an investigation into the white supremacist
16 sites in southern Ontario as part of his job as an
17 investigator of hate crimes.

18 One of the sites he found was the
19 Tri-City Skins website which provided a guest book
20 where electronic mail address of Coxwain24 WPCANADA,
21 which I will refer to as WPC, was found and he noted
22 that it listed an address in London.

23 He then started an Internet e-mail

1 conversation with WPC and he indicated he used the
2 fictitious names of Conrad Macdonald and Jen Macdonald.

3 In these e-mails WPC talked about the
4 white supremacist movement and the Canadian Ethnic
5 Cleansing Team. He signed these e-mails 88 at the
6 bottom which means heil Hitler in the Nazi community.

7 There were several conversations back
8 and forth in August between WPC and Det. Wilson.

9 MR. RICHARDSON: Mr. Chairman?

10 THE CHAIRPERSON: Yes.

11 MR. RICHARDSON: Excuse me. Why does
12 the Commission refer to everybody else as Alex Krause
13 or Terry Wilson and me as WPC.

14 THE CHAIRPERSON: No, no, the
15 reference is to the e-mail address. You are referred
16 to as J --

17 MR. RICHARDSON: JR.

18 THE CHAIRPERSON: JR, yes.

19 That's the e-mail address, sir. That
20 is what I understood. Am I right?

21 MS MAILLET: Yes. The pseudonyms
22 used by Mr. Kulbashian are Alex Krause and Totenkopf
23 and when I referred to that I would say Alex Krause and

1 Totenkopf.

2 Mr. Richardson's pseudonym was
3 WPCANADA and I will refer to that as WPCANADA.
4 WPCANADA is who Det. Wilson was communicating with.

5 THE CHAIRPERSON: Okay. So, when you
6 refer to Mr. Richardson elsewhere in your text you
7 refer to him as JR, or always WPC?

8 I see JR.

9 MS MAILLET: No, JR was how I --

10 THE CHAIRPERSON: I understand your
11 submissions. They are her submissions. If you can't
12 follow, you know, ask a question later, but she is
13 using WPC for the web --

14 MS MAILLET: That's how he signs
15 his --

16 THE CHAIRPERSON: That's how it's
17 alleged that you signed --

18 MR. RICHARDSON: I signed Coxwain too
19 and she doesn't have Coxwain down there at all.

20 THE CHAIRPERSON: you can make that
21 in your submissions at the end.

22 MR. RICHARDSON: This is garbage.

23 THE CHAIRPERSON: No, Mr. Richardson,

1 please. You will have your opportunity to argue
2 yourself at the end.

3 MR. RICHARDSON: I don't think my
4 afternoon is going to matter, anything I have to say.

5 THE CHAIRPERSON: Mr. Richardson.

6 MR. RICHARDSON: I will be quiet now.
7 I wanted to say that.

8 THE CHAIRPERSON: Mr. Richardson, let
9 me explain this, perhaps you are not following.

10 These are legal submissions. We have
11 had all the evidence on the record, it's all been
12 filed. So, now what everyone has the opportunity to do
13 is to take the evidence that is in the record and argue
14 it.

15 Now, each person has their own point
16 of view. It just follows. That's what legal
17 submissions are.

18 You try to present the evidence in
19 the best light for your end for the case that you wish
20 to present.

21 So, from the point of view of the
22 Commission, it's alleged that there was a website that
23 had the names Coxwain24WPCANADA and WPC. I'm gathering

1 from where the submissions are leading, there is an
2 allegation that that would have been you.

3 It is just their point of view. It
4 does not mean that it is the final story on this.

5 You will have your opportunity to add
6 or complete or, you know, make your own submissions in
7 all this.

8 MS MAILLET: And, again, instead of
9 indicating Coxwain WPCANADA every time, I shortened it
10 as WPC.

11 Now, again, there were several
12 conversations back and forth between WPC and Det.
13 Wilson and the first -- WPC sent Terry Wilson sent the
14 First Edition of the Vinland Voice newsletter with an
15 attachment that could be distributed.

16 Det. Wilson then requested a contact
17 number from the person he was e-mailing which was
18 Coxwain24WPCANADA, where WPC provided a phone number
19 and he then identified himself as James.

20 THE CHAIRPERSON: Is that found in an
21 e-mail? Do we have a copy of this e-mail, or is it
22 just his testimony?

23 MS MAILLET: I believe this was his

1 testimony and it was put in his crown brief at HR-1,
2 tab 60.

3 THE CHAIRPERSON: I'm sorry. Mr.
4 Richardson, please.

5 MR. RICHARDSON: Sorry.

6 MS MAILLET: It was his oral
7 evidence.

8 THE CHAIRPERSON: Okay.

9 MS MAILLET: If you just give me a
10 moment I can check to see. Perhaps this is a good time
11 for a short break.

12 THE CHAIRPERSON: Okay. We will take
13 our morning break. It is 11 o'clock.

14 REGISTRY OFFICER: All rise.

15 --- Upon recessing at 11:00 a.m.

16 --- Upon resuming at 11:20 a.m.

17 REGISTRY OFFICER: Order, please.

18 All rise.

19 Please be seated.

20 MS MAILLET: Mr. Chair, I just
21 finished going through e-mail conversations that
22 WPCANADA had with Terry Wilson; one where he signed
23 e-mail 88 at the bottom, another where he sent the

1 First Edition of Vinland Voice, and then another where
2 he gave his phone number and I did check and those are
3 reproduced at HR-7.

4 THE CHAIRPERSON: HR-7. I will just
5 take a quick look.

6 MS MAILLET: And when James writes to
7 Jen and Conrad --

8 THE CHAIRPERSON: Yes, I see the
9 first page right there where the telephone number is.

10 MS MAILLET: The rest follows.

11 THE CHAIRPERSON: Okay.

12 MS MAILLET: Det. Wilson then
13 continued to receive Vinland Voice Editions 2, 3 and 4
14 from Mr. Richardson.

15 He also states during that
16 investigation that the London police received
17 complaints at an address at 390 Southdale Road where
18 the superintendent complained of stickers, racial
19 stickers that were found the elevators.

20 Det. Wilson checked the number that
21 was supplied to him by WPCANADA in the e-mails and the
22 number came back to an address at 601-390 Southdale
23 Road in London.

1 Det. Wilson then attended this
2 address and was told by the superintendent that James
3 Scott Richardson lived at that address with a woman by
4 the name of Maggie Shearer and produced a leasing
5 agreement that's been produced at HR-5.

6 Terry Wilson was then convinced that
7 WPCANADA who identified himself as James in the e-mail
8 and who supplied him with the phone number that came
9 back to an address where James Scott Richardson lived
10 was, in fact, James Scott Richardson.

11 At one point Det. Wilson was sent an
12 edition of the Vinland Voice by e-mail on September
13 14th, 2001. He compared the Vinland Voice he had
14 received by e-mail with that found on the website and
15 concluded that they were exactly the same.

16 Det. Wilson's opinion that article,
17 which was signed by WPCANADA, in his opinion it was a
18 threat to people and property.

19 On September 27th Det. Wilson spoke
20 with James Richardson by calling the number that was
21 provided by James in the e-mails and told him he wanted
22 to meet him.

23 James Richardson advised Det. Wilson

1 that he worked full time for the Canadian Ethnic
2 Cleansing Team and asked Det. Wilson if he wanted
3 pamphlets or propaganda.

4 James Richardson advised he would
5 bring Maggie to the meeting and that he worked in
6 conjunction with Tri-City Skins, Northern Alliance and
7 other racialist sites.

8 Det. Wilson during his testimony
9 indicated that Northern Alliance was considered by the
10 police to be a threat to minorities with connections to
11 the Ku Klux Klan.

12 Det. Wilson received an electronic
13 e-mail from James who agreed to meet with him on
14 September 28th, 2001.

15 At that point Det. Wilson applied for
16 a search warrant for that address of James Richardson
17 to search the residence of James Richardson because he
18 believed the article in the September 14th Vinland
19 Voice constituted a threat, amongst other things, and
20 was a death threat to the Jewish and Muslim
21 communities.

22 The search was executed September
23 28th. Det. Wilson called Mr. Richardson in the lobby

1 again using the number that had been provided to him by
2 James in the e-mails. Then he entered the resident at
3 601-390 Southdale Road and arrested Mr. Richardson.

4 At that point a Mr. Chris Stumpf was
5 with Mr. Wilson in order to deal with the electronic
6 evidence and securing that evidence.

7 The computer was seized along with
8 the attachments and was stored in the crime analysis
9 department pursuant to the policies and procedures of
10 the London Police Service.

11 Det. Wilson testified that the
12 computer was put in a locked cabinet and tagged with an
13 exhibit number and a file number and was stored there
14 by Cst. Stumpf exclusively and only retrieved by him.

15 Det. Wilson testified that at no time
16 would any other person than Cst. Stumpf have access to
17 the computer, it was therefore secure and safe from any
18 other accidental damage.

19 Other items were seized from the
20 residence. A bomber jacket with Tri-City Skins,
21 Canadian Ethnic Cleansing Team emblems and it and uncut
22 business cards, again from the Canadian Ethnic
23 Cleansing Team for the name WPCANADA recruiting

1 director as found at HR-9.

2 James Richardson at that point asked
3 Det. Wilson if he could call his lawyer. He advised
4 Det. Wilson that the number was on speed dial. Det.
5 Wilson then pushed the button, put the phone to James
6 Richardson's ear who screamed, get rid of all the shit.

7 Det. Wilson realized at that point it
8 was obviously not his lawyer and hung up the phone. At
9 that point as well Det. Wilson realized that James
10 Richardson was obviously working with somebody else.

11 As they were escorting James
12 Richardson from the building, James Richardson yelled
13 out 'fucking Jews'.

14 While the search was being conducted,
15 Det. Wilson testified that the phone rang and Det.
16 Wilson answered. He indicated a male on the other end
17 proceeded to use profanity in his conversation with
18 Det. Wilson.

19 Det. Wilson then went back to the
20 police department, received a call from a man
21 identifying himself as Alex Krause and admits he was
22 the person who yelled at him at James Richardson's
23 residence. That's also the evidence that Mr.

1 Kulbashian -- or the information Mr. Kulbashian gave
2 Det. Wilson in his interview that it was in fact him
3 that had called and he used the profanity and he
4 apologized for doing so.

5 Alex Krause also stated to Det.
6 Wilson that he was a member of the Canadian Ethnic
7 Cleansing Team and Tri-City Skins and that the search
8 warrant he used wasn't worth the paper it was written
9 on, he should get ready to throw out the evidence.

10 Det. Wilson interviewed James
11 Richardson who advised he was a white supremacist and
12 he was involved in the distribution of the Vinland
13 Voice by being the proofreader or editor and other
14 people were involved in writing the articles.

15 He denied at that point any
16 involvement in the article which Terry Wilson opined
17 posed a threat against Jews and Muslims of September
18 14th, 2001.

19 Now, as a result of the search
20 warrant, the hard drive was removed -- or the hard
21 drive was retrieved from Cst. Stumpf by making an image
22 and Det. Wilson testified it's by booting the
23 analytical machine with ENCASE boot disk, it creates an

1 ENCASE image or mirror image with which he can work
2 then without altering the hard drive.

3 And I believe that's all explained at
4 HR-8, Cst. Stumpf's affidavit.

5 Cst. Stumpf - and I believe this is
6 in his affidavit as well - then copied out C.E.C.T. and
7 First Edition file directories from the Mydocuments
8 directory. He also copied a file which he believed to
9 be an Internet chat program data file.

10 He also downloaded exact copies of
11 three specific web pages being the tri-cityskins.com,
12 vinlandvoice.com, and canadianethnicleansingteam.com.

13 MR. RICHARDSON: Where were these
14 downloaded from?

15 THE CHAIRPERSON: Well --

16 MR. RICHARDSON: She didn't relate to
17 it in like, through the book.

18 THE CHAIRPERSON: Okay.

19 MS MAILLET: I believe it's in Cst.
20 Stumpf's affidavit at HR-8.

21 THE CHAIRPERSON: When you referring
22 to the affidavit, did he actually attach to his
23 affidavit the print-outs of those?

1 MS MAILLET: No, I don't believe it
2 is.

3 THE CHAIRPERSON: It's just mentioned
4 in his affidavit.

5 MS MAILLET: He indicates what he
6 did and what he downloaded.

7 MR. RICHARDSON: Did he download from
8 the hard drive?

9 THE CHAIRPERSON: No, no, no,
10 questioning.

11 MR. RICHARDSON: Okay.

12 MS MAILLET: Det. Wilson then
13 testified that an image of the hard drive is made to
14 work from to protect the integrity of the material
15 because every time they would open it up otherwise it
16 would be altered in the sense that there would be an
17 entry which was not there previously just by clicking
18 it open.

19 THE CHAIRPERSON: This is in Det.
20 Wilson's testimony?

21 MS MAILLET: That's correct. Now,
22 one of the items that was found on James Richardson's
23 hard drive was the Vinland Voice article of September

1 14th.

2 When Det. Wilson opened and examined
3 that article he observed that the computer gives a
4 start date and a date it was last edited or a date the
5 article was last modified.

6 The date that this letter of
7 September 14th was last modified was at 3:45 a.m. on
8 September 14th which is prior to the time that it was
9 placed on the Internet. This confirmed to Det. Wilson
10 that the draft version of the article of September
11 14th, 2001 was on Mr. Richardson's computer prior to it
12 being posted on the Internet.

13 The evidence from the hard drive
14 itself and specifically from the chat lines also
15 confirmed that James Scott Richardson is WPCANADA.

16 I won't go through these in detail I
17 will just try to summarize it quickly.

18 At tab 50 there was the inventory of
19 files found on the CD. And if you click on logs, at
20 tab 51 you will find an inventory of D drives which is
21 the print-out of logs which was on the list of
22 inventory at tab 50.

23 The logs were the Internet relay

1 chats with eight different people, #wpcanada, BOB,
2 Bootboy, Chloe25, FdaJEWS, I think it was Fukmedia not
3 Kukmedia, IhateJews and TankTCS.

4 Now at tab 52 it's the WPCANADA log.

5 On Monday, September 3rd, Det. Wilson
6 gave evidence that at 14:20:35 the topic was:

7 "WWW.wpcect.com join our
8 newsletter..."

9 And so on.

10 Mr. Warman testified that throughout
11 all of these chat lines the consistent pseudonym is
12 WPCANADA.

13 Throughout these chats every time
14 somebody writes to WPCANADA or often WPCANADA
15 responds -- every time they refer to James, WPCANADA
16 responds to that name. So we have:

17 "WPC changes topic to
18 'www.vinlandvoice.com'"

19 And:

20 "DeadGrl waves at James and says
21 buh bye."

22 Page 8 WPCANADA indicates Sheila
23 Copps is from his home town of Hamilton.

1 Page 13, Totenkopf writes:

2 "hey James wake up."

3 Tank at page 14 says:

4 "james, the image of the cect
5 logo u sent me, what's it
6 called?"

7 And then:

8 "WPCaway - i didn't send it
9 yet."

10 There was also evidence WPCaway is
11 what happens if you're away from the computer for a
12 short time.

13 Tank says:

14 "james, do you like it?"

15 And WPCaway says:

16 "yes cect under it."

17 Page 15, Tanktcs says:

18 "i will have a nazi shirt for
19 you james."

20 And WPCANADA answers:

21 "ok."

22 Page 17, Tank says:

23 "and james, what ones did you

1 want?"

2 WPC answers:

3 "I want both black."

4 And so on.

5 He also says at page 22:

6 "did you guys like this weeks

7 voice?"

8 Page 23 he says:

9 "you should write an article for

10 us."

11 He says:

12 "send e-mail to cect@wpcect.com

13 and put bones subscribe and I

14 will hook you up."

15 WPC has a conversation indicating he

16 was blind in one eye.

17 WPC indicates that Brian Caldwell

18 called his mom's house looking to interview him for

19 C.E.C.T. which corresponds with the article at tab 45

20 of Brian Caldwell.

21 He indicates in his chat that Brian

22 Caldwell had asked for Totenkopf and my mom was like

23 huh? and he said, I will get Alex to play head games.

1 WPC asks another person on the chat
2 line:
3 "did you get the record?"
4 I'm assuming it's the Kitchener
5 Waterloo Record.
6 "- tomorrow's will be worth the
7 walk
8 - Alex and I did a 45 min.
9 interview
10 - it should be good we liked a
11 lot"
12 WPC indicates at page 29:
13 "wow this weeks voice is gonna
14 be big again"
15 Tank says:
16 "- james, we made the front
17 page of the newspaper "
18 And WPC says:
19 " - todays...wait until you see
20 tomorrow"
21 And then Tank references the article
22 from Brian Caldwell of September 19th, 2001.
23 WPC again talks about how Brian

1 Caldwell phoned his house and he also says when Tank
2 asks him:

3 "- I hope you didn't tell him
4 shit about TCS"

5 WPC says:

6 "- I admitted to being a member"

7 And in that article that is, in fact,
8 the case where James Richardson admits to being a
9 member.

10 He indicates at tab 54 in the BOB
11 chat directory, or chat title:

12 "cept is huge now bro... we are
13 all other n. america and getting
14 big in england as well and we
15 have a weekly newsletter called
16 the Vinland Voice..."

17 "...see the links section in
18 www.wpcept.com you will see all
19 the people we host and supply
20 service for for free."

21 Tab 55 with Chloe25.log, WPC

22 indicates that he's:

23 "- finishing the web page for

1 the vinland voice, a weekly
2 white newspaper that I do...it
3 circles the world...ect has
4 three other directors it is a
5 team thing, we know our stuff."

6 Indicates at page 3 that he founded
7 ect and it keeps him busy, it's the biggest white
8 pride or white power org in Canada.

9 Tab 56 WPC says we started a
10 newsletter which is Vinland Voice.

11 Then fdajews says to WPC that he ran
12 into old guys in Toronto, they are wondering about
13 Alex, like he has so much money and shit but he's
14 giving all these people web space and P.O. Boxes et
15 cetera.

16 WPC says:

17 "- ect pays for it we have lots
18 of servers and we do it for
19 free"

20 Indicates, again they were talking
21 about Alex and he:

22 "- ...spends a lot of his
23 personal dough on donating web

1 space...he is the best thing
2 that has come to this movement
3 in years"

4 fdajews says:

5 "-I put a link to you guys on my
6 website"

7 Again puts the C.E.C.T. P.O. Box
8 which is the same as referred to numerous times.

9 Tab 56, WPCaway says:

10 "- I was just finishing off the
11 home page for the vinland voice,
12 it should be 100% tonight."

13 "Have a huge hosting"

14 Again indicates how to get there
15 through the Canadian Ethnic Cleansing Team website.

16 Then on September 14th, tab 58,
17 ihatejews.log:

18 "- hey, I just wanted to say
19 that I saw that CECT newsletter
20 you put out a couple of days ago
21 and I really appreciated it the
22 support the canadians are
23 showing for our country..."

1 WPC says:

2 "- np man -"

3 I assume no problem:

4 " - wait until you see
5 tomorrows..a cect
6 declaration of war against
7 the B'nai Brith, Jews,
8 Muslims A whole bunch of
9 theories and people
10 opinions"

11 Tab 59 tanktcs says:

12 "i'm going to make the page to
13 sell the on, buti have no
14 address or name for ppl to send
15 money orders too"

16 WPC says:

17 "- hmmm, email alex, I am sure
18 he will let you use the po box"

19 As a result of this information
20 provided in the print-out of the chat lines from James
21 Richardson's hard drive, Det. Wilson obtained a search
22 warrant to search Execulink which was the ISP that
23 James Richardson was using.

1 That search warrant confirmed that
2 communications by WPCANADA were traced back to James
3 Scott Richardson at 390 Southdale Road, telephone
4 number provided for the registrant to Execulink was the
5 same as that supplied by James Richardson to Conrad
6 Macdonald. A search warrant result is found at HR-4.

7 This confirmed to Det. Wilson that
8 James Richardson was signing on line as WPCANADA to
9 talk on the chat lines.

10 He then talked about how the
11 information is obtained by Execulink. That's also
12 described at HR-4 by Execulink in terms of, every time
13 you go on line the Internet service provider gives you
14 a code number and that's through that code number that
15 it's traced to the registrant of that e-mail address.

16 And I state that at when in Det.
17 Wilson's evidence he went through that information
18 which was found at tab 52.

19 It's my submission that all of this
20 evidence taken together establishes that James Scott
21 Richardson is the person that signs both the chat lines
22 and the articles as WPCANADA. It's also believed one
23 of the contacts for the websites, I believe it was

1 Canadian Ethnic Cleansing Team.

2 The material in the websites also
3 supports his integral involvement with Canadian Ethnic
4 Cleansing Team as editor, director, founder, leader and
5 author.

6 Tab 18 of the Vinland Voice article
7 is signed WPCANADA, tab 20 is also signed WPCANADA.

8 At tab 21 WPCANADA wrote an article
9 about an interview that he did with Totenkopf that I
10 spoke of earlier.

11 And then the article itself was
12 posted directly underneath the one authored by WPCANADA
13 which identifies James Richardson and Alex Krause,
14 Totenkopf, as being interviewed.

15 The newspaper articles I referred to
16 also support this and they're the same newspaper
17 articles that I referred to earlier with respect to Mr.
18 Kulbashian's connection to the websites.

19 Now, the Tri-City skins and the
20 Canadian Ethnic Cleansing Team are two other
21 respondents.

22 It's clear that these groups
23 communicated the messages that are the subject of this

1 complaint and are proper respondents in this case.

2 Although there is no evidence that
3 they're incorporated, the evidence shows that these
4 respondents are groups which are subject to the
5 Canadian Human Rights Act.

6 They have websites, they have a P.O.
7 Box, they have members and directors and they are also
8 identified by emblems. It's, therefore, within the
9 authority of the Tribunal to make a cease and desist
10 order as against these groups.

11 At HR-9 and 10 we have Det. Wilson's
12 evidence that the emblems found there were in fact the
13 emblems for the Canadian Ethnic Cleansing Team and the
14 Tri-City Skins. It also matched the emblems as they
15 were posted on the websites.

16 Courts have made cease and desist
17 orders in the past against groups that aren't
18 incorporated, some in fact were merely concepts the
19 court found and they still were found to be identified
20 as groups.

21 THE CHAIRPERSON: And you cite these
22 authorities below?

23 MS MAILLET: I do, and I don't intend

1 to go through them all. These are simply cases that
2 are found in the book of authorities and I indicate
3 where they are found in the book of authorities.

4 THE CHAIRPERSON: I will ask you the
5 question at this point. Does it also extend to other
6 remedies? I see you are speaking here about cease and
7 desist orders, but you are seeking other remedies as
8 well, financial ones, compensation from unincorporated
9 groups?

10 Have orders of that nature been
11 issued and how does that...

12 MS MAILLET: Mr. Warman may be able
13 to speak to that better than I can.

14 MR. WARMAN: If I may?

15 MS MAILLET: Or I can discuss it with
16 him.

17 THE CHAIRPERSON: I don't want to
18 interrupt your evidence but -- you know what, actually
19 I suppose it's appropriate I hear just one side. So,
20 let's get this issue out of the way right now.

21 MR. WARMAN: Yes, in fact not only
22 cease and desist orders but in fact the Federal Court
23 has also issued contempt citations against groups,

1 fined them, imprisoned leaders of the groups and...

2 MS MAILLET: I believe it's the
3 Liberty Net.

4 MR. WARMAN: Yes.

5 THE CHAIRPERSON: I would like you to
6 refer me to the authority instead of just...

7 MR. WARMAN: The Heritage Front case
8 that is listed in the book of authorities. There's the
9 Liberty Net.

10 THE CHAIRPERSON: Both Heritage Front
11 and Liberty Net?

12 MS MAILLET: Actually the Taylor
13 case.

14 THE CHAIRPERSON: These are all
15 unincorporated groups?

16 MS MAILLET: Yes.

17 MR. WARMAN: In fact they were in
18 fact unincorporated neo-Nazi or white supremacist groups.

19 MS MAILLET: Actually in the Taylor
20 case at the Federal Court level the group known as the
21 Western Guard Party was condemned to pay a fine in the
22 amount of \$5,000.

23 MR. WARMAN: And these were previous

1 s. 13 complaints.

2 THE CHAIRPERSON: Okay. To the other
3 parties, do you understand what my question was?

4 MR. RICHARDSON: I want to know if
5 there's a difference between criminal - because this
6 isn't a criminal proceeding, right, so he's saying --

7 THE CHAIRPERSON: You can make that
8 argument, but...

9 MR. A. KULBASHIAN: My question is --

10 THE CHAIRPERSON: I'm asking for --

11 MR. A. KULBASHIAN: This would be
12 relating to this actually, directly. Just one question
13 is how o they know if it's unincorporated or not?

14 THE CHAIRPERSON: Well, presumably
15 it's in the decisions.

16 The answer I have to my question -
17 and you can deal with this in your side, remember, we
18 are not cross-examining each other here today, you are
19 only talking to me one at a time.

20 I asked a question of whether in any
21 of the authorities - authorities means other decision,
22 other cases - there have been instances where
23 unincorporated groups, groups that don't have -- that

1 aren't unincorporated.

2 Do you both understand what I mean by
3 saying incorporated?

4 MR. V. KULBASHIAN: Yes.

5 THE CHAIRPERSON: Have been condemned
6 to pay amounts, be they fines or be they compensation
7 in the form of damages, and it was indicated to me that
8 I can find such instances in the cases called Heritage
9 Front, Liberty Net and Taylor in the books of
10 authorities.

11 Maybe we should for the record state
12 which tabs they are in and maybe you could even take me
13 to that, if you could.

14 I'm addressing myself now to the
15 Commission and complainant.

16 MS MAILLET: Yes, the Taylor case is
17 found at tab 4.

18 THE CHAIRPERSON: Okay. That's the
19 Federal Court decision; right?

20 MS MAILLET: That's correct.

21 THE CHAIRPERSON: Is it the same one
22 that went upstairs afterwards too?

23 MS MAILLET: It did.

1 THE CHAIRPERSON: Okay. So, when it
2 was heard in the review of the Tribunal decision...

3 MS MAILLET: That's correct.

4 THE CHAIRPERSON: Right, yes.

5 MS MAILLET: That's what I believe.

6 THE CHAIRPERSON: Under the old Act.

7 MS MAILLET: Right.

8 THE CHAIRPERSON: So, I see at
9 paragraph 13 I see mention of this:

10 "The Western Guard Party is
11 not..."

12 Are you all with me on this, the
13 paragraph?

14 MR. A. KULBASHIAN: Yes.

15 MS MAILLET: And I have highlighted I
16 believe --

17 THE CHAIRPERSON: And there was a
18 highlight on the side, that's why I went straight to
19 it.

20 "The Western Guard Party is not
21 incorporated but does constitute
22 a group of persons acting in
23 concert as provided for under s.

1 13 of the Act."

2 Okay, so there is a condemnation
3 immediately following that:

4 "The Western Guard Party is
5 therefore condemned to pay a
6 fine in the amount of \$5,000."

7 MS MAILLET: Correct.

8 THE CHAIRPERSON: And was there any
9 reference to this in the ensuing appeals all the way to
10 the Supreme Court?

11 MS MAILLET: It really -- and I read
12 these cases and it didn't seem to be a huge issue
13 whether or not these groups were proper respondents,
14 but the Tribunals were finding that they believed they
15 were a group for different reasons as stated, group
16 names, symbols, letterhead, P.O. Box, officers, leaders
17 and so on.

18 MR. WARMAN: In fact in the Heritage
19 Front case it's stated --

20 THE CHAIRPERSON: That would be tab?

21 MR. WARMAN: Excuse me.

22 THE CHAIRPERSON: I'm trying to help
23 you here, I'm looking myself. I found Liberty Net at

1 13.

2 MS MAILLET: As well in the Smith and
3 Western Guard Party at tab 15, and this is in fact the
4 Taylor case that went to the Supreme Court.

5 THE CHAIRPERSON: Oh, it began --

6 MS MAILLET: It actually is the very
7 first Tribunal hearing.

8 THE CHAIRPERSON: Okay.

9 MS MAILLET: And at paragraph 41 page
10 24 of 37 it talks about why it constitutes a group.

11 THE CHAIRPERSON: I am sorry, page
12 41?

13 MS MAILLET: Paragraph 41, page 24.

14 THE CHAIRPERSON: Okay.

15 MS MAILLET: I apologize, I could
16 have gone through all of these.

17 THE CHAIRPERSON: All right. And
18 this is reflected later in the Federal Court
19 decision --

20 MS MAILLET: That's correct.

21 THE CHAIRPERSON: -- with regard to
22 the same complaint?

23 MS MAILLET: That's correct.

1 THE CHAIRPERSON: All right. And the
2 other case you were referring to, Mr. Warman, were
3 Heritage Front and Liberty Net?

4 MS MAILLET: There's also Liberty Net
5 at tab 9.

6 THE CHAIRPERSON: Tab 9, okay.

7 MS MAILLET: And page 27, I'm sorry.

8 THE CHAIRPERSON: Page 27. Okay, I
9 was about to ask you.

10 MS MAILLET: Indicates the order --

11 THE CHAIRPERSON: Okay, here it is.

12 MS MAILLET: -- against both Derek
13 Peterson and Canadian Liberty Net either by themselves
14 or servants, agents and so on.

15 THE CHAIRPERSON: And there was no
16 evidence here that Liberty Net was incorporated?

17 MS MAILLET: No.

18 THE CHAIRPERSON: So, it's your
19 submission - and I will find the other one, Heritage
20 Front, at some point, Mr. Warman.

21 MR. WARMAN: If I may just make
22 specific reference to, yes, that is here readily
23 available, it's tab 4, it's the Taylor and it's

1 paragraph 13.

2 THE CHAIRPERSON: I think we just
3 read that.

4 MR. WARMAN: Yes, but I just draw
5 your attention to a specific part of it where it talks
6 about the Federal Court accepts the fact that if it was
7 within the Tribunal's jurisdiction to issue an order
8 against them, then it was possible then for the Federal
9 Court to issue contempt citations against them.

10 THE CHAIRPERSON: Since that group of
11 persons - it's a very short paragraph. What exactly
12 are you referring to?

13 MR. WARMAN: It states:

14 THE CHAIRPERSON:

15 "Since that group of persons
16 acting in concert was amenable
17 to the order of the Commission
18 in joining it..."

19 MR. WARMAN:

20 "...it follows that for the
21 purposes of the Act this is an
22 entity capable of being cited
23 and punished for contempt."

1 So, clearly it's acceptable not just
2 for the Commission's purposes but also the Supreme
3 Court.

4 THE CHAIRPERSON: To close from this
5 then from your end, it is your submission that there is
6 no obstacle and no problem for a Tribunal to issue an
7 order, be it for compensation or of any other nature
8 against what may just be a name reflecting an
9 unincorporated group of persons.

10 MS MAILLET: Group of persons, that
11 is correct, and there is evidence that they are
12 actually formed as a group, they have a website, they
13 have directors, they have people that say they are
14 leaders, they have emblems, they have business cards.

15 THE CHAIRPERSON: In that sense, yes.

16 MS MAILLET: Yes.

17 THE CHAIRPERSON: But in the
18 corporate sense it may not exist as such and there is
19 no - any issue relating to execution of such an order
20 should not be of concern to the Tribunal at this stage;
21 is that what your submission is?

22 MR. WARMAN: Yes, that becomes an
23 enforcement issue.

1 THE CHAIRPERSON: That strikes me as
2 an obvious problem here.

3 MS MAILLET: Yes.

4 THE CHAIRPERSON: If we're talking
5 about a website or server and it's not incorporated,
6 I'm turning back to affordable-space.com now, where
7 does the sheriff go with the writ of execution?

8 MS MAILLET: Well, that would be an
9 enforcement issue where we would have to prove that it
10 had breached the cease and desist order if that should
11 be the case.

12 MR. WARMAN: In fact, the issue would
13 relate more to the body itself, so the Affordable Space
14 as what, in my submission, would be a sole
15 proprietorship under Mr. Kulbashian or Canadian Ethnic
16 Cleansing Team or the Tri-City Skins, you would then
17 delve into the law of unincorporated voluntary
18 associations where the members who take action under
19 the name of the unincorporated voluntary association
20 are subsequently held responsible for those actions
21 under those groups.

22 THE CHAIRPERSON: Possibly jointly
23 and severally?

1 MR. WARMAN: Exactly, yes. And in
2 fact, sorry just to finish that thought, the case law
3 under s. 13 of the Act predominantly dealing with
4 telephone hate lines quite clearly, in my submission,
5 would state there is no problem issuing orders against
6 unincorporated hate groups.

7 THE CHAIRPERSON: I heard your
8 answers but I'm mindful of the fact that we got very
9 legalistic there, so if either Mr. Kulbashian or Mr.
10 Richardson had any difficulty with understanding -- you
11 did not understand, Mr. Richardson?

12 MR. RICHARDSON: No, I understood.
13 I'm fine.

14 THE CHAIRPERSON: Both of you?

15 MR. A. KULBASHIAN: Yeah.

16 MR. RICHARDSON: The only question I
17 have relating to this --

18 THE CHAIRPERSON: Address it to me
19 though.

20 MR. RICHARDSON: Yeah, the C.E.C.T.
21 website -- well, all of the websites have been closed
22 for numerous years, so I mean how are you going to
23 enforce something that is enforceable?

1 That was my question.

2 THE CHAIRPERSON: While that would be
3 a good argument, it is a question that has crossed my
4 mind, so I will put it to you, Ms Maillet.

5 MS MAILLET: Yes, that is exactly I
6 believe what happened in the Kyburz case where the
7 Patriots on Guard website was no longer operating and
8 the order was still made -- that's at tab 17 of the
9 book of authorities.

10 THE CHAIRPERSON: Just a second.

11 It is in evidence, maybe you are
12 getting to this, but it is in evidence that some of
13 these websites or all of them were shut down, or
14 subsequently shut down?

15 MS MAILLET: Yes, that's correct.
16 That's correct.

17 THE CHAIRPERSON: I think Mr. Wilson
18 testified to that, maybe Mr. Warman too.

19 MS MAILLET: I think Mr. Warman
20 testified that it had attempted to be resurrected at
21 some point in 2003, but that's the evidence as I
22 recall.

23 THE CHAIRPERSON: So, that's in the

1 evidence. I'm going to review the evidence.

2 MR. WARMAN: I think really what the
3 issue is is because the Commission and Tribunal process
4 take a certain amount of time, it is entirely possible
5 under Internet conditions that a website will cease to
6 exist.

7 THE CHAIRPERSON: Right. And your
8 evidence was that at the time your complaint was filed
9 in 2001 -- or 2002, I believe it was; right? Am I
10 correct on that?

11 MS MAILLET: February, yes.

12 THE CHAIRPERSON: 2002, that the
13 websites were operating.

14 MR. V. KULBASHIAN: February.

15 MR. WARMAN: I'd have to go back.

16 THE CHAIRPERSON: Okay. Anyway,
17 there is no --

18 MS MAILLET: There's no evidence that
19 they are up and running right now.

20 THE CHAIRPERSON: No evidence that
21 they are up and running right now?

22 MS MAILLET: That's correct.

23 MR. WARMAN: The issue of seeking the

1 remedy is prescriptive so that they do not subsequently
2 re-appear and we have seen an attempt to resurrect the
3 Tri-City Skins website at one point, so you know the
4 idea is simply to look forward and say they shall not
5 recommence their activities.

6 THE CHAIRPERSON: But the order would
7 be nonetheless limited to the group name?

8 MR. WARMAN: Yes, the Canadian Ethnic
9 Cleansing Team, Tri-City Skins, Affordable-Space and
10 then the two individual respondents.

11 MR. A. KULBASHIAN: The quick
12 question that I have is if the group was not served
13 what would happen.

14 MS MAILLET: That's dealt with in the
15 case of Nealy v. Johnston at tab 12 and they talk about
16 how due notice --

17 THE CHAIRPERSON: Are you getting to
18 that in your argument later on?

19 MS MAILLET: Well, I might as well go
20 to it right now. Just give me one second.

21 At that point it was s. 40 of the Act
22 that indicates that it does not require personal
23 service and that adequate notice had been given to the

1 three respondents, and in looking at how adequate
2 notice had been given, the Tribunal goes through - and
3 this is at page 25 of my closing argument.

4 THE CHAIRPERSON: Where, page 25?

5 MS MAILLET: Page 25 of my closing -
6 this is all found at tab 12 of the book of authorities
7 in the case of Nealy v. Johnston.

8 THE CHAIRPERSON: I'm looking at page
9 25.

10 MS MAILLET: Of my closing, yes.

11 THE CHAIRPERSON: It begins Nealy
12 from the previous page. That's right, okay.

13 So we're there, this is actually
14 where we are right now.

15 MS MAILLET: Yes.

16 THE CHAIRPERSON: So, why don't I let
17 you continue. Thank you for your information,
18 gentlemen, but now we will allow Ms Maillet to
19 continue.

20 So, go ahead, yes.

21 MS MAILLET: And the Tribunal is
22 stating that adequate notice had been given to the
23 groups. He had indicated that the Church and Terry

1 Long are closely linked as is also evident from the
2 statements in the press attributed to Mr. Long.

3 THE CHAIRPERSON: You are referring
4 back to page...

5 MS MAILLET: Nealy v Johnston.

6 THE CHAIRPERSON: I know, but within
7 the text here that we're reading right now.

8 MS MAILLET: At the top of page 25.

9 THE CHAIRPERSON: At the top of page
10 25. Yes, sorry.

11 MS MAILLET: It cites at page 4 of 25
12 of the case, and what the Tribunal looked at in finding
13 that there was adequate notice to the groups was that
14 the other respondent, the people respondent - if I
15 could use that term - were linked with the groups and
16 that was clear from newspaper articles, the Tribunal
17 found, all of which featured interviews with Long in
18 which he asserted his role as the leader of the group,
19 which is exactly on point with what we have before the
20 Tribunal now.

21 MR. A. KULBASHIAN: My question
22 basically was --

23 MS MAILLET: The Tribunal found --

1 THE CHAIRPERSON: You will make your
2 arguments at the end.

3 MS MAILLET: Tribunal was -- sorry.

4 THE CHAIRPERSON: Just save it for
5 the -- see how it is going to work - I'm sorry to
6 interrupt, we will get back to you Ms Maillet - how it
7 is going to work, I hear one argument, I hear your
8 arguments and any issues raised by you in your
9 arguments are dealt with in reply thereafter again by
10 Commission and complainant, all right.

11 So, you know, I asked you a specific
12 question about another point and you raised some other
13 issues and I thought it appropriate to present them,
14 but I am going to ask you to just withhold your
15 comments until your turn, unless I specifically ask for
16 them.

17 MR. A. KULBASHIAN: Fine.

18 THE CHAIRPERSON: Go ahead, Ms
19 Maillet, Nealy and Johnston.

20 MS MAILLET: Yes. And again, the
21 Tribunal found that the individual and the group were
22 so connected that they did have due notice of the
23 complaint against the groups.

1 He indicated:

2 "The Tribunal is satisfied that
3 there exists strong
4 circumstantial evidence linking
5 both Terry Long and Randy
6 Johnston with the messages and
7 that these messages are put out
8 under the name of Aryan Nations
9 Church which uses the same
10 postal address as Terry Long."

11 Again, Mr. Kulbashian who was the
12 sole owner of Affordable-Space had a post office box
13 which was the same as the Canadian Ethnic Cleansing
14 Team and Tri-City Skins.

15 We had the newspaper articles where
16 they admitted to being leaders of these groups, as well
17 articles found on the websites themselves talk about
18 the complaint. I believe it's at tab 27, the Editor's
19 Voice, I believe it was Alex Krause that authored that,
20 indicated that Canadian Ethnic Cleansing Team and the
21 Tri-City Skins may possibly get the honour of showing
22 up in front of judges. They also talk about making Mr.
23 Warman cry. I believe it's tab 25:

1 "Issue has a special message
2 from Alex Krause, sends out a
3 big hello to Richard Warman."

4 So, it's our submission that there is
5 enough circumstantial evidence in this case that there
6 are strong links between Mr. Kulbashian and Mr.
7 Richardson with the groups that they had notice of this
8 complaint.

9 The next question for the Tribunal is
10 whether the material was communicated telephonically or
11 by Internet.

12 Section 13 of the Act was amended in
13 December, 2001 to include the Internet. The evidence
14 before the Tribunal is that a lot of these messages
15 were viewed prior to that, however some were viewed
16 after that.

17 The Kyburz decision also deals with
18 this issue whereby the messages -- it wasn't clear
19 whether the messages were posted, and on the Internet
20 either before or after the amendments to the Act.

21 It's the Commission's position that
22 the definition of communicate telephonically includes
23 communication via the Internet as the old section

1 indicated.

2 We adopt the reasoning as found in
3 the case of Citron v. Zundel that communicating via the
4 Internet is, in fact, communicating telephonically and
5 is doing so repeatedly.

6 I believe the Tribunal in that case
7 said the nature of the Internet itself causes the
8 material to be communicated repeatedly.

9 It's our submission that the Tribunal
10 must apply a broad and purposeful interpretation of the
11 Act and allow the Act to be adapted to keep pace with
12 the realities of technological advancement as was
13 found in the Zundel case.

14 To find otherwise, would reduce the
15 effectiveness of the Act to fulfil its purpose, the
16 advancement of equality.

17 It's our submission that the fact
18 that the legislation was amended by s. 13(2) which
19 indicates "for greater certain", to include the
20 Internet is indicative of Parliament' intent to have
21 the Act apply to the Internet both before and after the
22 amendment.

23 THE CHAIRPERSON: Okay. Because the

1 incidents took place before the amendments; right?

2 MS MAILLET: Yes, some did. There
3 was some evidence that material was viewed after as
4 well, but it's our submission that regardless, it
5 applies to the Internet.

6 MR. A. KULBASHIAN: When was the
7 amendment?

8 THE CHAIRPERSON: The amendments
9 occurred --

10 MS MAILLET: December, 2001 I believe
11 was the anti-terrorism legislation.

12 THE CHAIRPERSON: Was it actually
13 passed or did it come into force at that time?

14 MS MAILLET: I think it came into
15 force at that time.

16 THE CHAIRPERSON: Yeah, okay. Well,
17 the statute itself is 2001, shortly after the September
18 11 attacks.

19 I wonder if this would be an
20 appropriate time to break for lunch at this time.

21 MS MAILLET: Yes or no.

22 THE CHAIRPERSON: No objection?

23 MS MAILLET: No.

1 --- Upon recessing at 12:00 p.m.

2 --- Upon resuming at 1:30 p.m.

3 REGISTRY OFFICER: Order, please.

4 All rise.

5 Please be seated.

6 THE CHAIRPERSON: Sorry for the
7 little delay.

8 Okay.

9 MS MAILLET: Sir, we were at of
10 course one of the critical issues that needs to be
11 determined by the Tribunal, and that is, is the
12 material that was observed during the course of this
13 hearing that was posted on the Tri-City Skins website
14 and the Canadian Ethnic Cleansing Team website likely
15 to expose a person or persons to hatred or contempt by
16 reason of the fact that those persons are identifiable
17 on the basis of a prohibited ground of discrimination.

18 And as stated the prohibited grounds
19 in this case would be mostly people of Jewish origin,
20 black and of the Muslim religion.

21 It's our submission that the test to
22 be used in determining whether or not this material is
23 likely to expose people to hatred or contempt was set

1 out by the Tribunal in Nealy v. Johnston and that was
2 cited with approval by the Supreme Court of Canada in
3 the Canada v. Taylor case.

4 In essence the test is as follows:

5 The Tribunal said:

6 "With hatred the focus is a set
7 of emotions and feelings which
8 involve extreme ill will towards
9 another person or group of
10 persons. To say that one hates
11 another means, in effect, that
12 one finds no redeeming qualities
13 in the latter."

14 And the Court indicated it does not
15 necessarily mean looking down upon somebody if you hate
16 them, it's quite possible that you could hate somebody
17 that you would feel is superior to yourself in either
18 intelligence, wealth or power.

19 The court also found that none of the
20 synonyms used in the dictionary definition gave any
21 clues as to the motivation for the ill will when it
22 came to the definition of hatred.

23 Contempt, however, is a contrast term

1 which suggests a mental process of looking down upon or
2 treating as inferior the object of one's feeling.

3 All of the material before you is
4 based on the premise that the white race is superior to
5 all other races. The material in the websites with
6 respect to how it characterizes persons of the Jewish
7 faith is such that it indicates Jewish people have no
8 redeeming qualities and that they are in fact
9 destroying the white race. They are criminals and they
10 are not even human.

11 There's a repeated pattern of
12 singling out Jews and ascribing extremely negative
13 characteristics to them as a group and as individuals.

14 There's very similar facts in the
15 case of Zundel with respect to the material that the
16 Tribunal looked at in that case.

17 They are also characterized in a
18 derogatory manner in which questions are raised
19 regarding the existence or the extent of the Holocaust.
20 The impact of raising these doubts would be to vastly
21 diminish the horror of the events.

22 The jokes about the Holocaust are an
23 example of this and they trivialize the suffering

1 experienced.

2 Jews are also described as liars,
3 especially with respect to the Holocaust. The messages
4 also insinuate that Jews have a disproportionate degree
5 of power and control in the media and government and
6 that Jews, in effect, pose a menace to the civilized
7 world.

8 It's suggested that this is just
9 healthy political debate by the respondents. It's our
10 submission that the tone and the extreme denigration of
11 Jews distinguishes this from a legitimate debate and
12 that all of these messages must be read together in
13 order to capture the intent of the communication.

14 With respect to the characterization
15 of blacks, Muslims and other non-whites, the message
16 there is that they are destroying the country and that
17 they in fact should be annihilated.

18 Immigrants are characterized as Third
19 World rejects. Also, not only are the blacks and
20 Asians polluting our cities with gangs and drugs, they
21 are sleeping with our women and do everything possible
22 to ensure that the white race does not exist through
23 interracial breeding.

1 That was actually at tab 16 of HR-19
2 authored by Totenkopf.

3 In the case of Khaki, which is found
4 at tab 9, the Tribunal looked at similar material and
5 pointed out:

6 "That these messages point out
7 that immigrants are non-whites
8 and are not European, do not
9 resemble our forefathers and
10 bring crime, poverty, corruption
11 to our society. There is a good
12 reason not just to dislike them
13 or be suspicious of them but to
14 be contemptuous of them. When
15 one is described as a human
16 refugee or a threat to the very
17 substance of civilization, that
18 person is held up for contempt
19 and nothing so mild as
20 apprehension or suspicion or
21 dislike would be appropriate."

22 I've listed some examples of the
23 material on the websites when, in our submission, taken

1 together are likely to expose people to hatred.

2 In the Tri-City Skins website starts
3 out I think on the initial page, it's a site:

4 "...for people who have reached
5 the edge of their chain, people
6 who are on the edge and can be
7 pushed no further. We are all
8 unseen warriors battling for a
9 cause we all want but that most
10 are afraid to fight for. Well
11 we aren't afraid to fight."

12 Then at tab 3, the Heroes and
13 Warriors of Our Movement where pretty much symbols from
14 the Nazi era, the swastika, the SS symbol and the
15 contributors to the fight, Adolf Hitler, Rudolph Hess
16 which was a leader and senior figure in the Nazi era
17 during World War II and Ernst Zundel, of course, which
18 is a Holocaust denier.

19 The links to the Canadian Ethnic
20 Cleansing Team and other neo-Nazi and extreme white
21 right wing groups such as the White Aryan Resistance
22 were commented upon by Richard Warman.

23 This is a photo of a white child that

1 says:

2 "Immigration hurts our future."

3 It's also I think right on the cover
4 of the Tri-City Skins website:

5 "Bring your nigger, we've got
6 the rope."

7 Quote of the month by Adolf Hitler,
8 then there was the joke about Sikhs and Muslims
9 advocating violence:

10 "Please beat accordingly."

11 Jokes about 'six niggers' hanging
12 from a tree.

13 Tab 6, again trivializing the
14 Holocaust:

15 "The best thing to come out of
16 Auschwitz - empty train."

17 Looks like I made an error there in
18 tab 6 and 7.

19 THE CHAIRPERSON: You mean the
20 numbers are wrong?

21 MS MAILLET: Looks like I just quoted
22 the same thing for both.

23 THE CHAIRPERSON: Oh, I see. Okay.

1 MS MAILLET: But they are all joke
2 tabs in any event.

3 THE CHAIRPERSON: Tab 6 is different
4 types of those jokes?

5 MS MAILLET: Yes.

6 THE CHAIRPERSON: Okay. The tab
7 speaks for itself.

8 MS MAILLET: Right. Tab 8 deals with
9 other ethnic jobs including other minorities such as
10 South Asians, East Asians, Mexicans and gays and
11 lesbians.

12 At tab 11 we have the article from
13 William Pierce who's found on the Tri-City Skin
14 website. This article was downloaded by Richard Warman
15 I believe through a Google search, but he had testified
16 that he had seen it on the Tri-City Skins website and I
17 believe the URL, there was information right on that
18 article that shows where it originated from.

19 This article of course deals with how
20 the situation in South Africa provides a directional
21 sign of where the U.S. and other western countries are
22 going. He indicates:

23 "...the only viable long-range

1 solution for you is to get rid
2 of all the Blacks and other
3 non-whites in your country. Do
4 whatever you must do - force
5 them out, sterilize them, kill
6 them - otherwise you will lose
7 your country."

8 And then he goes on.

9 Tab 12, again William Pierce talking
10 about how:

11 "...Israel, the world capital of
12 the White slave trade, where
13 buying and selling kidnapped
14 gentile women as sex slaves is
15 legal - is a country that
16 respects the "sanctity of human
17 life". What Wuliger forgot to
18 mention is that religious Jews
19 believe that only Jews are
20 human."

21 At tab 13, I believe the article was
22 called What is Moral. The message is if we are to
23 survive, then we cannot be fair, which totally promotes

1 hatred and contempt as well as encourages
2 discrimination.

3 "- the morality of survival is
4 now a higher morality than the
5 morality of fairness. ...Jews
6 as a race whose monomaniacal
7 scheming poses an enormous
8 danger to the wholeworld...",

9 And this is an:

10 "...effort to inform their
11 people of the Jewish menace."

12 Culture of lies article at tab 14
13 indicates that, talks about a university professor and
14 that this university professor:

15 "...may not feel obliged to
16 repeat all of the more fanciful
17 Jewish lies.....,but he
18 certainly will not describe
19 these lies for what they are,
20 and he will not challenge the
21 central myth of the "six
22 million" innocent, blameless
23 Jews killed in "gas ovens" by

1 the wicked Nazis....He's likely
2 to leave his students believing
3 the oft-repeated lie that the so
4 called "Holocaust" was the
5 greatest crime ever
6 committed..."

7 And then they go on to talk about
8 other reasons why the Germans wanted to be rid of the
9 Jews.

10 "They were strongly entrenched
11 in the legal profession, in
12 banking, in advertising and
13 merchandising, in show business,
14 in organized vice, in publishing
15 and other media."

16 Tab 15 there's a discussion about
17 Alan Dershowitz, indicates:

18 "Fundamentally, he's not a
19 lawyer or civil libertarian,
20 he's not an American; he's not
21 even a fellow human being. Alan
22 Dershowitz is a Jew and that's
23 says it all."

1 I'm sorry, it looks like I copied tab
2 14 twice there and 15.

3 THE CHAIRPERSON: Okay. So, I'll
4 just...

5 MS MAILLET: There's also a quote
6 that indicates:

7 "White man's justice is
8 substantially polluted by the
9 infusion of non-whites, black
10 and Jewish judges and
11 prosecutors everywhere."

12 And, Mr. Chair, I haven't reproduced
13 all of the evidence that came in, but I believe that's
14 an example of the evidence that was on the Tri-City
15 Skins website.

16 My opinion -- our opinion is likely
17 to expose persons to hatred or contempt.

18 Canadian Ethnic Cleansing Team
19 material I have listed some as well.

20 Again, as I indicated earlier, both
21 Mr. Warman and Mr. Wilson testified that Vinland Voice
22 could be accessed through the Canadian Ethnic Cleansing
23 Team site and it was the newsletter link.

1 The links of that site are to the
2 American Nazi Party, to the Tri-City Skins and other
3 hate groups.

4 At tab 16 is an article from C.E.C.T.
5 called Intro to Racial Woes written by Totenkopf, talks
6 about:

7 "immigrants as Third World
8 rejects."

9 Again, what I just spoke of earlier
10 about the blacks and Asians polluting the cities.
11 Indicates:

12 "They are being followed by
13 young white teens that through
14 the media think it's cool to be
15 black."

16 THE CHAIRPERSON: Just for the
17 record, I think it's tab 17.

18 MS MAILLET: Oh, I'm sorry.

19 THE CHAIRPERSON: Intro to Racial
20 Woes.

21 MS MAILLET: Sorry.

22 THE CHAIRPERSON: I'm trying to
23 follow along with the --

1 MS MAILLET: Yes, I see that I have
2 two tab 16s here, I apologize.

3 THE CHAIRPERSON: Please go ahead.

4 MS MAILLET:

5 "These wiggers, who I refer to
6 as race traders, have no idea
7 that they are just part of the
8 plan that's only purpose is to
9 exterminate the white race. The
10 Jewish media who control
11 everything that we see and hear
12 through TV and radio heads up
13 their war against us. When as a
14 united white race will we learn
15 our lesson? Because of the
16 recent events over this
17 millenium's terrorist problems,
18 I don't think I need to mention
19 anything East Indians, they are
20 filthy and nothing but bad for a
21 young country like ours. If we
22 keep letting all these aliens
23 come into Canada don't be

1 surprised if one day Canada
2 isn't known for a great living
3 and beautiful countryside but as
4 a country that aids and abets
5 criminals and a place where
6 rapists and murderers can hide
7 out from the laws of their own
8 country. Wait a minute, that
9 has already happened."

10 At tab 19 the word RAHOWA stood out
11 and Richard Warman testified that things are seen by
12 the white supremacists as an Apocalyptic war and it
13 stands for racial holy war, RAHOWA. This is a war that
14 will take place within the races and that the white
15 race should prepare itself.

16 At tab 20, Vinland Voice No. 5,
17 WPCANADA indicates that September 11th was caused by
18 those dirty Jews; that is the September 14th article
19 which Det. Wilson was investigating that we:

20 "Must never let this happen
21 again - must stop all
22 immigration to North America -
23 deport all Jews, Muslims and

1 anything from these people."

2 At tab 23 is Vinland Voice No. 7, has
3 a list of four items.

4 "1) Jews are responsible for the
5 immigration policies that let
6 Arab bombers into the country

7 2) Jews are responsible for
8 foreign policies that made Arabs
9 want to attack us

10 3) Jews are responsible for
11 obscuring these facts in the
12 media...

13 4) End ZOG, end terrorism
14 Tyranny and oppression for all."

15 Beneath it it states:

16 "I pledge allegiance to the
17 race-mixing rag, of the
18 Jew-nited States of America, and
19 to the New World Order for which
20 it stands; one conglomerate,
21 under Zionism, with Tyranny and
22 Oppression for all."

23 There is also an article about my

1 life as a diversity victim - 'Niggers committing
2 crimes - diversity - gotta love it'.

3 Also at tab 41 there was an article
4 by Alex Krause and I refer to that in my closing
5 argument at page 9.

6 THE CHAIRPERSON: At tab 23 or tab
7 29?

8 MS MAILLET: No, it was found at tab
9 41.

10 THE CHAIRPERSON: Sorry.

11 MS MAILLET: I refer to it in page 9
12 of my argument. It's an article by Alex Krause,
13 Pulling the Race Card where Race Isn't the Issue.

14 THE CHAIRPERSON: Tab 41, okay. Yes.

15 MS MAILLET: And the last paragraph
16 of the article states:

17 "It's ironic and hypocritical
18 that the black community which
19 produces the majority of violent
20 criminals, rapists and sex
21 offenders in our society, as
22 well as gangs that use identical
23 violent tactics, should be

1 feeling threatened and feel
2 victimized by this isolated
3 incident."

4 As well tab 46 in the newspaper
5 article indicated that Alex Krause and James Scott made
6 no bones of their extreme racist beliefs, blaming
7 non-white immigrants for almost every social problem
8 Canada faces.

9 It's my submission that these
10 materials found on the Canadian Ethnic Cleansing Team
11 site are likely to expose people to hatred or contempt
12 as is prohibited by the Act.

13 THE CHAIRPERSON: All those, those
14 last two that you just mentioned, the last one was in a
15 newspaper article; right?

16 MS MAILLET: That's correct.

17 THE CHAIRPERSON: And 42 was?

18 MS MAILLET: 41 was an article
19 written by --

20 THE CHAIRPERSON: On European
21 American National News website.

22 MS MAILLET: That's correct. That's
23 correct.

1 And again I just took certain
2 excerpts, but there's quite a bit more material.

3 THE CHAIRPERSON: Right. I know you
4 still have more analysis to deal with the material
5 itself, but as a general question, certainly one of the
6 points that will be made by the respondents - they were
7 alluding to it - was the fact that many of these
8 articles in the Vinland Voice and other pages, it was a
9 form of bulletin board, if you will, I mean, people
10 would actually write these articles and sign them at
11 the bottom.

12 I look quickly at some of them. I
13 just saw it earlier. On page 4 of the Vinland Voice,
14 that's at tab 23, we see for instance from Damien, that
15 was an extra one, that was another story, there were
16 other ones - I'm just trying to find them now - I was
17 looking before, where it appeared clear that people who
18 put their e-mails at the bottom were posting these,
19 these were like bulletin boards or post boards or
20 whatever they call them, and not necessarily the
21 expression of whoever was running the website or the
22 individual respondents here.

23 So, what do you have to say?

1 MS MAILLET: Yes, and it's our
2 position that you do not have to author the articles,
3 all you need to do in order to come under s. 13 is you
4 have to be a person or part of a group of persons
5 acting in concert to communicate or cause to be
6 communicated the material.

7 Therefore, who was responsible for
8 the websites communicating the hate material is the
9 question for this Tribunal, and I believe it was dealt
10 with in a couple of cases. Kyburz I believe.

11 If you could just give me a moment,
12 Mr. Chair.

13 THE CHAIRPERSON: Mm-hmm.

14 MS MAILLET: At page 7 in the Kyburz
15 decision at tab 17.

16 THE CHAIRPERSON: Oh, so that would
17 be...

18 MS MAILLET: At tab 17 of the book of
19 authorities.

20 THE CHAIRPERSON: Okay. I'm sorry, I
21 missed the page again.

22 MS MAILLET: Page 7, paragraph 27.

23 THE CHAIRPERSON: Okay.

1 MS MAILLET: Indicates:

2 "While it does not appear that
3 Fred Kyburz was the author of
4 this article, s. 13 of the Act
5 does not require authorship.
6 The discriminatory practice is
7 made out when a respondent
8 communicates matter..."

9 And again the section indicates:

10 "...or causes to be communicated
11 matter that is likely to expose
12 a person or persons to hatred or
13 contempt..."

14 And so on.

15 "...whether or not the
16 respondent wrote the material
17 himself."

18 And I would argue, Mr. Chair,
19 especially in light of it seems the trend of a lot of
20 the people who communicate hate messages to use
21 pseudonyms and so on, it's critical that once they are
22 part -- it's an attempt to evade detection, it's an
23 attempt to evade the Act, and it's our submission that

1 in order to provide a meaningful forum and a meaningful
2 way to apply the Act, it's got to be given a broad and
3 liberal interpretation and that there's evidence that
4 they were part of a group of persons that caused this
5 to be communicated; i.e., they played a part that they
6 in fact do not need to author the articles themselves.

7 Dr. Henry was called as an expert
8 witness to take a look at the material.

9 The Tribunal stated that:

10 "The discriminatory or rational
11 implication of some of the terms
12 used on these websites may fall
13 outside the experience or
14 knowledge of this Tribunal. As
15 such, this opinion may assist
16 the Tribunal in reaching its own
17 conclusion with respect to the
18 complaint."

19 Dr. Henry defined hate speech as any
20 form of expression directed at objects of prejudice
21 that perpetrators use to wound or denigrate its
22 recipient.

23 Hate speech presents itself in many

1 different forms.

2 She also states that another
3 definition is that, (1) the speech has a message of
4 inferiority; and (2) that it's directed against a
5 member or members of an historically oppressed group;
6 (3) is persecutory, hateful and degrading.

7 Although ultimately it is for the
8 Tribunal to decide the critical question of whether the
9 material is likely to expose a person or persons to
10 hatred or contempt, it's submitted by the Commission
11 that the evidence of Dr. Henry was helpful to this
12 Tribunal. She sets the historical context of much of
13 the material as biological racism; that is, ideas that
14 stem from the 19th century notions of biological racism
15 and of the notion of racial purity. This form of
16 belief is based on the belief, the conviction that the
17 white race is the only race that is capable of reaching
18 levels of civilization because of their superior
19 intellect and so on and everybody else, other groups
20 are thought to be inferior biologically and, therefore,
21 they exist at a lower level of existence.

22 It's her opinion that most of the
23 material that she reviewed contained classical white

1 supremist beliefs.

2 When she looked at Dr. Pierce's
3 article: To Be or To Be Nice, she says what he's
4 suggesting is that a reader has a choice: To be nice
5 is to let various ethnic people live; whereas to be
6 indicates that they must be annihilated in order to
7 allow the white race to live.

8 She said this whole commentary
9 contains a lot of hyperbolic language and there was a
10 call for violent and murderous action. The message
11 ends with a call to kill, to annihilate any and all
12 competitors in order to preserve the white race.

13 She then goes through the jokes and
14 indicates that they really rely on stereotypes and they
15 contain well-known stereotypes about blacks and Jews.

16 She says the danger - and she's
17 written at some length about what stereotyping is about
18 and what it means - what it really leads to and what
19 these jokes reinforce is an us and them, we and they,
20 kind of othering, making people who are not like us the
21 other.

22 And I think it's important again to
23 go back to the purpose of s. 2 of the Act when we look

1 at what this material does.

2 Creates dichotomies, creates various
3 vicious ethnic hierarchies of people who are us and
4 those people who are not, and she indicates that the
5 jokes reinforce stereotypes and, as such, they he
6 reinforce racism and prejudicial attitudes.

7 She talks about the anti-Jewish
8 jokes, about the Holocaust experience. She says the
9 material suggests that these jokes deal sort of less
10 with stereotypes and more with the defamation of
11 memory. She said they assault and defile the victims
12 of the Holocaust and by implication the lives and
13 experience of all Jews.

14 In looking at the Vinland Voice
15 article dated September 14th - that's the one of course
16 Det. Wilson investigated - she states:

17 "Essentially the message here
18 seems to be that war should be
19 declared on Jews and Arabs as a
20 form of retaliation."

21 Again, in giving her view on the
22 effect that hate messages has on its victims she also
23 refers to the Cohen report which was referred to by the

1 Supreme Court of Canada.

2 She states:

3 "Uncontrolled harassment of
4 minority target groups and the
5 uncontrolled repetition of
6 falsehoods and pseudofacts can
7 leave behind a residue of
8 prejudice, a seed bed from which
9 more widespread incitement to
10 hate and harm can flourish."

11 She then states:

12 "Hate communications, messages
13 of any kind send out a powerful
14 message to members of certain
15 groups that they are unwanted
16 and unwelcome, but at the same
17 time they also work to reinforce
18 latent racist sentiments in the
19 majority populations."

20 She indicated:

21 "They have a powerful influence,
22 not only in defaming and harming
23 the target group, but as well in

1 sending out a message that
2 promotes discord, unease and
3 threat among the majority
4 population."

5 She provides a closing summation by
6 stating:

7 "My general conclusion is that
8 the material that I have read
9 constitutes hate propaganda in a
10 variety of forms ranging from
11 news items, to speeches, to
12 jokes and so on.
13 They all have in common
14 virulent, anti-Semitism,
15 anti-black sentiments, although
16 the prejudice is also expressed
17 a wide of other ethnic groups.
18 They exhibit strong racist
19 ideology, and in my opinion at
20 least, expose viewers or readers
21 to hate and to contempt. I
22 think the reader or viewer of
23 these messages is exposed to a

1 level of anger, a level of
2 stress which, in turn, may make
3 people quite apprehensive and
4 become fearful for themselves,
5 their lives, their property and
6 so on."

7 She says:

8 "In general I think the effect
9 on the reader or the viewer is
10 to reinforce the view that
11 certain people are inferior and
12 that they have no redeeming
13 qualities.
14 As well, there is an underlying
15 threat to de-stabilize the
16 values and norms that democratic
17 societies and democratic
18 institutions are based on and
19 especially in countries like
20 ours which have increasingly
21 become diverse and
22 multicultural."

23 And it's the submission of the

1 Commission, sir, that the material found on these
2 websites are likely to expose persons that are Jewish,
3 Black and Muslim to hatred and contempt. It's our
4 position that there's no doubt that these messages
5 describe these groups of persons as having no redeeming
6 qualities, being a threat to the survival of the white
7 race and are looked down upon and treated as inferior
8 compared to the superior white race.

9 The final issue, sir, is whether or
10 not Affordable-Space is exempt from liability under s.
11 13(3).

12 It is the position of the Commission
13 that Affordable-Space which is a server which allows
14 websites to be put on the Internet should not be exempt
15 from liability.

16 This exemption was meant to protect
17 those facilities that are mere conduits of the
18 information and that have no knowledge of the contents
19 of the material, nor would it be practical for them to
20 monitor such material.

21 Companies such as Bell and Telus for
22 example would not be liable for the mere presence of
23 hate material on the websites which they host.

1 Liability may be imposed, however, should they be
2 notified that the material may be a breach of the Act
3 and they continue to host such websites.

4 However, that is not the case before
5 you today, maybe for another day.

6 Section 13(3) states:

7 "For the purposes of this
8 section no owner or operator of
9 a telecommunication undertaking
10 communicates or causes to be
11 communicated any matter that is
12 described in ss. 1 by reason
13 only that the facilities of a
14 telecommunication undertaking
15 owned or operated by that person
16 are used by other persons for
17 the transmission of that
18 matter."

19 And I'm sorry, I added the emphasis
20 to that section.

21 The facts of this case are that Mr.
22 Kulbashian did not only own or operate Affordable-Space
23 and that these facilities were not only used by other

1 persons to transmit messages, but that he himself as
2 owner/president of Affordable-Space was much more
3 involved.

4 He was a leader of the Canadian
5 Ethnic Cleansing Team, web master, editor, author. He
6 was very aware and had full knowledge of the nature of
7 the content of the websites.

8 He donated space to the Canadian
9 Ethnic Cleansing Team because he was a part of it and
10 he took steps to have the space provided to the server
11 from a connection in the United States in order to
12 expressly avoid the application of the Canadian Human
13 Rights Act.

14 He had indicated that to Det. Wilson,
15 that he knew the material on the websites would likely
16 be a breach of the Act.

17 THE CHAIRPERSON: Much of this is
18 rooted in that conversation that took place during the
19 interrogation; right?

20 MS MAILLET: That's correct.

21 THE CHAIRPERSON: The source for a
22 lot of this information?

23 MS MAILLET: That's correct.

1 And, as well, there's all of the
2 other circumstantial with the mailing addresses, the
3 fact that he owned Affordable-Space.

4 THE CHAIRPERSON: Mr. Kulbashian?

5 MS MAILLET: Mr. Kulbashian, yes, I'm
6 sorry.

7 Although this Tribunal has not yet
8 made a ruling on ISP liability under s. 13 and whether
9 or not they are exempt, I believe that the SOCAM case
10 found at tab 16 is helpful to the Tribunal in its
11 analysis.

12 That case dealt with an issue which
13 is analogous to that now before the Tribunal.

14 The issue in that case arose out of
15 the application and interpretation of the Copyright Act
16 and whether or not co-servers or ISPs were
17 communicating material and breaching the Act.

18 The respondent in that case was a
19 society which administers the copyright in Canada in
20 music of Canadian members.

21 They sought to collect royalties from
22 the Internet service providers located in Canada
23 because they allegedly infringed the copyright owner's

1 exclusive statutory right to communicate the work to
2 the public by telecommunication and to authorize such
3 communication.

4 The appellants were a broad coalition
5 of Internet service providers and they argued that they
6 neither communicated or authorized anyone to
7 communicate musical works because they are merely a
8 conduit and do not regulate the content of the Internet
9 communications which they transmit.

10 They argued they're exempt from
11 liability under s. 2.4(b) of the Copyright Act which is
12 similar to s. 13(3) of the Canadian Human Rights Act.

13 That section states:

14 "For the purposes of
15 communication to the public by
16 telecommunication..."

17 And I provided that, I'm sorry, it
18 was not included in our --

19 THE CHAIRPERSON: Yes, the Act is
20 here, yes.

21 MS MAILLET:

22 "...a person whose only act in
23 respect of the communication of

1 the work or other subject matter
2 to the public consists of
3 providing the means of
4 telecommunication necessary for
5 another person to so communicate
6 the work or other subject matter
7 does not communicate that work
8 or other subject matter to the
9 public."

10 Again, it's incredibly similar to our
11 s. 13(3).

12 The Supreme Court of Canada held that
13 in looking at what the roots of that section were, what
14 is it for, the Supreme Court states:

15 "That that section finds its
16 roots perhaps in the defence of
17 innocent dissemination sometimes
18 available to book stores,
19 libraries, news vendors and the
20 like who, generally speaking,
21 have no actual knowledge of an
22 alleged libel, are aware of no
23 circumstances to put them on

1 notice to suspect liable and
2 committed no negligence in
3 failing to find out about the
4 liable."

5 That's at paragraph 89 of the SOCAM
6 decision.

7 Supreme Court goes on to state:

8 "So long as an Internet
9 intermediary does not itself
10 engage in acts that relate to
11 the content of the communication
12 (i.e. whose participation is
13 content neutral) but confines
14 itself to providing a conduit
15 for information communicated by
16 others) then it will fall within
17 s. 2.4."

18 Justice Binnie indicated that the
19 server should not be held liable for copyright
20 infringement in that case, saying that typically the
21 host server will not be able to monitor what is posted
22 on his sites.

23 He bases this comment on the vast

1 amount of information posted on servers and the
2 practicality of requiring a host server to do so.
3 However, he hinted that there may be cases that could
4 establish reasonable exceptions to this rule and that
5 this would depend on the individual facts in each case.

6 He quoted the Copyright Board of
7 Canada's decision which states:

8 "That each transmission must be
9 looked at individually to
10 determine whether in that case
11 an intermediary merely acts as a
12 conduit for communications by
13 other persons or whether it
14 acted as something more."

15 Again, in this case it's clear that
16 not only did Mr. Kulbashian have knowledge of the
17 nature of the materials on the websites he hosted and
18 that he was, in fact, a member, director, author,
19 editor and leader of the group, he was also an integral
20 part of the websites, as web master and technical
21 advisor and as part of the services that were offered
22 by Affordable-Space.

23 The evidence also shows he created

1 the layouts and the scripts for the website, designed
2 the emblems found on the sites.

3 Importantly, he was able to control,
4 he says, who was or was not a client and stated that he
5 would refund any anti-racist groups who wanted an
6 account on his server.

7 It's our submission that the server
8 in this case, therefore, was not merely a conduit, but
9 that Mr. Kulbashian, in essence, used Affordable-Space
10 as a facilitator and a direct contributor to the
11 material being communicated.

12 A second copyright case decided by
13 the Supreme Court of Canada entitled The Law Society of
14 Upper Canada and CCH Canadian Ltd., and that's found I
15 believe at tab 2 of the book of authorities.

16 THE CHAIRPERSON: Yes.

17 MS MAILLET: Yes. Is also helpful in
18 this analysis.

19 The case involved the reproduction of
20 legal materials at the Law Society's library.

21 Justice McLachlin, writing for the
22 majority, states:

23 "A person does not authorize

1 infringement by authorizing the
2 mere use of equipment that could
3 be used to infringe copyright.
4 Courts should presume that a
5 person who authorizes an
6 activity does so only so far as
7 it is in accordance with law.
8 This presumption may be rebutted
9 if it is shown that a certain
10 relationship or degree of
11 control existed between the
12 alleged authorizer and the
13 persons who committed the
14 copyright infringement."

15 Mr. Chair, as the nature of human
16 rights legislation militates against an unduly narrow
17 interpretation of the Act and is not to be treated as
18 another ordinary law of general application, it's the
19 submission of the Commission that the exception to
20 liability under s. 13(3) should be read narrowly and
21 that the Tribunal should find in the facts of this case
22 that Affordable-Space is not exempt from liability.

23 As well at tab 7 in the Zundel

1 decision the Tribunal looks at statutory interpretation
2 and indicates at paragraph 74 in citing the Mosop
3 decision:

4 "The Act is thus to be given a
5 large and liberal
6 interpretation: Protected
7 rights must be interpreted
8 broadly, while defences and
9 exceptions are read narrowly."

10 Now, there may be a question about
11 the fact that the server was located in the United
12 States, it had a contract to get the space from Cari
13 Net which was in California.

14 It's the position of the Commission
15 that Affordable-Space was solely owned and operated by
16 Mr. Kulbashian who was in Canada and, therefore, in
17 effect it operated in Canada.

18 The Supreme Court has held that:

19 "To occur in Canada, a
20 communication need not originate
21 from a server located in Canada.
22 Although the evidence is that
23 Affordable-Space was running

1 through Cari Net, the test is
2 whether the party has a real and
3 substantial connection with
4 Canada."

5 That's also dealt with in SOCAM.

6 THE CHAIRPERSON: So, the reference
7 to Supreme Court here is to SOCAM?

8 MS MAILLET: Yes, yes, the SOCAM
9 decision.

10 Affordable-Space should not escape
11 the application of the Canadian Human Rights Act by
12 obtaining the space it sold to its clients outside of
13 Canada, especially when such actions were purposefully
14 meant to do so.

15 It is clear that, again, the sole
16 owner Alexan Kulbashian residing in Canada was acting
17 in concert with this company and others in Canada to
18 communicate the messages on the websites.

19 And the test of real and substantial
20 connection was cited in SOCAM, as stated by Justice
21 LaForest in Libman v. The Queen, he indicates:

22 "...As I see it, all that is
23 necessary to make an offence

1 subject to the jurisdiction of
2 our courts is that a significant
3 portion of the activities
4 constituting the offence took
5 place in Canada. As is it put
6 my modern academics, it is
7 sufficient that there be a "real
8 and substantial link" between an
9 offence in this country..."

10 In this case, Affordable-Space had a
11 P.O. Box in Toronto and, again, Mr. Kulbashian who
12 owned the company, resided in Toronto.

13 As well at tab -- I believe it's B1
14 of the book of authorities, I've taken out an excerpt
15 from what is known as the LaForest Report.

16 THE CHAIRPERSON: B1?

17 MS MAILLET: It's the very last tab
18 in Volume 2 of the book of authorities. I believe you
19 have got Volume 1 there.

20 THE CHAIRPERSON: Oh, that's A1.

21 Oh, okay.

22 MS MAILLET: Hiding back there.

23 THE CHAIRPERSON: Why the distinction

1 between A and B, B is doctrine?

2 MS MAILLET: Yes, B is text, A is the
3 case law.

4 THE CHAIRPERSON: Case law.

5 MS MAILLET: Justice LaForest, this
6 is recommendations of the Canadian Human Rights Review
7 Panel.

8 MR. RICHARDSON: Which page?

9 MS MAILLET: It's at page 135, so the
10 second to last page --

11 MR. RICHARDSON: Thank you.

12 MS MAILLET: -- of that tab. Justice
13 LaForest made recommendations, the panel made
14 recommendations with respect to hate on the Internet.

15 He notes that:

16 "The Internet technologies
17 provide a much more powerful
18 means of promulgating hate
19 messages..."

20 THE CHAIRPERSON: Are you reading
21 word for word, or you're paraphrasing?

22 It's like in the last paragraph?

23 MS MAILLET: I believe that that is

1 at the page beforehand. The recommendation begins at
2 the second to last paragraph in terms of the liability
3 of Internet service providers, but this was just in the
4 discussion section a comment on the nature of the
5 Internet.

6 THE CHAIRPERSON: So, what are you
7 reading?

8 MS MAILLET: I believe it's at page
9 134 at the very top of the second column:

10 "Internet technologies provide a
11 much more powerful means of
12 promulgating hate messages."

13 THE CHAIRPERSON: Okay.

14 MS MAILLET:

15 "The messages can be much more
16 expressive in the multi-media
17 world of the Internet. They can
18 be accessed by mass audiences
19 with much less effort than
20 messages communicated over the
21 telephone. Second, the Internet
22 has increased the ability of
23 those who wish to disseminate

1 hate messages to find each other
2 and mobilize their efforts.
3 Hate communicators on the
4 Internet can use the medium to
5 find others to form a critical
6 mass for their activities."

7 And this is all background discussion
8 to the recommendation of the panel which is found at
9 the last page, recommendation 145, and this is just to
10 support how we think the Tribunal should rule in
11 respect to ISP liability.

12 "We recommend that the accessed
13 service provider should be found
14 liable itself to the extent that
15 it knew or should have known
16 that its facilities were being
17 used to disseminate hate
18 messages based on the extent of
19 its knowledge and technological
20 ability to take measures to
21 prevent further breaches of the
22 Act."

23 Those are my submissions, sir.

1 I have submissions to make on
2 damages. I'm not sure how you want to proceed with
3 that.

4 THE CHAIRPERSON: Well --

5 MS MAILLET: Continue?

6 THE CHAIRPERSON: Yes.

7 MS MAILLET: Okay. Remedies are
8 listed under s. 54 of the Canadian Human Rights Act.
9 The Commission seeks the following
10 remedies.

11 THE CHAIRPERSON: Mm-hmm.

12 MS MAILLET: An order under s.
13 54.1(a) that all of the respondents and any other
14 individuals acting in concert with them cease the
15 discriminatory practice; i.e. a cease and desist order.

16 And order that each of the
17 respondents pay a penalty in the amount of \$10,000
18 pursuant to s. 54.1(c) of the Canadian Human Rights
19 Act.

20 An order that the respondent Alexan
21 Kulbashian compensate the complainant - and here I had
22 indicated an amount of \$20,000, that was what in our
23 letter of particulars - in this case we're amending

1 that to indicate \$10,000.

2 THE CHAIRPERSON: To reflect the fact
3 that that is the maximum, or you're just reducing it?

4 MS MAILLET: That's correct, the
5 maximum is 20.

6 THE CHAIRPERSON: I was looking at
7 (c).

8 Yes, sorry.

9 MS MAILLET: 54.1(b) that's for
10 naming --

11 THE CHAIRPERSON: Your claim is
12 \$10,000.

13 MS MAILLET: -- yes, Mr. Warman
14 personally.

15 THE CHAIRPERSON: Yes, go ahead.

16 MS MAILLET: And as well, I didn't
17 put it in my closing, but an order as against Canadian
18 Ethnic Cleansing Team which is where that naming of Mr.
19 Warman personally came from.

20 THE CHAIRPERSON: I want to be clear.
21 You are claiming \$10,000 against Mr.
22 Kulbashian and \$10,000 against?

23 MS MAILLET: Canadian Ethnic

1 Cleansing Team, and I'll speak to each of these
2 remedies, and then any interest.

3 THE CHAIRPERSON: So, those are the
4 only respondents that you are claiming compensation
5 from, compensation under 54.1(b)?

6 MS MAILLET: Under 54.1(b), yes.

7 THE CHAIRPERSON: That's right. You
8 listed all of the respondents under the penalty
9 provision, 54.1.

10 MS MAILLET: That's correct.

11 MR. RICHARDSON: If I may, just a
12 question.

13 Mr. Warman at the end of his had the
14 same thing. Now, is this two different ones?

15 THE CHAIRPERSON: I'm getting two
16 different requests here. These are two different
17 parties but the amounts will flow to the person
18 indicated; that is to say, and my understanding is the
19 Commission is saying that \$10,000 go to the
20 complainant.

21 MR. RICHARDSON: So, it is the same
22 then.

23 THE CHAIRPERSON: Sorry?

1 MR. RICHARDSON: Like she's asking
2 for the same thing.

3 THE CHAIRPERSON: It's not doubling
4 up if that's what you're concerned about, right?

5 MS MAILLET: That's correct.

6 THE CHAIRPERSON: But what it is,
7 they have the right to express different opinions on
8 the amounts being requested, but all of these amounts
9 would be flowing to the alleged victim of
10 discrimination who is the person who filed the
11 complaint.

12 Well, actually I shouldn't say
13 alleged victim because we're in the context of 54. So,
14 the complainant, just leave it at that.

15 MS MAILLET: Yes, it's the named
16 personal complainant.

17 THE CHAIRPERSON: The named
18 complainant.

19 MS MAILLET: Right.

20 With respect to the cease and desist
21 order under 54.1(a), in the Zundel case they considered
22 that it may be ineffectual because people can have
23 mirror sites and that it's very hard to control.

1 The Tribunal indicated that:
2 "There's a significant symbolic
3 value in the public denunciation
4 of the actions that are subject
5 of this complaint. Similarly
6 there is the potential educator
7 and ultimately larger
8 preventative benefit that can be
9 achieved by open discussion of
10 the principles of the Tribunal's
11 decision."

12 THE CHAIRPERSON: So, this addresses
13 the question that I asked earlier; correct?

14 MS MAILLET: That's correct.

15 The cease and desist order will
16 hopefully prevent all of these respondents from further
17 spreading hate in our society.

18 Under 54.1(b) considering the order
19 as against Mr. Kulbashian and Canadian Ethnic Cleansing
20 Team compensate a victim specifically identified in the
21 materials on the website, I have quoted the evidence of
22 Mr. Warman and how this affected him.

23 First of all, the passage is at tab

1 25 of HR-1 indicates:
2 "This issue has a special
3 message from Alex Krause
4 regarding a great new project
5 he's involved with. In the mean
6 time, C.E.C.T. sends out a big
7 hello to Richard Warman of 440
8 Wiggins Private Way...", I
9 believe "...Ottawa, Ontario for
10 submitting a formal complaint
11 about the Canadian Ethnic
12 Cleansing Team to the Canadian
13 Human Rights Commission. You
14 got it guys, the C.E.C.T. hurts
15 people's feelings and we made
16 Mr. Warman cry. Your kind of
17 attention is exactly what
18 C.E.C.T. needs to build a bigger
19 membership base. We extend our
20 thanks to that Jewish lawyer and
21 candidate of the Greens Party.
22 Our new slogan will be, we give
23 you 300,000 real reasons and 5.7

1 million made up ones to support
2 the C.E.C.T. It will be a gas.
3 Richard, we added you to our
4 Christmas card list this year.
5 Who knows, we might even send
6 you compensation in the amount
7 of the vacation pay your family
8 didn't get while working at
9 Auschwitz."

10 Signed Totenkopf.

11 And I asked Mr. Warman about that.

12 He indicates that they cite that address and, yes, at
13 the time it was in fact his personal home address.

14 In talking about his reaction when he
15 read that article he said:

16 "At first I didn't believe it
17 because the first time I learned
18 of it was over the phone when a
19 colleague in the human rights
20 movement or milieu informed me
21 that, in fact, this was included
22 in the issue of the Vinland
23 Voice. Then I subsequently

1 returned home, viewed it myself
2 both in the newsletter format
3 that had been e-mailed to me and
4 on the website I was shocked. I
5 had never anticipated they would
6 stoop to something like that and
7 I certainly considered it to be
8 a personal threat and to be a
9 threat against my personal
10 safety. If all that was desired
11 was to comment on the fact that
12 I filed a human rights complaint
13 against them, that could have
14 easily been done without
15 including my home address on it.
16 The members of both of these
17 groups and similar groups in
18 Canada have been involved in a
19 history of course of racist
20 violence and the two personally
21 named respondents have been the
22 subject of criminal charges in
23 that regard, either with actual

1 events or with threats of racist
2 violence.
3 Certainly when you get into the
4 content below, it said we extend
5 our thanks to that Jewish
6 lawyer. So it's clearly
7 targeting me on the basis that
8 they presumed that I was, in
9 fact, Jewish and candidate of
10 the Greens Party because I had
11 run in the past as a candidate
12 of the Green Party of Canada --
13 Green Party of Ontario.
14 Clearly they have done some work
15 to expose and discover aspects
16 of my personal background. That
17 caused me a fair bit of concern
18 as well.
19 They indicated after that, "we
20 give you 300,000 real reasons,
21 5.7-million made up ones to
22 support C.E.C.T. It will be a
23 gas."

1 And the next part about Auschwitz is
2 clearly a mocking reference to the Holocaust and to
3 what happened to Jews during the Holocaust.

4 "Certainly on the perception
5 that they had that I was, in
6 fact, Jewish, it concerned me
7 greatly that what they were
8 saying was, look, this is what
9 happened to Jews in the past and
10 I think the message that was
11 intended to be sent and was
12 certainly perceived was that it
13 was a direct threat to my
14 personal safety.

15 I certainly contacted the police
16 as soon as possible after I
17 received that message and
18 without going into specific
19 details about what the police
20 have done, they have made, what
21 I would describe as alternate
22 arrangements in terms of my
23 personal security that would not

1 be the case for an average
2 citizen."

3 In light of the effect that this
4 message has had on Mr. Warman, again, we seek an order
5 under s. 54.1(b).

6 In the Kyburz decision, Member
7 McTavish, Chair at the time, awards a remedy under that
8 same section. That's found at page 20 of tab 17.

9 THE CHAIRPERSON: It was a
10 three-member panel actually.

11 MS MAILLET: Yes, that's correct.
12 Sorry.

13 And I'll just go through the things
14 that that panel considered in awarding special
15 compensation.

16 Paragraph 87 they indicate:

17 "Where a victim is specifically
18 identified, the subsection
19 authorizes the Tribunal to order
20 the respondent to pay special
21 compensation of up to \$20,000 if
22 the Tribunal finds that the
23 person is engaged or has engaged

1 in the discriminatory practice
2 willfully or recklessly."

3 In that case Mr. Kyburz began
4 including regular references to Mr. Warman who he
5 identified by name on his postings on the website.

6 The Tribunal found that the
7 references to Mr. Warman are noteworthy for their
8 degree of vitriol, motivated at least in part by Mr.
9 Kyburz' perception that Mr. Warman was himself Jewish.
10 This reflects a recurring pattern in Mr. Kyburz' web
11 postings. As soon as anyone disagrees with his views,
12 that person immediately becomes part of the worldwide
13 Jewish conspiracy.

14 "Mr. Warman testified that he
15 was not Jewish. In our view,
16 the fact that Mr. Warman was not
17 himself Jewish does not detract
18 in any way from the viciousness
19 of the attacks launched against
20 him by Mr. Kyburz. These
21 attacks were clearly motivated,
22 at least in part, by Mr. Kyburz'
23 perception that Mr. Warman was

1 Jewish.
2 Based on his belief, Mr. Kyburz
3 ascribed very negative character
4 traits as well as criminal
5 behaviour to Mr. Warman.
6 Mr. Warman quite understandably
7 found this conduct to be very
8 hurtful and was a victim of the
9 practice."

10 In that case they awarded \$15,000 of
11 special compensation.

12 Again, in this case it was not
13 repeated, it was one article which is why we won't be
14 seeking \$15,000.

15 THE CHAIRPERSON: That's item No. 3
16 where you reduced it to \$10,000?

17 MS MAILLET: That's correct.

18 Now, in terms of the penalty section
19 under s. 54.1(c) --

20 THE CHAIRPERSON: Yes.

21 MS MAILLET: -- that section
22 indicates that:

23 "In deciding whether to order

1 the person to pay the penalty,
2 the members shall take into
3 account the following factors:
4 (a) the nature, circumstances,
5 extent and gravity of the
6 discriminatory practice; and
7 (b) the willfulness or intent of
8 the person who engaged in the
9 discriminatory practice, any
10 prior discriminatory practices
11 that the person has engaged in
12 and the person's ability to pay
13 the penalty."

14 In considering an order under this
15 section the Tribunal should take into account the
16 evidence before it.

17 It's the position of the Commission
18 that these materials were incredibly harmful and even
19 considered by Det. Wilson to be advocating violence as
20 against these groups.

21 The Tribunal must also consider that
22 the respondents continued to try to evade the Canadian
23 Human Rights Act by using pseudonyms, having

1 Affordable-Space be located in the U.S. and, as Mr.
2 Kulbashian stated in his interview with Mr. Wilson, the
3 fact of the matter is, I don't care to follow the
4 Canadian law on what I do with my server.

5 Tab 27 of the Editor's Voice it
6 states:

7 "I wonder when Sharon will be
8 called in to stand in front of
9 the Human Rights Tribunal for
10 war crimes in Lebanon. If the
11 C.E.C.T. and TCS may possibly
12 get the honour of showing up in
13 front of judges that get paid to
14 piss on the constitution, then
15 Ariel Sharon should already be
16 there taking a golden shower."

17 At tab 27 the respondent states:

18 "Our server is of course located
19 in the U.S. to help you avoid
20 all those pesky, anti-white,
21 freedom-squishing hate speech
22 laws."

23 THE CHAIRPERSON: It's tab 29?

1 MS MAILLET: I'm sorry, tab 29.

2 THE CHAIRPERSON: So what about the
3 other component of 54.1?

4 MS MAILLET: That's correct. As
5 found in the Kyburz decision, I'll just find where it
6 is.

7 It's our submission that that
8 evidence, if the respondents relied on any of the
9 elements in that section in order to reduce the
10 penalty, the panel found in Kyburz that the onus is on
11 them to provide that evidence.

12 THE CHAIRPERSON: Now, in Kyburz did
13 the respondent appear?

14 MS MAILLET: No, they did not. They
15 indicate that because there was no evidence and it was
16 his duty to bring forth that evidence, I believe -- if
17 you could just give me one second here.

18 At paragraph 95 the panel indicates
19 that they will consider each of these factors: The
20 nature, circumstances, extent and gravity of the
21 practice --

22 THE CHAIRPERSON: As well as?

23 MS MAILLET: As well as -- well, they

1 found that he repeatedly communicated messages
2 regarding Jewish people that were nasty, vicious and
3 extreme. Not only do these messages attribute numerous
4 and very criminal acts to people of the Jewish faith,
5 described them therein as innately corrupt and devious,
6 but some messages went so far as to openly advocate the
7 extermination of Jews, root and branch as a class.

8 THE CHAIRPERSON: I think paragraph
9 98 is what we're looking at.

10 MS MAILLET: Pardon me?

11 THE CHAIRPERSON: In terms of the
12 mitigating...

13 MS MAILLET: Yes. Well, this is the
14 sum of the circumstances they considered; that is, how
15 extreme, how bad is the material, so to speak, that is
16 before you.

17 THE CHAIRPERSON: Okay, that's the
18 gravity in terms of mitigating...

19 MS MAILLET: That's correct. The
20 final consideration is Mr. Kyburz' -- well, first of
21 all the prior discriminatory practices, which they said
22 there was no evidence of that, then the final
23 consideration is Mr. Kyburz' ability to pay.

1 The only information they had was the
2 unsworn assertion that he was impecunious.

3 Counsel for the Commission in that
4 case suggested that the burden lay not on the
5 Commission to show that Mr. Kyburz had resources but
6 rather on Mr. Kyburz that he was unable to pay, as this
7 information would largely be within Mr. Kyburz'
8 control.

9 And then they cite the case of R. v.
10 Noseworthy in the Newfoundland Court of Appeal,
11 indicates at paragraph 100:

12 "In contrast, that is to a
13 criminal proceeding, s. 54
14 mandates that the Tribunal
15 consider the respondent's
16 ability to pay before levying a
17 find. That said, we are of the
18 view that the court's comments
19 regarding the burden of proof
20 relating to the ability to pay
21 are equally applicable to our
22 deliberations under this
23 provision of the Canadian Human

1 Rights Act."

2 In this case there is some evidence,
3 albeit evidence that is unsworn and untested, to
4 suggest that Mr. Kyburz may have limited resources.
5 Because of the way the evidence was adduced they could
6 not attribute it much weight.

7 They have taken into account the fact
8 that this is a first offence, while its seriousness of
9 the s. 13 breach would otherwise call for a fine at or
10 near the maximum permissible under the legislation.

11 They then reduced the penalty from
12 \$10,000 maximum to \$7,500.

13 THE CHAIRPERSON: Yes. There is some
14 mention here they have considered that the evidence,
15 although of little weight.

16 MS MAILLET: He did make some
17 submissions.

18 THE CHAIRPERSON: Well, in this case
19 the respondent it would appear, just on the scheduling
20 discussions we have had from time to time in this case,
21 is a student.

22 MS MAILLET: My submission if they
23 are here they should produce that evidence.

1 THE CHAIRPERSON: Of their being
2 impecunious.

3 MS MAILLET: Their financials.
4 That's correct, of any of their suffering.

5 THE CHAIRPERSON: Of any of their
6 financial situations.

7 MS MAILLET: That's correct.

8 THE CHAIRPERSON: And as for the
9 other components, you have dealt with in your
10 submissions in terms of...

11 MS MAILLET: That's correct.

12 And with respect to the costs - again
13 this was taken from our letter of particulars - and as
14 we discussed earlier in the hearing section under 54
15 which provides for s. 13 remedies does not include the
16 remedy for expenses to be covered by the complainant.

17 THE CHAIRPERSON: Now, still dealing
18 with 54.1(c) - just a second.

19 It isn't the nature of a penal
20 provision.

21 MS MAILLET: No, that's correct.

22 THE CHAIRPERSON: I mean, the word
23 penalty is used.

1 MS MAILLET: That's right.

2 THE CHAIRPERSON: Does that have any
3 bearing on the legal standard of proof that's going to
4 be applies to this case, does it alter anything in the
5 big picture in terms of the level of evidence that's
6 required to be led in order to make the case under that
7 provision?

8 Do you have any submissions on that?
9 I don't know if the respondent intends to make any
10 submissions, but it's a thought that crosses my mind
11 when I see the word penalty there.

12 Have any of the authorities that you
13 have reviewed dealt with this?

14 MS MAILLET: I have and a lot of the
15 financial penalties with respect to the Internet cases
16 rest with the Kyburz decision. Zundel did not award a
17 financial penalty as against --

18 THE CHAIRPERSON: So, the only source
19 is the one in Kyburz?

20 MS MAILLET: That's correct.

21 THE CHAIRPERSON: Do you have a
22 position on the point then? Well, maybe I will leave
23 it for the respondents to raise.

1 MS MAILLET: If I could just think
2 about that for a second.

3 THE CHAIRPERSON: Do you have a
4 position Mr. Warman?

5 MR. WARMAN: My position would be
6 that the law under the Human Rights Act has been fairly
7 clear to set out a standard of liability being on the
8 balance of probabilities that, although the section may
9 appear to be, to some small extent, punitive as opposed
10 to remedial or designed to -- purely designed to
11 stopping discriminatory conduct.

12 THE CHAIRPERSON: I mean, there
13 hasn't been some theoretical discussion what 53.3 and
14 whether it has a punitive effect, nonetheless, it's
15 called special compensation, i.e., special indemnity.

16 MR. WARMAN: Yes. My position would
17 simply be that if Parliament had intended to change the
18 standard of proof that was required, they would have
19 been explicit in changing the legislation to include
20 that and that, in the absence of that, nothing of that
21 nature should be read in by the Tribunal and that the
22 standard of proof should remain on the balance of
23 probabilities.

1 THE CHAIRPERSON: All right. And I
2 know you said you wanted some time to think about it Ms
3 Maillet.

4 MS MAILLET: Yeah. I'm sorry, I'm
5 running out of gas it little bit.

6 THE CHAIRPERSON: So, you can go back
7 to it later on in reply.

8 MS MAILLET: Yes.

9 THE CHAIRPERSON: All right. So
10 then, that's the end of your submissions?

11 MS MAILLET: Yes.

12 THE CHAIRPERSON: Mr. Warman, do you
13 have anything else?

14 MR. WARMAN: There is, just before
15 the respondents commence with submitting their
16 materials, I would as an officer of the court like to
17 raise one point in relation to their submissions.

18 THE CHAIRPERSON: Yes.

19 MR. WARMAN: And this issue came up
20 in the context of the teleconference call previously
21 that we had had as well.

22 Having reviewed the respondents
23 submissions, there are extensive allegations of

1 perjury, not just against Mr. Wilson, but also against
2 crown prosecutor Peter Kierluk, there are extensive
3 allegations of criminal conduct on the part of Mr.
4 Wilson, and I would simply raise as an officer a
5 concern that that is scandalous to the Tribunal's
6 processes and an abuse of the Tribunal's process as a
7 whole.

8 MR. A. KULBASHIAN: I believe that
9 it's our right to use information provided to the court
10 and interpret it into our -- I guess in our own way to
11 show the court just, in some cases, blatantly just
12 how -- in a way, for example, Mr. Wilson admitted to
13 committing a criminal act and the fact of the matter is
14 if he has a problem with it he can address it in his
15 response afterwards, until then I believe that it's our
16 right to address the Tribunal -- put it before the
17 court.

18 THE CHAIRPERSON: Look, there are
19 ways to say things where you don't have to cross the
20 line.

21 All right. Now, look, I haven't seen
22 this material so I don't know what is being referred
23 to.

1 I can tell you this much. I was
2 doing a case a couple of weeks ago, I was in the
3 presence of a lawyer who was making some very strong
4 allegations about one of the witnesses and calling him
5 a liar and a perjurer, I asked him to stop because I
6 don't think it's appropriate for the process and it
7 exposes the person who makes these allegations to a
8 possible liability.

9 So my recommendation to you is that
10 you can achieve the result that you seek without
11 getting too colourful in your presentation.

12 I don't know what we're talking about
13 specifically, but I'm just telling you --

14 MR. RICHARDSON: I'm sure Mr. Warman
15 is talking about mine in particular and it's full of
16 that and if he wants me to take all that out, then I am
17 going to have to start right from scratch and shut this
18 down and start over again.

19 THE CHAIRPERSON: No, sit down a
20 second, Mr. Richardson, please.

21 MR. RICHARDSON: I mean, I don't take
22 back anything I said, so like I would have to get legal
23 advice actually to go over this with me to see what I

1 was doing wrong.

2 I assumed that's what I was sending
3 it in for ahead of time.

4 THE CHAIRPERSON: No, I'm not going
5 to give you any legal advice, Mr. Richardson.

6 MR. RICHARDSON: Well, no, you asked
7 us to send it in to see if it was okay.

8 THE CHAIRPERSON: No, that was not
9 why. I said it so I could read it and I have a better
10 understanding of what is coming.

11 I have perused your documents, I have
12 looked through them. I don't remember, perhaps it
13 didn't strike me as much as Mr. Warman suggests.

14 All I'm saying is right now, I won't
15 let it go any further, I mean, you're at your own risk
16 if you do this. We don't say things about people that
17 are very strong because they may expose us to a certain
18 degree of liability, and also it elevates or rather
19 degrades the level of discussion.

20 It is very easy to say that it is
21 your submission that Mr. "X" witness misled the
22 Tribunal, did not present the facts properly, was
23 contradicted by other evidence. You achieve the same

1 end, it's just fine Parliamentary language, if you
2 like.

3 And I'm answering your point, Mr.
4 Warman, in the abstract. I don't know exactly what
5 we're speaking of.

6 All I will do, I want to be
7 consistent in my practices. Last week I told you, or
8 two weeks ago, I had a lawyer who made a strong
9 statement at one point and said this witness perjured
10 himself right here before you.

11 I asked him to stop, all right,
12 because said that was going a little too far, we didn't
13 need to go down that road.

14 So, if what you're going to say is
15 that, in your opinion, Mr. Wilson misrepresented the
16 truth, was contradicting himself, those types of
17 statements, you can say that and I get the message,
18 without having to bring it up to another level, okay.

19 That's what I'm saying.

20 MR. RICHARDSON: (off microphone)

21 THE CHAIRPERSON: Listen to me, Mr.
22 Richardson, before reacting earlier.

23 All I'm saying is avoid, because

1 those types of words, they become sharper and they are
2 not necessary.

3 You can get the message to me loud
4 and clear by just saying, look he said "X" and "Y" and
5 "Z" and he's saying "A", two different things, draw
6 your own conclusion, Mr. Chair.

7 MR. A. KULBASHIAN: My question is,
8 what if the witness admits to doing what would be
9 perceived by you --

10 THE CHAIRPERSON: Doesn't make a
11 difference. Say it the way I just told you, because it
12 won't make a difference with me if you use the word
13 perjury. You're trying to convince me.

14 MR. A. KULBASHIAN: Not necessarily
15 about perjury, like, let's say a witness admits to
16 committing a criminal act on the stand, what would that
17 be?

18 THE CHAIRPERSON: Well, if it's
19 relevant to the case you can refer to it. It has to be
20 of some relevance. I don't recall exactly what you are
21 referring to.

22 But it has to always be relevant to
23 the case. But you can certainly point out those types

1 of facts. It has to be in the facts and if you find a
2 contradiction, you draw it to my attention.

3 Don't go making some kind of a
4 thumping speech saying this guy's a liar, he's a thief,
5 because those types of things don't get us anywhere.

6 I mean, to be fair, I haven't heard
7 anything of that sort from the complainant or the
8 Commission today. All they have done is they have
9 taken me through the evidence as presented and from
10 their point of view. Now I'm going to hear it from
11 your point of view, and I fully expect that.

12 But let's not bring it to another
13 level, it doesn't have to go there.

14 MR. A. KULBASHIAN: If words do come
15 out in the case because of the way it was written in
16 the first place, so if there is anything accidentally
17 how can I say, just correct me.

18 THE CHAIRPERSON: Well, try to
19 control yourself in the reading.

20 Okay. Does that address your
21 comments too, Mr. Warman? Yes?

22 MR. WARMAN: Yes.

23 THE CHAIRPERSON: Okay. So, we

1 should take a break, I think.

2 MR. A. KULBASHIAN: Just a quick
3 question before, because it's relating to what Ms
4 Maillet was talking about.

5 The question is, who does the money
6 under s. 54.1(c) go to?

7 THE CHAIRPERSON: My understanding
8 from what I heard - well, I will let Ms Maillet...

9 MS MAILLET: Is that the special
10 compensation section?

11 THE CHAIRPERSON: Yes. No, 54.1(c)
12 that's the penalty section.

13 MS MAILLET: Yes, the penalty section
14 is to the Receiver General.

15 THE CHAIRPERSON: Is it?

16 MR. A. KULBASHIAN: Okay. That's the
17 answer to my question, so we can take our break now.

18 THE CHAIRPERSON: Okay.

19 Why don't you give the provision
20 to --

21 MR. WARMAN: Member Hadjis, if it's
22 of any assistance, that is what transpired in Kyburz.

23 THE CHAIRPERSON: The Kyburz, fine.

1 I'm just saying, is there a provision in the Act that
2 specifies it.

3 MS MAILLET: Yes, I think there is
4 and I will look for it, sir.

5 THE CHAIRPERSON: Okay. Would you
6 please provide it --

7 MR. A. KULBASHIAN: That wasn't a
8 good question.

9 THE CHAIRPERSON: No, that's a good
10 question, but they will find the provision and show it
11 to you and put it on the record when we come back.

12 Okay.

13 REGISTRY OFFICER: All rise.

14 --- Upon recessing at 2:55 p.m.

15 --- Upon resuming at 3:30 p.m.

16 REGISTRY OFFICER: Order, please.

17 All rise.

18 Please be seated.

19 THE CHAIRPERSON: Sorry. Again I had
20 a call come in. Sorry.

21 MS MAILLET: Sir, I just looked into
22 briefly the penalty section that's tabled for the
23 Receiver General.

1 THE CHAIRPERSON: Yes.

2 MS MAILLET: It's not in our Act in
3 fact, it's in the Financial Administration Act where
4 penalties and fines and moneys are payable to the
5 Receiver General.

6 THE CHAIRPERSON: Where everything
7 seems to be paid.

8 MS MAILLET: Exactly.

9 THE CHAIRPERSON: It's budget day
10 today.

11 But that addresses your question,
12 right, Mr. Kulbashian?

13 MR. A. KULBASHIAN: It was a
14 question.

15 THE CHAIRPERSON: It's a penalty as
16 opposed to compensation.

17 MR. A. KULBASHIAN: That's right.

18 THE CHAIRPERSON: Okay.

19 If you'll you give me a moment to
20 take out your material.

21 So, Mr. Kulbashian, you will be
22 following the text that you forwarded to the Tribunal?

23 MR. A. KULBASHIAN: More or less,

1 yeah. I'll also be addressing some of the issues as a
2 response first.

3 THE CHAIRPERSON: Yes.

4 ARGUMENT BY MR. KULBASHIAN:

5 MR. A. KULBASHIAN: Now, the issue is
6 just a few, I guess, issues, like corrections I guess.

7 Now, it says over here that Officer
8 Wilson or Det. Wilson --

9 THE CHAIRPERSON: Remember, you have
10 to speak up and try to speak a bit slower.

11 MR. A. KULBASHIAN: That he's
12 lectured to well over 1,000 police officers, probation
13 officers, et cetera.

14 THE CHAIRPERSON: What are you
15 reading from?

16 MR. A. KULBASHIAN: This is from the
17 closing statement.

18 THE CHAIRPERSON: Back to the old
19 text.

20 MR. A. KULBASHIAN: Yes.

21 THE CHAIRPERSON: So, on the first
22 page in the introduction --

23 MR. A. KULBASHIAN: It's on the third

1 paragraph, last sentence.

2 THE CHAIRPERSON: Yes, okay. Let me
3 just take a note here.

4 So, paragraph 3. Yes, go ahead.

5 MR. A. KULBASHIAN: Now, the fact of
6 the matter is, like, I don't have any memory of and I
7 didn't search or find any information where there was
8 any evidence about him talking to over I guess 1,000
9 police officers, probation officers, teachers, so I'm
10 just wondering where that information came from.

11 THE CHAIRPERSON: So, you're saying
12 there is no evidence to support the statement that he's
13 lectured to a thousand, I think it says 1,000.

14 MR. A. KULBASHIAN: Yeah, to over
15 1,000. I think it's just a typo from what I can tell.

16 Okay.

17 THE CHAIRPERSON: Yes, go ahead,
18 please.

19 MR. A. KULBASHIAN: Now, addressing a
20 continuation, talking more about Det. Wilson where it
21 says:

22 "It was suggested by the
23 respondents that we heard about

1 during his testimony were over
2 zealous and that he acted beyond
3 the call of duty...", et cetera.

4 And also continues saying:

5 "His actions were viewed as
6 admirable and as an effort to
7 protect the citizens he was
8 there to protect."

9 Now, the issue is, a person with
10 authority acting out of line is more dangerous than
11 someone without authority acting out of line.

12 A police officer that takes matters
13 into his own hands and I guess goes outside the call of
14 duty or even goes outside the law to, it doesn't matter
15 what the principles are, to do what he believes is
16 right is actually more dangerous to society than
17 somebody ranting and raving about issues that he has
18 opinions about. Just wanted to address that too.

19 Also another issue which comes up on
20 page 3 -- sorry, page 4.

21 THE CHAIRPERSON: Page 3, sub --
22 sorry, page 4, you changed...

23 MR. A. KULBASHIAN: Page 4, sorry.

1 It's where it says:

2 "AK then distinguishes -
3 Totenkopf with death head beside
4 it is him, Totenkopf alone is
5 not him. However --"

6 THE CHAIRPERSON: Where is that?

7 MR. A. KULBASHIAN: Down the middle
8 of the page, roughly.

9 THE CHAIRPERSON: Okay, then
10 distinguishes --

11 MR. A. KULBASHIAN:

12 "However he admits to submitting
13 content under the name
14 Totenkopf."

15 And it says:

16 "He states that everyone knows
17 the Totenkopf logo is him."

18 Now, the thing is that, first of
19 all -- sorry, He distinguishes that Totenkopf with
20 death head beside it is him, Totenkopf alone is not
21 him.

22 However, this is kind of just like
23 paraphrasing things from my --

1 THE CHAIRPERSON: They are
2 paraphrasing, my understanding is, from that
3 "transcript" of the interrogation.

4 MR. A. KULBASHIAN: Right. Now,
5 continuing down, first of all, just on the record,
6 like, I have never admitted to being Totenkopf as much
7 as using symbol during my -- I think they say
8 testimony, it's written, it's on paper, and it's not
9 testimony, more like --

10 THE CHAIRPERSON: I just want to
11 understand your comment. You're saying you never
12 admitted to being Totenkopf.

13 MR. A. KULBASHIAN: Being Totenkopf.

14 THE CHAIRPERSON: But in as much as
15 symbol, you mean that --

16 MR. A. KULBASHIAN: As much as just
17 using say the symbol.

18 THE CHAIRPERSON: So, you are
19 saying -- I just want to make sure I understand you
20 correctly.

21 You're saying the evidence is that
22 you admitted using the symbol, but never admitted using
23 the title. Is that what you were saying?

1 MR. A. KULBASHIAN: It says:
2 "AK states that Totenkopf is the
3 brand name and that it is him."
4 Totenkopf is not necessarily me and I
5 never admitted to Totenkopf being him.
6 THE CHAIRPERSON: So, you never
7 admitted being the individual who used the name
8 Totenkopf?
9 MR. A. KULBASHIAN: I never admitted
10 to being Totenkopf, straight forward, like pretty much
11 said.
12 THE CHAIRPERSON: But you said
13 something about the logo right after, did you not say
14 something about the logo?
15 MR. A. KULBASHIAN: It was about
16 logos, yes, but this is trying to establish that
17 Totenkopf was me and I never admitted to being
18 Totenkopf.
19 THE CHAIRPERSON: I have your comment
20 noted.
21 MR. A. KULBASHIAN: And also states:
22 "AK states that after James
23 Richardson was arrested he wrote

1 and posted an article in the
2 Vinland Voice where he urges
3 supporters to call the phone
4 number provided, ask for Terry
5 Wilson, dial *67 to mask their
6 caller ID, and express their
7 disgust with him. This shows AK
8 had access to the content of the
9 website."

10 I also never admitted in my interview
11 to writing that article.

12 THE CHAIRPERSON: All right. So you
13 are denying what is being said here.

14 MR. A. KULBASHIAN: The interview is
15 on the record and I never admitted in my interview to
16 writing that article.

17 Next:

18 "AK states that he requested
19 that the article be edited to
20 remove the reference to Det.
21 Wilson and to Det. McKinnon as
22 it was suggested that he may be
23 harassing these police officers.

1 He states that he does this by
2 contacting the editors."

3 I never said editors as much as
4 owners, contacting owners.

5 It also says:

6 "AK states that he arranged to
7 have the threatening article
8 which James wrote on September
9 14, 2001 in Vinland Voice be
10 taken off the websites. Here
11 again he states he does this by
12 contacting the editors."

13 It's more about contacting the
14 owners. And 'arrange' would be a key word.

15 If you choose, I guess to believe
16 that information, arrange is different than actually
17 removing it myself or say, removing -- having control
18 of the information.

19 Now, going to the next page, just
20 give me a second, going to -- near the bottom of the
21 page where it says:

22 "A woman named Carol Miles
23 e-mailed the Toronto Police

1 Department to advise..." et
2 cetera.

3 I just want to note that no
4 documentation was never provided and that it was
5 basically going off of Det. Wilson's memory as to what
6 he thought might have happened.

7 And that he also admitted that he did
8 not receive the alleged e-mail personally and that
9 somebody else might have sent it to him.

10 Okay. Next, turning over to page 6
11 where Ms Maillet points out that the e-mail was
12 authored -- the alleged e-mail was authored by
13 Totenkopf - C.E.C.T. and stating that there were
14 business cards seized from my house.

15 According to Det. Wilson's testimony,
16 there was only one business card with C.E.C.T.
17 public/press relations seized from my house.

18 And he was asked that question
19 explicitly and stated there was only one that he new
20 of.

21 Det. Wilson also, if I remember
22 correctly, took back what he said about Det. Samuel Sam
23 visiting my home.

1 And he remembered it was something
2 more about a coffee shop, not my home, and he admitted
3 that he didn't have direct knowledge of whether or not
4 I admitted being Totenkopf to him.

5 Okay. Now, it says also:

6 "AK's computer was seized --"

7 This is two paragraphs down --
8 actually three paragraphs down:

9 "AK's computer was seized
10 complying with the seizure of
11 electronic information rules so
12 that the evidence could be used
13 in court. Other article located
14 denoted white supremacist
15 philosophy such as T-shirts with
16 swastikas on them, business
17 cards of Canadian Ethnic
18 Cleansing Team --"

19 Of which I note he admitted there was
20 only one:

21 "-- public/press relations,
22 business card of Tri-City Skins,
23 scrap book with racist names and

1 drawings."

2 This is basically clarifying that
3 there was only one card that he admitted to.

4 THE CHAIRPERSON: I had it noted.

5 MR. A. KULBASHIAN: Now, coming back
6 to -- going to page 7 where it says:

7 "It is then followed by the
8 article --"

9 This is down by the bottom, three
10 paragraphs up, it is talking about the article
11 'Skinheads On The March', it is noting that:

12 "Alex Krause, a member of the
13 Canadian Ethnic Cleansing Team,
14 who runs the server that the
15 Tri-City Skins et al. use to run
16 their websites..."

17 The key word would be 'use' not
18 manage or control of any of those websites:

19 "...is reluctant to get into a
20 detailed discussion of the
21 activities of any of the
22 groups - except to say that they
23 use the Internet to network."

1 No admission by the individual that
2 he talked to of having control of the website, knowing
3 of the contents, just saying that -- or knowing of any
4 legal content, just saying that they just use the
5 network.

6 Okay. Now, the comment was made,
7 going to page 8 where it says:

8 "As I stop the projects, I am
9 in the process of creating a new
10 organization by the name of...",

11 That's what the quote is and it says
12 at the bottom of that paragraph:

13 "...however still dedicated to
14 the same ultimate cause...."

15 THE CHAIRPERSON: I'm sorry, I must
16 have missed a paragraph.

17 MR. A. KULBASHIAN: This is page 8,
18 top paragraph.

19 THE CHAIRPERSON: Oh, sorry. And you
20 are referring to...

21 MR. A. KULBASHIAN: The first
22 paragraph.

23 THE CHAIRPERSON: The first

1 paragraph.

2 MR. A. KULBASHIAN: And it takes a
3 quote from an article signed by Alex Krause.

4 THE CHAIRPERSON: Yes.

5 MR. A. KULBASHIAN: And near the very
6 end a comment was made,

7 "...however still dedicated to
8 the same ultimate cause...."

9 And the comment made by Ms Maillet
10 was, of course, white supremacy even though there's no
11 indication of what the ultimate cause is or what
12 aspects of the cause the article is looking at.

13 Now, also the third paragraph where
14 it says, page 8:

15 "Article states to please
16 forward to everyone on their
17 list and discusses the
18 anti-racist database - wants to
19 build it into a massive,
20 publicly accessible
21 database...", et cetera.

22 And says:

23 "...educate people about the

1 presence of danger and trash in
2 their communities."

3 There was no -- that's the wording of
4 the author of this document as opposed to wording of
5 any articles on that site. There's no reference that
6 an article in tab 27 actually called people, you now,
7 danger or trash.

8 THE CHAIRPERSON: Are you saying that
9 nowhere in the Village Voice --

10 MR. A. KULBASHIAN: Vinland Voice,
11 yeah.

12 THE CHAIRPERSON: Sorry.

13 MR. A. KULBASHIAN: It's all right,
14 it's kind of confusing.

15 MR. RICHARDSON: You were thinking of
16 Village People.

17 THE CHAIRPERSON: Vinland Voice,
18 nowhere is there a reference, issue No. 13, tab 27, is
19 there a reference to presence of danger and trash in
20 their cities, is that what you are saying?

21 MR. A. KULBASHIAN: In a specific
22 article that says:

23 "Please forward to everyone on

1 the list..."

2 et cetera, et cetera, because it's referring to a
3 specific article.

4 THE CHAIRPERSON: So, you are saying
5 that statement is not there.

6 MR. A. KULBASHIAN: Yeah. Now, going
7 down to where it says tab 28, near the last sentence
8 says:

9 "The Canadian National Front..."
10 et cetera,
11 "...To those emailing me at
12 krause@wpcect.com or
13 totenkopf@wpcect.co - ..." Shows
14 old and new email address."

15 If anything this shows that there is
16 two separate e-mail addresses that the author could
17 have received e-mail at. One appears to be a personal
18 e-mail with the same last name Krause and the other one
19 could still be in line with Totenkopf being a group
20 because people can still e-mail to a group e-mail
21 address as opposed to an individual e-mail address.

22 So, it would either be illogical for
23 an individual to have two e-mail addresses on the same

1 site to himself, or it is possible that Totenkopf would
2 be a group as opposed to an individual.

3 Now, where it says down there --
4 where it says, page -- sorry tab 39, Vox Candidi.

5 THE CHAIRPERSON: Yes.

6 MR. A. KULBASHIAN: It says:

7 "...the voice of the white
8 race...", et cetera.

9 "...- signed by Alex Krause with
10 the Totenkopf symbol at the
11 bottom."

12 If you look at tab 39 there is no
13 Totenkopf symbol at the bottom.

14 THE CHAIRPERSON: Let me look.

15 Yes, tab 39?

16 MR. A. KULBASHIAN: I'm sorry, I mean
17 there's no author's Totenkopf symbol. I meant to
18 clarify that, sir.

19 THE CHAIRPERSON: My understanding
20 was it was the word with the logo next to it.

21 MR. A. KULBASHIAN: But it does
22 not --

23 THE CHAIRPERSON: It doesn't say Alex

1 Krause.

2 MR. A. KULBASHIAN: It does say Alex
3 Krause, but it does not identify the author as
4 Totenkopf as much as being part of the templates.

5 THE CHAIRPERSON: Okay. The way I
6 read this and it confirms my viewing of it right now,
7 is that the hyphen was there sort of to introduce a
8 second phrase to say that there's a Totenkopf symbol at
9 the bottom as well.

10 MR. A. KULBASHIAN: Which hyphen?

11 THE CHAIRPERSON: Between Krause and
12 Totenkopf.

13 MR. A. KULBASHIAN: There's a hyphen.

14 THE CHAIRPERSON: Anyway, I am
15 looking at the document, so the document speaks for
16 itself.

17 The document is signed by Alex Krause
18 and at the bottom is the Totenkopf logo with the word
19 Totenkopf next to it.

20 MR. A. KULBASHIAN: At the very
21 bottom.

22 THE CHAIRPERSON: At the very bottom,
23 underneath "Home" "About Us" "Current Issue", et

1 cetera.

2 MR. A. KULBASHIAN: Which would be
3 consistent with it being part of more a template rather
4 than it being the author's identification.

5 Going to page 9.

6 Okay. It says Tab 35, I think it's a
7 little lower than the bottom, like the middle,
8 referring to the P.O. Box on Adelaide Street being the
9 same as TCS and CECT mailing addresses.

10 There is no information about it
11 being TCS's mailing address as much as maybe saying
12 being used by TCS but not being their mailing address.

13 THE CHAIRPERSON: Mm-hmm.

14 MR. A. KULBASHIAN: Okay.

15 Now, if you look to page 10 and it's
16 down near the middle of the second big paragraph where
17 it says:

18 "Alex Krause, 20, of Toronto
19 said he and Richardson are
20 actually the only formal members
21 of the C.E.C.T..." et cetera,
22 "which they created..."

23 I'd like to note that the media had a

1 tendency of not being correct in their reporting as
2 well as possibly that that was paraphrased and modified
3 from its original, I guess, from the way it was
4 originally stated.

5 THE CHAIRPERSON: Well, you are
6 making a general statement here.

7 MR. A. KULBASHIAN: Yes.

8 THE CHAIRPERSON: That newspaper
9 reports may inherently not represent the actual --

10 MR. A. KULBASHIAN: Event.

11 THE CHAIRPERSON: -- event. By
12 nature a newspaper report is hearsay, so, I think that
13 goes without saying.

14 MR. A. KULBASHIAN: Now, while
15 reading page 11, Ms Maillet by her own admission states
16 that there's weak evidence of involvement between,
17 like, Affordable-Space and TCS except for hosting, or
18 of any those other sites in fact is what she states,
19 except for hosting.

20 THE CHAIRPERSON: I must have missed
21 that.

22 MR. A. KULBASHIAN: It's actually
23 written there.

1 THE CHAIRPERSON: What page? Wait
2 until I catch up, you see. If you don't see me
3 catching up to you, don't continue.

4 MR. A. KULBASHIAN: Oh, sorry. Okay,
5 I don't know.

6 THE CHAIRPERSON: I can't tell what
7 page you are on.

8 What page are you on?

9 MR. A. KULBASHIAN: Panel 11.

10 THE CHAIRPERSON: Page 11. Okay, I'm
11 there. Go ahead.

12 MR. A. KULBASHIAN: While she was
13 reading page 11 she stated that there was weak evidence
14 of involvement between affordable-space.com and the
15 other sites except for hosting.

16 THE CHAIRPERSON: Okay. I don't
17 know -- make your point. I'm seeing heads nodding,
18 they're disagreeing with how Ms Maillet presented the
19 evidence. So, just make your assertion.

20 What do you wish to say?

21 MR. A. KULBASHIAN: So, basically I'm
22 just addressing the points.

23 THE CHAIRPERSON: I know, but you

1 said -- you made a comment about something that Ms
2 Maillet said but you don't give me what your
3 proposition is. What is your proposition?

4 MR. A. KULBASHIAN: My proposition is
5 that the reason there would be weak evidence would
6 probably mean that there might have been no evidence of
7 links between the sites except for the hosting and
8 affordable-space.com.

9 THE CHAIRPERSON: So, you are saying
10 there is no evidence of direct link other than hosting.

11 MR. A. KULBASHIAN: And also Ms
12 Maillet stated that there was a bail condition that I
13 transfer ownership of affordable-space.com.

14 THE CHAIRPERSON: At what point in
15 time?

16 MR. A. KULBASHIAN: This was around
17 the same point in time, while she was reading this
18 page - it's not actually on the page - and just a
19 correct that there was bail condition that I transfer
20 ownership, it just stated that I release any contracts
21 that I have with carinet.com and shut down
22 affordable-space.com, where at that point
23 affordable-space.com was not shut down due to Mr.

1 Wilson's admission that I was not in control at that
2 time.

3 THE CHAIRPERSON: Yes, please.

4 MR. A. KULBASHIAN: Okay.

5 On page 12 there is, I guess, a point
6 where Ms Maillet states::

7 "AK states he manages 80 sites,
8 20 of which are racist."

9 I never admitted to managing 80
10 sites, this is during the transcript.

11 THE CHAIRPERSON: I see it, yes,
12 okay.

13 MR. A. KULBASHIAN: I never admitted
14 to managing 80 sites. Managing would be pretty -- I
15 guess a lot more involvement than just providing the
16 service to somebody, it would be actually having
17 control over it rather than just being the service
18 provider for them.

19 THE CHAIRPERSON: So, what were you
20 then? I don't want you to testify, but what is the
21 evidence?

22 MR. A. KULBASHIAN: The evidence was
23 that I hosted them, not managed them; that

1 Affordable-Space in fact hosted them, not managed them.

2 There's also a part two lines down:

3 "AK states that he always has
4 control over the people he sells
5 space to and can choose who not
6 to sell space to."

7 Isn't that in context of trying to
8 give me control of their sites is one thing, but in
9 general everybody in business has the option to use
10 their discretion when doing business with another
11 individual.

12 It also is not an admission that I
13 did control, it's that I could have had control in the
14 sense that I would have administrative abilities, I
15 guess, over the site themselves.

16 THE CHAIRPERSON: So, you are saying
17 that with the reference to control in that transcript
18 was a reference to administrative control; is that what
19 you said?

20 MR. A. KULBASHIAN: More like, yes.

21 THE CHAIRPERSON: Meaning. I don't
22 want you to elaborate on your evidence, but what based
23 on what is in the record, you are suggesting that the

1 statement was...?

2 MR. A. KULBASHIAN: More like
3 misinterpreted in a sense.

4 THE CHAIRPERSON: Fine.

5 MR. A. KULBASHIAN: And it also
6 states lower down that:

7 "AK sold Affordable Space to
8 Steve Weigand."

9 There is no evidence at all, in fact,
10 in front of the court that affordable-space.com was
11 sold to Steve Weigand, in fact the evidence was that an
12 account belonging to affordable-space.com on Cari Net
13 was transferred over to Steve Weigand which would make
14 a difference considering there is no evidence provided
15 as to how many servers or how much property, I guess
16 more like digital property affordable-space.com had.

17 They could have had 10 more servers,
18 20 more servers, but the only evidence that was
19 provided was that the server on Cari net was
20 transferred over to Steven Weigand.

21 Lower down it says:

22 "The domain server for Tri-City
23 Skins and Canadian Ethnic

1 Cleansing Team is
2 affordable-space.com."

3 And earlier on in this point there
4 was, kind of a -- there was, I guess, a reference to
5 one of the authorities talking about how servers work,
6 et cetera.

7 Basically the only information that
8 can be found out from doing a Whois search is who
9 actually hosted the domain name server, not the actual
10 site and the content of the site unless you actually do
11 a different kind of, I guess -- I think just a Whois
12 itself that has been taken from, I guess, I'm not sure
13 where he did it from, but it says:

14 "Domain server in order...",

15 The Whois information only shows
16 where the domain name servers lie, it doesn't show
17 where the actual site itself has been hosted.

18 Now, going to a more serious --
19 sorry.

20 THE CHAIRPERSON: Yes.

21 MR. A. KULBASHIAN: Okay.

22 Now, Ms Maillet also wrote that, on
23 page 13 it says tab 38:

1 "AK's resume:"

2 It says:

3 "President of
4 Affordable-Space.com which
5 offers website Hosting, Design
6 and Technical Support."

7 Now, if you turn to tab 38 there is
8 nothing saying that I stated I was the president of
9 affordable-space.com. I think she might have misread
10 where it says 1996 to present -- "pres."

11 So, still -- so, like I mean, I guess
12 everyone makes mistakes. So, I'm just, like,
13 clarifying that.

14 THE CHAIRPERSON: So, nowhere even in
15 the later pages does it make reference to you being
16 president.

17 MR. A. KULBASHIAN: President, no.

18 THE CHAIRPERSON: Where was the
19 reference in the text?

20 MR. A. KULBASHIAN: Text. In her
21 text you mean.

22 THE CHAIRPERSON: Yes.

23 MR. A. KULBASHIAN: Page 13, tab 38

1 THE CHAIRPERSON: Oh, okay. Yes.

2 MR. A. KULBASHIAN: Okay. And going
3 down where it says:

4 "Court documents.

5 Bail recognizance..."

6 It says, supporting it:

7 "- required to cancel
8 affordable-space.com's contract
9 with California Regional
10 Intranet Inc., also known as
11 Cari Net."

12 This is the next paragraph.

13 THE CHAIRPERSON: Yes.

14 MR. A. KULBASHIAN: It just supports
15 what I stated about not actually selling
16 Affordable-Space as much as just cancelling contracts
17 which I had no control over, which Det. Wilson
18 testified to at that time.

19 In page 16 on the second paragraph
20 where it says:

21 "At no time would any other
22 person than Cst. Stumpf have
23 access to JR's computer and it

1 was therefore secure and safe
2 from any potential accidental
3 damage."

4 That information is actually
5 according to Det. Wilson and not, in my opinion not to
6 be taken as fact.

7 THE CHAIRPERSON: So, what is your
8 proposition on that?

9 MR. A. KULBASHIAN: My proposition?

10 THE CHAIRPERSON: Are you suggesting
11 that it was tampered with.

12 MR. A. KULBASHIAN: I'm suggesting
13 that there could have been more than one person had
14 access to that information.

15 I'm trying to be more cautious than
16 just saying outright, but I'm suggesting it could have
17 been tampered with.

18 On page 17, second last paragraph --
19 well, the third last paragraph --

20 THE CHAIRPERSON: Page 17.

21 Third to last paragraph, yes.

22 MR. A. KULBASHIAN: Where it says:

23 "Richard Warman notes that

1 WPCANADA is a consistent
2 participant in the internet
3 relay chat and that the
4 pseudonym of "WPCANADA" on
5 occasion may be transformed into
6 "WPCaway" which happens when you
7 have left the computer for a
8 short time."

9 I'm suggesting that that's not the
10 way, I guess the...

11 THE CHAIRPERSON: Well, you have to
12 be careful because you can't give me evidence here.

13 MR. A. KULBASHIAN: Okay.

14 THE CHAIRPERSON: So, if there is
15 somewhere in the record some suggest that this is a
16 misrepresentation of the evidence.

17 MR. A. KULBASHIAN: First of all,
18 before getting to that, I would state that just as Det.
19 Wilson faked his identity on line, has two different
20 identities while talking to an individual called
21 WPCANADA, just as easily an individual could have used
22 the WPCANADA name on line; whereas there is no
23 restrictions on IRC as we found out from testimony on

1 what name you use.

2 As well, Mr. Warman is not an expert
3 on the Internet by his own admission and that using the
4 Internet a lot does not make him an expert on Internet.

5 Making it likely that WPCanada --
6 WPCaway, sorry, could be a different person than
7 WPCANADA and as alleged it could not be maybe a
8 consistent pseudonym or it could just not be the
9 pseudonym of James because there are, in effect, two
10 pseudonyms, there's WPCaway and WPCANADA and either one
11 or both could not be James.

12 Also --

13 THE CHAIRPERSON: How do you deal
14 with -- at some point I'd like you to deal with the
15 bigger argument.

16 MR. A. KULBASHIAN: Yeah, I'm going
17 to. I'm just trying to touch on her closing argument.

18 THE CHAIRPERSON: All right. I will
19 bring you back to that, okay.

20 MR. A. KULBASHIAN: Yeah, because I
21 do have actually the big arguments in the --

22 THE CHAIRPERSON: No, I mean you're
23 pointing out some issues on specifically here with

1 respect to the web logs, but here they were presented
2 in a way to build a general impression of who this
3 individual is.

4 MR. A. KULBASHIAN: That's right.
5 And I'm saying that since no expert testified on the
6 Internet, then --

7 THE CHAIRPERSON: No, no, but there's
8 more than that here. There's actual statements, James,
9 references to Hamilton, all this kind of thing.

10 MR. A. KULBASHIAN: I understand. I
11 will be getting into that one.

12 THE CHAIRPERSON: You will get into
13 that.

14 MR. A. KULBASHIAN: For sure, for
15 sure.

16 On page 19 where it says page 26:

17 "WPC - Brian Caldwell called my
18 moms...", et cetera.

19 Assuming this was a true chat, like
20 assuming this was accurate, like the way it happened on
21 line, it says:

22 "...I will get Alex to play head
23 games"

1 And lower down it says:

2 "- it should be good we lied a
3 lot"

4 So, I would I guess more, like, ask
5 the Tribunal member to be cautious about relying on the
6 media reports if by the person's admission here there
7 were lies that were sent to the media.

8 So, basically if you should find that
9 they these logs are accurate, then there should be no
10 problem finding that the media might not have had
11 accurate information to, I guess, tell the story.
12 with.

13 On page 20 where it says:

14 "p.3 fdajews -"

15 Okay.

16 "fdajews."

17 Like, right there it says p.3:

18 "- I put a link to you guys on
19 my website...CECT PO Box...", et
20 cetera, Toronto.

21 Now, my question is -- actually my
22 statement is just because the individual put a link on
23 the site does not mean that that site is now liable or

1 responsible for all the content of the sites that he
2 links to would have, I guess, propagated.

3 On page 21, the end of the second
4 paragraph where it says:

5 "WPC - hmmm, email alex, I am
6 sure he will let you use the po
7 box"

8 Again, if the Tribunal member should
9 find that these chat logs are accurate, it would also
10 show that people were allowed to use the P.O. Box not
11 necessarily have ownership of the P.O. Box and not
12 necessarily translate that everybody that put that
13 address actually - I'm sorry, doesn't necessarily show
14 that every site that had that address was owned by the
15 same person or even controlled by the same person for
16 that matter.

17 Okay. Page 21 again go lower done
18 underneath it says "cect@...", et cetera, et cetera.

19 It says:

20 "- TW explained in his testimony
21 that when the person signs on as
22 WPCANADA, they get a sign-in
23 code essentially which was the

1 above noted in this case."

2 Again, Det. Wilson was not an expert
3 on the Internet and he admitted to not being an expert.

4 "- TW then took this information
5 and on January 16th, 2002, he
6 prepared a search warrant to
7 search Execulink, which is the
8 internet service provider for
9 information on the registrant
10 who signed on on that date, at
11 that time, with that sign-in
12 code."

13 Again, the information that was
14 provided to the Tribunal was patchy at best. The, I
15 guess, information from Execulink looked like it was
16 typed up in NotePad not even Word, didn't have any
17 formal letterhead, no signature, basically the only
18 thing we had to show that that information was accurate
19 was the word of the witness.

20 And on page 22 it states on the
21 second floor -- sorry, I'm getting tired.

22 THE CHAIRPERSON: Second paragraph.

23 THE CHAIRPERSON: Second paragraph,

1 that:

2 "This evidence establishes that
3 James Scott Richardson is
4 WPCANADA."

5 Now, again, just as Det. Wilson faked
6 his identity, there may be more than one WPCANADA.

7 I think I may have missed something,
8 so I may have to take you back to page 4.

9 THE CHAIRPERSON: Four.

10 MR. A. KULBASHIAN: Page 4, yes.

11 Give me a sec I'm just going to check, before you turn
12 there I just have to check because I may have actually
13 typo'd my paper.

14 There was a reference to tab 16 in
15 HR-1.

16 THE CHAIRPERSON: At page 4?

17 MR. A. KULBASHIAN: Well, I'm trying
18 to find out exactly where it is right now.

19 Tab 16.

20 MR. RICHARDSON: Tab 8.

21 MR. A. KULBASHIAN: Yes, there was a
22 reference to tab 16 though.

23 THE CHAIRPERSON: I see a tab 26.

1 MR. A. KULBASHIAN: I'll get back to
2 that in a bit. Sorry about that. I will actually get
3 my stuff together.

4 So page 23 --

5 THE CHAIRPERSON: Okay.

6 MR. A. KULBASHIAN: If you look down
7 Ms Maillet was identifying groups, like having group
8 names, symbol, letterhead, P.O. Box , telephone number,
9 bank accounts.

10 THE CHAIRPERSON: Yes.

11 MR. A. KULBASHIAN: Basically the
12 only things that the groups stated here have in common
13 with this list are the group name, symbol, a P.O. Box
14 that some of the groups use as opposed to actually own,
15 and there's no bank account information, no leaders
16 that were alleged to exist, having existed in TCS,
17 Tri-City Skins and there's no telephone number listing
18 in the phone book for any of the groups.

19 And aside from --there was also no
20 letterhead which would, I guess, make a difference than
21 some of the examples she provided.

22 THE CHAIRPERSON: You said there was
23 no indication of officers or leaders of the group.

1 MR. A. KULBASHIAN: Of Tri-City Skins
2 there was not. That was -- sorry I should have been
3 more clear.

4 THE CHAIRPERSON: The evidence as
5 presented by the complainant, the Commission was that
6 the two respondents, you and Mr. Richardson identified
7 yourself as member of the CECT; right?

8 MR. A. KULBASHIAN: That's right.

9 THE CHAIRPERSON: That's the evidence
10 as presented by the complainant/Commission. But you're
11 saying there is no evidence of TCSkins?

12 MR. A. KULBASHIAN: TCSkins never had
13 a leadership or anything like that.

14 THE CHAIRPERSON: Okay.

15 MR. A. KULBASHIAN: Okay.

16 Now, going to page 27 -- the main
17 quick comment before that, there was testimony from
18 Det. Wilson that people use pseudonyms on line all the
19 time and not only to mask illegal actions, and there
20 was some statement that people do it just to run away
21 from the law, which I think Ms Maillet either said
22 explicitly or was referring to, or suggesting, sorry.

23 And according to the testimony that

1 we had that people use pseudonyms on line all the time,
2 in fact people rarely use their real names for, I
3 guess, recreational chatting.

4 Okay. Now, going to page 27, the
5 paragraph in the centre, the quoted one, it states
6 that:

7 "With "hatred" the focus is a
8 set of emotions and feelings
9 which involve extreme ill
10 will...",

11 Also says:

12 "To say that one "hates" another
13 means in effect that one finds
14 no redeeming qualities in the
15 latter."

16 I don't think that, at least from the
17 Vinland Voice or CECT side, there was any articles that
18 stated that individual had or group of people had no
19 redeemable qualities and extreme ill will should be up
20 to the Tribunal to decide rather than taking the
21 suggestion of the complainant or Commission.

22 Also in the paragraph underneath it
23 where it says:

1 "The basic theme the material
2 communicates to readers is that
3 Jewish people have no redeeming
4 qualities and that they are
5 destroying the white race, they
6 are criminals and not even
7 human. There is a repeated
8 pattern of singling out jews and
9 ascribing extreme negative
10 characteristics...", et cetera,
11 et cetera.

12 Again, that is her opinion in some
13 ways it is her opinion of how white races -- like,
14 white supremacist groups might work and I think in some
15 cases she's attributing them to the group just through
16 association more than actual explicit documents, for
17 example, in the sense of CECT or Vinland Voice.

18 Okay. Now, if we go to page 28,
19 there's a second paragraph there underneath the
20 characterization, there's reference to tab 16 of HR-1
21 it says authored by Totenkopf. There's no tab -- I
22 think that's what I was trying to look for earlier on.
23 There is no, like, I guess, no document to be authored

1 in tab 16, HR-1.

2 If I'm not mistaken she might have
3 been referring to tab 17 HR-1.

4 And if you look at the back of the
5 document at tab 17 HR-1 there is no author, and if you
6 turn back to the first page of tab 17 HR-1, there is a
7 symbol on the side that there has been some testimony
8 stating that that would be part of the template rather
9 than the actual author's signature directly on that
10 document.

11 Turn to page 29, I'm not trying to
12 defend any of the articles here, but there is a
13 statement that says underneath tab 11:

14 "Pierce was head of largest
15 neo-nazi organization in the
16 US - National Alliance -
17 article deals with his
18 musings...", et cetera.

19 The comment about Pierce is, I guess,
20 uncorroborated as far as the evidence in the court
21 goes, so I guess that would be more of like an opinion
22 or something that did not occur.

23 And tab -- where it says tab 12:

1 "Pierce - America's real
2 enemies -" et cetera.

3 It says:

4 "...Israel the world capital of
5 white slave trade where
6 buying...", et cetera, et
7 cetera.

8 And going down:

9 "...is a country that respects
10 the "sanctity of human life"
11 What Wuliger forgot to mention
12 is that religious Jews believe
13 that only Jews are human"

14 This would be more of a country --
15 attack on a country more than attack on a people
16 explicitly and not a nationality as much as a country
17 at the very beginning part especially.

18 Now, coming back, going to page 31
19 again where it says tab 16, I think she actually
20 corrected that one to tab 17, and the Totenkopf symbol
21 again is not -- is in place that evidence has stated
22 was more of signature, like not a signature but --

23 THE CHAIRPERSON: What evidence is

1 that?

2 MR. A. KULBASHIAN: Evidence during
3 the court from Wilson.

4 THE CHAIRPERSON: From Mr. Wilson?

5 MR. A. KULBASHIAN: Mr. Wilson stated
6 that that would not be the actual author of the article
7 as much as the signature of the designer of the
8 template of the sites.

9 Now, going to -- I guess where for a
10 second there while she was going through page 32 she
11 stated to look at tab 41 about an article that was
12 posted on a site called EAN News.

13 Now, the thing is there was no
14 evidence about the site itself and I'm suggesting that
15 it's possible that whoever actually posted the article,
16 the editor of the site itself might have modified the
17 article if they were posting it.

18 THE CHAIRPERSON: I missed the page?

19 MR. A. KULBASHIAN: I'm just going
20 actually logically the way she went. So, which she was
21 reading page 32 she commented on this.

22 THE CHAIRPERSON: 32.

23 MR. A. KULBASHIAN: Yeah.

1 The last paragraph of that same page,
2 she stated that:

3 "Dr. Henry was qualified as an
4 expert witness."

5 Does not state what she was qualified
6 as expert in. She was qualified as an expert in racism
7 and hate propaganda of which she admitted she was not
8 an expert in hate propaganda.

9 Again to page 33 where it says:

10 "In reviewing Pierce's article
11 To Be or Not To Be or To Be
12 Nice"

13 Dr. Henry used her own opinion as to
14 what she thought that title meant rather than looking
15 at the actual contents of the article, she said it
16 would somehow, like, it would be like a lot of
17 hyperbolic language, et cetera, but To Be or Not To Be
18 Nice doesn't mean, in her opinion, and what he's
19 suggesting is that the reader has a choice to be nice
20 is let various other people live; whereas To Be
21 indicates they must be annihilated in order to allow
22 the white race to live. That was her own opinion, and
23 she made that comment before she touched on the article

1 itself, she was just commenting on the title.

2 On page 35 under section 4 where it
3 says:

4 "Is the respondent (Affordable
5 space only) exempt", et cetera.

6 It is the position of the
7 Commission -- or starts there, if you read down below:

8 "This exemption to liability was
9 meant to protect those
10 facilities that are mere
11 conduits of information and that
12 have no knowledge of the
13 contents of the material, nor
14 would it be practical for them
15 to monitor such material.

16 Companies such as Bell and
17 Telus, therefore, would not be
18 liable for the mere presence of
19 hate material in the websites
20 which they host. Liability may
21 be imposed, however, should they
22 be notified that the material
23 may be a breach of the CHRA and

1 they continue to host such
2 websites, the Tribunal may
3 indeed need to consider that for
4 another day."

5 First of all, there is no evidence
6 that the owners of affordable-space.com knew the
7 material that was on.

8 Knowing roughly what the material is
9 is not the same as knowing what the material is because
10 there's a line between what is allowed and what isn't
11 allowed and to state that Affordable-Space should have
12 censored the sites purely on the fact that they came
13 from the right as opposed to censored them on the fact
14 that they might actually have gone against the Act, is
15 to state that other people from the right have no, I
16 guess, no right to state their opinions. That some
17 censors believe should be the fact and they believe
18 they should be moderated too.

19 It say also states that they should
20 be notified. Both Mr. Warman and Det. Wilson stated
21 that they did not notify affordable-space.com or any of
22 the sites of the content and they stated they don't
23 know anybody who has actually, like, notified, notified

1 the server or the site themselves which takes
2 affordable-space.com out of that liability.

3 On page 36, this is more specific to
4 my case where on the second last paragraph where it
5 says:

6 "SCC held that the exemption
7 under s. 2.4 of the Copyright
8 Act...", et cetera.

9 Obviously we're not dealing with the
10 Copyright Act.

11 But going lower down where she's
12 underlined, it has:

13 "...have no actual knowledge of
14 an alleged libel...",

15 And if paralleled to this case it
16 would require that Affordable-Space knew of the
17 specific articles violating, not just the theme of the
18 sites, if she's drawing that parallel.

19 THE CHAIRPERSON: I didn't follow
20 you.

21 MR. A. KULBASHIAN: Okay. Well, it
22 states there:

23 "...have no actual knowledge of

1 committed no negligence in
2 failing to find out about the
3 libel."

4 Your point?

5 MR. A. KULBASHIAN: So, translating
6 more towards the Internet if you look up, if you
7 actually look up at one paragraph up it says:

8 "...the Copyright Act provides
9 that persons who only supply the
10 "means of telecommunication
11 necessary for another person to
12 so communicate" are not
13 themselves to be considered
14 parties to an infringing
15 communication."

16 Now, there's also -- Ms Maillet
17 stated that this Act was modified to the Internet in
18 order to take into account the fact that so many pages
19 could exist on a server and the server had no way of, I
20 guess, knowing of the content on every single page,
21 which would be, I guess, a little bit different than
22 the Copyright Act or the Publishers Act.

23 I'm going to page 37. It says -- now

1 in the middle paragraph where it says:

2 "In this case..."

3 et cetera. If you go down to the middle sentence, it
4 says:

5 "The evidence also shows that he
6 created the layouts and the
7 script for the website and
8 designed the emblems on the
9 sites. Importantly, he was able
10 to control who was or was not a
11 client and states that he would
12 refund any anti-racist groups
13 that wanted an account on his
14 server."

15 Now, coming to that, it says: "he was
16 able to control", does not mean that he did control or
17 did monitor, ability is different than actually doing,
18 and the owner of affordable-space.com or myself were
19 not required to monitor any of the sites.

20 And also stated that he would refund
21 anti-racist groups that wanted accounts on the server.

22 According to my testimony which was
23 on the record, I did state that if I found out that one

1 of the sites was anti-racist, on my own discretion
2 could shut them down or refund them the money or would
3 shut them down, but that would require my knowledge.

4 And it doesn't necessarily state
5 that -- it doesn't mean that I did have knowledge or
6 would actually have knowledge, it would mean if I did
7 have knowledge.

8 Now page 38, at the very top it says:

9 "It is the position of the
10 Commission that Affordable Space
11 was solely owned and operated by
12 Alexan Kulbashian and therefore
13 is located in Canada."

14 Again, obviously this is an opinion
15 as there was no documentation to show that
16 affordable-space.com was either owned by me or solely
17 owned by me. There was some evidence that I could have
18 been a part owner, et cetera, but not that I actually
19 solely owned the entire company.

20 Now, the other thing is that --
21 states that the reason why she believed that would be
22 in Canada is, for example, the majority of the actions
23 took place in Canada, et cetera, and also stated along

1 with that on the second paragraph that Affordable-Space
2 had a P.O. Box in Toronto.

3 There was no evidence that
4 Affordable-Space did not have a P.O. Box in the U.S. or
5 possibly many P.O. boxes in the U.S.

6 Okay. And also on the bottom of page
7 38 it says:

8 "We recommend that the
9 access/service provider should
10 be found liable itself to the
11 extent that it knew or should
12 have known that its facilities
13 were being used disseminate hate
14 messages, based on the extent of
15 its knowledge and technological
16 ability to take measures to
17 prevent further breaches of the
18 Act."

19 The fact of the matter is if further
20 breaches means after it being notified, which was by
21 being served, of the complaint papers, then there is no
22 indication that I actually have control, in fact there
23 is indication that I did not have control over the

1 server at that time and should have known would be the
2 opinion of the Commission because it would be akin to
3 the Commission saying that just because they're from
4 the right you have to monitor them or censor them for
5 that matter.

6 Now, if you go to page 39, in the
7 quote underneath the heading under s. 54(b) there is a
8 quote that says.

9 "This issue has a special
10 message from Alex Krause
11 regarding a great new project
12 that he is involved with. In th
13 e meantime, C.E.C.T. sends out a
14 big hello to Richard Warman...",
15 et cetera, et cetera.

16 This, to any reasonable person should
17 appear that it's an article written about Alex Krause
18 by somebody else, doesn't necessarily mean that Alex
19 Krause wrote the article, or in fact it would more
20 likely be that Alex Krause didn't write the article,
21 and it doesn't say that Alex Krause actually had said
22 this, it states that Alex Krause has a message. In the
23 meantime...

1 This is what we have to say.
2 So, again, on page 41 where it says:
3 "The Tribunal must also consider
4 that the Respondents continued
5 to try to evade the CHRA by
6 using pseudonyms, having
7 Affordable Space be located in
8 the US, and as Mr. Kulbashian
9 stated:"...the fact of the
10 matter is I don't care to follow
11 the Canadian law on what I do
12 with my server."

13 THE CHAIRPERSON: Where was that?

14 MR. A. KULBASHIAN: This is on the
15 last page, 41, second paragraph.

16 First of all the issue of pseudonyms,
17 again, as I brought up that everybody uses pseudonyms
18 on line and it would be, I guess, serious to state that
19 the reason people use pseudonyms because they are doing
20 something illegal.

21 Second of all the comment as to
22 whether or not Affordable-Space was in the U.S. was
23 because of certain reason, would not necessarily have

1 to do with racist speech, maybe it had to do with
2 something else, because there is no direct indication
3 as to what that comment was about.

4 Okay. That's my answer. I was just
5 going through it very briefly. I didn't want to get
6 too deal on the closing.

7 Getting into the closing submissions
8 from Mr. Warman. The problem is that -- sorry, I'm
9 actually tripping over the chords here.

10 So, the problem is that everybody has
11 their own opinion as to why this case was put forward
12 and everybody has, I guess, their opinions as to what
13 happened or didn't happen.

14 For example, now the thing is that my
15 opinion is that this attack was by someone who many
16 people believe to be a censor on speech that he does
17 not agree with and someone who stated that everyone on
18 the right should be moderated.

19 Now the thing is, coming back to his
20 closing submissions. I'm not sure.

21 Okay.

22 THE CHAIRPERSON: Are you going to be
23 referring to --

1 MR. A. KULBASHIAN: Mr. Warman's.

2 THE CHAIRPERSON: Mr. Warman's

3 submissions.

4 THE CHAIRPERSON: Let me bring those

5 up.

6 Go ahead.

7 MR. A. KULBASHIAN: Okay, ready.

8 Now, there was allegations that

9 Jewish scriptures were used in some way to belittle or,
10 I guess, attack Jews and that's what I'm trying to find
11 because my dad was actually reading this while I was
12 asleep.

13 Okay over here.

14 THE CHAIRPERSON: Page?

15 MR. A. KULBASHIAN: Okay, it's

16 actually page 2 at the very bottom paragraph where it
17 states:

18 "That in addition, there were
19 reprehensible efforts on the
20 part of Mr. Kulbashian and Mr.
21 Richardson in their
22 cross-examinations of Dr. Henry
23 to resurrect historical canards

1 such as that perhaps Jews were
2 in fact responsible for the
3 Communist Revolution in the
4 Soviet Union, and that Judaism
5 and its scriptures are based
6 upon religious supremacy and
7 permissive of any evil towards
8 non-Jews."

9 In fact what I remember is that the
10 cross-examination of Dr. Henry was about drawing
11 parallels between B'Nai Brith and a group that she was
12 commenting on being racist without having any prior
13 information on and drawing parallels between their
14 names as well as the comments that she made on the
15 groups say, I guess, motto.

16 And the comments about the Communist
17 Revolution could have been made as a fact and, again,
18 this is just his opinion as to why the comments were
19 made.

20 Another issue is the money that was
21 being asked by Mr. Warman is different than what was
22 put forth in the statement -- joint statement of
23 particulars between the Commission and Mr. Warman.

1 THE CHAIRPERSON: Do you want to
2 bring this to my attention, the statement of
3 particulars so we can compare the two.

4 It was the joint letter of
5 particulars --

6 MR. A. KULBASHIAN: That's right.

7 THE CHAIRPERSON: -- of the
8 Commission and complainant.

9 Okay, I have that. Let me look at
10 it. That's the one that's dated -- is there a date on
11 this? It had a cover letter dated April 19th, 2004
12 when it was sent to the Tribunal, all right, so,
13 remedies sought. Yes.

14 Can you point out the differences,
15 please?

16 MR. A. KULBASHIAN: I don't actually
17 have a copy on me, that's the problem, so...

18 And there was the issue of -- over
19 here what I --

20 THE CHAIRPERSON: Mr. Levac will
21 bring you a copy. I would like you to tell me where
22 the differences lie.

23 MR. A. KULBASHIAN: Okay. It states

1 over here.

2 THE CHAIRPERSON: Other where?

3 MR. A. KULBASHIAN: Over in the
4 statement of particulars:

5 Relief sought states that each
6 respondent should pay a penalty in the amount of
7 \$10,000 pursuant to 5.4 and that --

8 THE CHAIRPERSON: 54.1(c).

9 MR. A. KULBASHIAN: Sorry, 54.1(c).

10 And that the respondent Alexan
11 Kulbashian compensate the complainant in the amount of
12 \$20,000 pursuant to s. 54.1(b).

13 THE CHAIRPERSON: That's been dropped
14 to 10.

15 MR. A. KULBASHIAN: Yes, that's been
16 dropped to 10, which would also have been the original
17 amounts filed by Ms Maillet in her closing argument
18 before she modified it during her reading, which was
19 20,000, 10,000, 10,000.

20 THE CHAIRPERSON: Right.

21 MR. A. KULBASHIAN: In this case
22 there is 50,000 in total that is being requested.

23 THE CHAIRPERSON: Let me look at it.

1 I'm looking at Mr. Warman's document
2 first.

3 The only distinction I see is that
4 there's a request that a compensation order of \$10,000
5 be made against the Canadian Ethnic Cleansing Team.
6 That's the only difference I see right now. Do you see
7 it differently?

8 MR. A. KULBASHIAN: There's s.
9 54.1(c) 10,000 from each of the five respondents as
10 well as --

11 THE CHAIRPERSON: Yes?

12 MR. A. KULBASHIAN: -- 10,000 from
13 myself and James Richardson at 54.1(b).

14 THE CHAIRPERSON: That's not being --

15 MR. A. KULBASHIAN: That's
16 inconsistent with --

17 THE CHAIRPERSON: No, wait a minute.
18 Okay. It's compensation in the amount of 10,000 from
19 Mr. Richardson also.

20 MR. A. KULBASHIAN: 70,000 sorry, I
21 missed or 80,000.

22 THE CHAIRPERSON: So, what is
23 different is that in the current list of remedies

1 compensation in the amount of 10,000 pursuant to s.
2 54.1(b) is now being sought against Mr. Richardson and
3 the Canadian Ethnic Cleansing Team.

4 Am I correct?

5 MR. A. KULBASHIAN: That's right.

6 THE CHAIRPERSON: Okay.

7 MR. A. KULBASHIAN: Okay.

8 THE CHAIRPERSON: And your suggestion
9 is because it was not mentioned in the statement of
10 particulars --

11 MR. A. KULBASHIAN: Right. Well, my
12 suggestion is because it was not mentioned in the
13 statement of particulars and all throughout this case
14 until like now that he shouldn't, I guess, have a right
15 to amend what he is asking for. It's like changing the
16 penalties for the same crime throughout the trial.

17 THE CHAIRPERSON: So that it causes a
18 prejudice to you, it's not fair that you be asked this
19 at this time.

20 MR. A. KULBASHIAN: Yeah, for
21 example, say, if it was more I could have maybe hired
22 a lawyer or something like that.

23 THE CHAIRPERSON: Well, in your

1 particular case though, the only change with regard to
2 the amounts claimed against you personally -- well,
3 there is no change against you personally.

4 MR. A. KULBASHIAN: Well, there would
5 be --

6 THE CHAIRPERSON: There's a change
7 against the Canadian Ethnic Cleansing Team.

8 MR. A. KULBASHIAN: Which they're
9 trying to me.

10 THE CHAIRPERSON: I'm sorry?

11 MR. A. KULBASHIAN: Which they're
12 trying to me.

13 THE CHAIRPERSON: They're alleging
14 you are a part of, yes, and certainly in the case of
15 Mr. Richardson that is a modification, it's not present
16 in the joint statement --

17 MR. A. KULBASHIAN: Okay.

18 THE CHAIRPERSON: -- of particulars.

19 MR. A. KULBASHIAN: Also, Ms Maillet
20 suggested that we don't have remorse for what happened.

21 Now, the problem is we -- I can say,
22 speak for myself, I have nothing to feel remorse about.
23 As the Tribunal is well aware, the case didn't see a

1 day in court before it was dropped and if Ms Maillet is
2 suggesting just because we were charged we were guilty,
3 that might be a little more serious than, I guess, that
4 would be some kind of prejudice towards us just under
5 the innocent until proven guilty, I guess, clause, we
6 would be entitled to our day in court and since we
7 received that, making I guess a suggestion that we
8 didn't have remorse, so the problem should be worse is
9 like saying that we were guilty of the crime even
10 though we never saw court.

11 THE CHAIRPERSON: Okay.

12 MR. A. KULBASHIAN: Okay.

13 I'm getting to the actual bulk of my
14 closing arguments.

15 I might get through my introduction,
16 because there's 20 pages and there's 20 minutes left.

17 THE CHAIRPERSON: It's true that we
18 are running late it's a long day. Well, we can do your
19 introduction.

20 MR. A. KULBASHIAN: I might just do
21 the introduction.

22 THE CHAIRPERSON: Okay.

23 MR. A. KULBASHIAN: So, this case

1 brought in front of this Tribunal by both the
2 complainants CHRC and Mr. Warman is a continuation and
3 is in direct relation to criminal charges which was
4 brought against both myself and Mr. Richardson by
5 London Police where we were accused for alleged death
6 threats against certain ethnic groups and religious
7 groups.

8 Both complainants allege that the
9 respondents have contravened s. 13 of the Canadian
10 Human Rights Act.

11 THE CHAIRPERSON: Just to be clear
12 it's complainant and the Commission you mean.

13 MR. A. KULBASHIAN: Oh sorry,
14 complainant and Commission, okay.

15 Moreover, Mr. Warman alleges that I
16 myself have identified him specifically in one of the
17 articles in Vinland Voice.

18 Mr. Warman considers the language of
19 that article as a personal threat and is asking for
20 compensation.

21 The suit involves tri-city skins.com,
22 Canadian Ethnic Cleansing Team and
23 affordable-space.com, due to my alleged involvement in

1 control of those sites.

2 During this lengthy, I guess,
3 Tribunal hearing the complainants had three witnesses
4 testify on their behalf. Mr. Warman is one of the
5 complainants, Det. Wilson, the lead officer in charge
6 of the criminal investigation and Dr. Francis as an
7 expert witness.

8 THE CHAIRPERSON: Francis Henry.

9 MR. A. KULBASHIAN: Oh, right.

10 Sorry, okay.

11 THE CHAIRPERSON: So wherever I see
12 DF it's Dr. Francis Henry.

13 MR. A. KULBASHIAN: Just because both
14 names are first names. Sorry about that.

15 Okay. So, Mr. Richardson and I were
16 arrested by London Police at the end of January -
17 actually there's a typo there. I was arrested at the
18 end of January, 2002, Mr. Richardson was arrested
19 September 14th - and charged for alleged --

20 THE CHAIRPERSON: Of 2001.

21 MR. A. KULBASHIAN: Yeah, 2001, and
22 charged for allegedly making death threats.

23 After almost three years

1 investigations by the police and extensive media
2 coverage, during which some spectacular events took
3 place, suddenly all the charges were dropped, without
4 either myself or Mr. Richardson appearing for a day in
5 court on the trial and no explanation was given for
6 that whatsoever, neither was it by the witness Det.
7 Wilson who stated that he didn't know why it was
8 dropped.

9 Today both myself and Mr. Richardson
10 have clean criminal records and no pending charges in
11 Canada or elsewhere.

12 THE CHAIRPERSON: I don't know if
13 that was in evidence. I don't know if anyone --

14 Anyway it's part of your
15 introduction. I'm not entirely certain any evidence
16 was led about your record, but certainly I take it, I
17 think it's from the evidence that you were not
18 convicted on those charges, they were dropped as you
19 just said?

20 MR. A. KULBASHIAN: Yes.

21 Almost two weeks after my arrest I
22 received a letter from the CHRC that a complaint was
23 filed against me by Mr. Warman and the designated

1 investigator Mr. Steacy.

2 And, again, a few weeks later --
3 sorry, a few weeks after my charges were completely
4 dropped - sorry I just made so many typos - completely
5 dropped I was informed that a lawsuit was filed against
6 myself by Mr. Warman and the Canadian Human Rights
7 Tribunal, I guess more to say that it actually went to
8 court.

9 This lawsuit --

10 THE CHAIRPERSON: Oh, you mean the
11 Commission?

12 MR. A. KULBASHIAN: Yeah, the
13 Commission.

14 THE CHAIRPERSON: CHRC.

15 MR. A. KULBASHIAN: And that we would
16 actually be appearing at the Tribunal.

17 The lawsuit is a direct result of
18 criminal charges against myself and my co-respondent.

19 The overwhelming majority of the
20 documentation presented to this court are related to
21 the investigation before and after my arrest. The main
22 witness Det. Wilson was the lead investigator of that
23 inquiry. Mr. Warman also admitted that he took part in

1 those investigation as part of his evidence.

2 Also, the Canadian Human Rights
3 Commission was a party during the investigations.

4 THE CHAIRPERSON: During which
5 investigations?

6 MR. A. KULBASHIAN: During the
7 investigations that Mr. Warman made. Sorry, I guess,
8 it's like a little --

9 THE CHAIRPERSON: I'm trying to be
10 clear as opposed to the criminal investigation.

11 MR. A. KULBASHIAN: Oh no, these
12 particular. Initially it was criminal and now it's
13 changed to, Mr. Warman also admitted that he took part
14 in those investigations and also the Canadian Human
15 Rights Commission was a party during the investigations
16 done by the Commission obviously.

17 The complainants and the Commission
18 have presented the court with two main sets of
19 documents that include articles alleged to contravene
20 s. 13. One set belonging to the Tri-City Skins and the
21 other set belonging to Vinland Voice, but they are
22 actually trying to find the Canadian Ethnic Cleansing
23 Team liable instead of Vinland Voice, which are two

1 completely different sites with completely different
2 URLs, as they stated.

3 The night of my arrest I was
4 questioned at length at the London Police Department by
5 Det. Wilson regarding my involvement in death threats
6 that he alleged after the incidents of 911.

7 I was also questioned about the
8 aforementioned organizations and sites.

9 Det. Wilson specifically questioned
10 me regarding my involvement and relations in
11 Affordable-Space and C.E.C.T. and many other subjects
12 but not the Tri-City Skins.

13 I was questioned about my political
14 and ideological beliefs. The transcript of the Crown
15 brief was filed as Exhibit HR-1, tab 62 by the
16 complainant.

17 We would like to bring to the
18 attention of the court that this document was submitted
19 by myself and not by the Commission initially in the
20 disclosure phase and the complainants and the
21 Commission did not have possession of this document
22 before I submitted it during the disclosure phase.

23 The Crown brief was also missing in

1 the files that were brought, I guess, as evidence or
2 reference by Det. Wilson. Also what is more striking
3 is the lack of police reports and documentary evidence
4 for such a lengthy investigation.

5 I answered all the questions during
6 my, I guess, interrogation with no fear in a straight
7 forward and clear manner. I did not hide my beliefs or
8 political views, and -- or the extent of my
9 involvements in each of the aforementioned sites and
10 the server. Moreover, I volunteered extra information
11 to help with the investigation.

12 During the whole hearing it was
13 demonstrated how the events unfolded and about the
14 motives and irregularities including - the word here
15 I'll change it - including, I guess, certain misleading
16 information provided by individuals, provided by some
17 members of the groups -- sorry, by some of the members
18 of the London Police including London Crown Peter
19 Kierluk.

20 During testimony of Det. Wilson it
21 was apparent that the whole event was - I guess to
22 myself - was a personal vendetta against myself. To
23 get his revenge Det. Wilson resorted to all sorts of

1 lies and perjury - sorry, I'll get rid of that one
2 too - and by his own admission some criminal activity.

3 Mr. Warman on the other hand tried to
4 take advantage of the situation to attack organizations
5 and people who are against his political views to get
6 personal compensation.

7 Here we would like to mention that
8 Mr. Warman and the CHRC were informed by myself about
9 certain falsehoods and I guess misrepresentations
10 committed by certain members of the police, especially
11 Det. Wilson, and that although sites and server were
12 shut down, they elected to proceed with their lawsuit
13 and bring as their chief witness Det. Wilson.

14 They also knew that all the criminal
15 charges for both myself and my co-respondent were
16 dropped with no clear explanation.

17 The main issues at this trial are as
18 follows:

19 Did I contravene s. 13 of the
20 Canadian Human Rights Act?

21 Am I accountable merely being
22 associated with a certain group or for owing or
23 operating a server, Affordable-Space?

1 What is the extent of my involvement
2 in each of the websites?

3 Do those articles posted contravene
4 s. 13 in fact in some cases?

5 Did I know in advance about the
6 contents of the materials which were posted and did I
7 willingly communicate them through the Internet,
8 because will is actually important, being completely
9 ignorant to what's going on should, in all fairness,
10 should not hold people liable for certain things that
11 get done.

12 Who was responsible for the
13 interpretation of the materials in the case the
14 complaints?

15 Did the complainant and the
16 Commission complain to the websites or the server about
17 the materials which they claim were contrary to s. 13?

18 Is Affordable-Space or any other
19 server accountable for any articles posted on those
20 websites?

21 Is Mr. Warman --

22 THE CHAIRPERSON: Can you just back
23 up.

1 MR. A. KULBASHIAN: Sorry.

2 THE CHAIRPERSON: Can you explain
3 whose responsible for the interpretation of those
4 materials.

5 MR. A. KULBASHIAN: Yeah, like,
6 during the investigation.

7 THE CHAIRPERSON: Who's responsible
8 for the interpretation of those materials in case of a
9 complaint.

10 I don't understand what that means.

11 MR. A. KULBASHIAN: Okay. Also -- oh
12 yeah, sorry, you need clarification.

13 THE CHAIRPERSON: I asked you a
14 question, what do you mean by, who was responsible?

15 MR. A. KULBASHIAN: It's confusing.

16 Who in Affordable-Space would be
17 responsible for interpreting whether or not the
18 material would contravene s. 13 if no complaint was
19 filed.

20 THE CHAIRPERSON: So for --

21 MR. A. KULBASHIAN: And is --

22 THE CHAIRPERSON: Hold on.

23 MR. A. KULBASHIAN: Ready.

1 THE CHAIRPERSON: Okay. And I need
2 some clarification on 6: Did the complainants complain
3 to the websites or the server.

4 MR. A. KULBASHIAN: To the websites.
5 This is just -- these are just like notes.

6 THE CHAIRPERSON: That's fine.

7 "...complain to the websites or
8 server about the materials..."

9 Was there any official notice, so to
10 speak?

11 MR. A. KULBASHIAN: Was there any
12 kind of notice, in fact, I'm not even saying official.

13 Also the question is if there was a
14 complaint made, how would the owners of the server or
15 the company itself determine whether or not it was a
16 bogus complaint since no one requires people to be both
17 judge and jury when they're running a business.

18 So, who would -- even if the
19 complaint was made, who would be responsible for taking
20 the content down and interpreting whether the content
21 was actually contrary to the Human Rights Act.

22 Is Mr. Warman's claim legitimate or
23 some, I guess, means of extortion from myself or any of

1 my co-respondents.

2 It's a question I'm asking.

3 MR. WARMAN: Member Hadjis, I'm going
4 to object. That's an allegation of a criminal offence.
5 Extortion is quite clearly a criminal offence.

6 MR. A. KULBASHIAN: The question was
7 more of as a question, not necessarily --

8 THE CHAIRPERSON: You are not using
9 it in the criminal sense. Let me read the sentence
10 because I'm still trying to keep up with the last one,
11 okay.

12 MR. A. KULBASHIAN: I will change the
13 word then. Can I change it to opportunistic
14 profiteering?

15 MR. WARMAN: Member Hadjis, that's
16 clearly abusive.

17 MR. A. KULBASHIAN: Well, I don't
18 know how else to put it.

19 Like, I really don't know how else to
20 put it.

21 THE CHAIRPERSON: All right. So, is
22 the claim legitimate or for some other purpose?

23 MR. A. KULBASHIAN: Some other

1 purpose other than, I guess, the right purpose or
2 whatever, I'll just put it.

3 Am I the author of the article or did
4 somebody else write the article, like targeting, I
5 guess, Mr. Warman.

6 Did the complainant disclose during
7 the trial the remedies that are being sought for
8 himself like, you know, for open discussion during the
9 Tribunal hearing, because I don't think there's any --
10 until the end there wasn't like an issue of remedies
11 being brought up yet.

12 And through what association does
13 Vinland Voice get connected to C.E.C.T. and
14 Affordable-Space in a liability manner as opposed to
15 just there's a link.

16 And also have to address the
17 credibility of the witnesses and experts and the
18 documents produced.

19 And also we get the almost
20 non-existent police reports for such a lengthy and
21 eventful case.

22 Dues to the complexity of the case
23 which involves so many factors we have subdivided the

1 issues into different sections and each section will be
2 discussed and analyzed separately.

3 So, you want to actually -- this is
4 where I actually start.

5 THE CHAIRPERSON: So, you're saying
6 it's a good point for us to take a break for the day.

7 MR. A. KULBASHIAN: Yes.

8 THE CHAIRPERSON: We will begin
9 tomorrow morning.

10 MR. V. KULBASHIAN: Because of the
11 traffic.

12 THE CHAIRPERSON: Nine thirty is your
13 preference; isn't it?

14 Yes, that's fine.

15 MR. A. KULBASHIAN: It's really
16 difficult.

17 REGISTRY OFFICER: All rise.

18 --- Whereupon the hearing adjourned at 4:55 p.m.,
19 to Thursday, February 24th, 2005 at 9:30 a.m.

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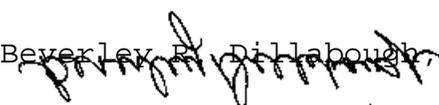
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I HEREBY CERTIFY, to the best of my skill and ability, that the foregoing is a true and accurate transcript of the proceedings

 Beverley R. Dillabough, C.S.R.