

**CANADIAN
HUMAN RIGHTS
TRIBUNAL**



**TRIBUNAL CANADIEN
DES DROITS
DE LA PERSONNE**

BETWEEN/ENTRE:

RICHARD WARMAN

Complainant

Plaignante

and/et

CANADIAN HUMAN RIGHTS COMMISSION

Commission

Commission

and/et

ELDON WARMAN

Respondent

Intimé

BEFORE/DEVANT:

PAUL GROARKE

CHAIRPERSON/
PRÉSIDENT

LINDA BARBER

REGISTRY OFFICER/
L'AGENTE DU GREFFE

FILE NO./N^o CAUSE:

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

HEARING HELD IN HEARING ROOM NO. 1 OF THE CANADIAN HUMAN RIGHTS
TRIBUNAL, 160 ELGIN STREET, 11TH FLOOR, ON WEDNESDAY, APRIL 27,
2005, AT 1:30 P.M. LOCAL TIME

CASE FOR HEARING/CAUSE DEVANT ÊTRE ENTENDUE

IN THE MATTER of the complaint filed under section 13(1) of the
Canadian Human Rights Act by Richard Warman, dated June 1, 2003,
against Eldon Warman. The Complainant alleges that the
Respondent has engaged in a discriminatory practice on the
grounds of religion and national and ethnic origin in a matter
related to the usage of a telecommunication undertaking.

APPEARANCES/COMPARUTIONS

Richard Warman	on his own behalf
Valerie Phillips Monette Maillet	Counsel for the Canadian Human Rights Commission

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Ottawa, Ontario

1
2 --- Upon resuming on Wednesday, April 27, 2005
3 at 1:30 p.m.

4 THE CHAIRPERSON: Good afternoon. Is
5 there anything that the parties want to say or comment
6 on?

7 I have considered the situation and I
8 think I am prepared to make the finding, but is there
9 anything that either of the parties would like to say
10 before I do that?

11 MS PHILLIPS: Yesterday, when we
12 left, we had discussed the issue of additional notice
13 to the Respondent and --

14 THE CHAIRPERSON: I think we can come
15 to that after I deal with the finding.

16 MS PHILLIPS: That's fine.

17 THE CHAIRPERSON: It is whether there
18 is anything, really, on liability that either party
19 feels they need to bring up.

20 You are fine, Mr. Warman?

21 MR. WARMAN: Yes, thank you.

22 MS PHILLIPS: I would just mention
23 that we had discussed a draft order yesterday --

24 THE CHAIRPERSON: I think we can come
25 back to that, as well.

1 MS PHILLIPS: All right.

2 THE CHAIRPERSON: Before I make my
3 finding, I do want to make a couple of comments. One
4 comment, actually, has to do with language I used.

5 It occurred to me that at the
6 beginning of the hearing -- this hearing is a bit
7 confusing because, of course, the Complainant and the
8 Respondent have the same surname, and I think I
9 referred to "our" Mr. Warman, and I may have used words
10 like "we", and I want the record to be very clear that
11 the Tribunal is an independent and impartial legal
12 body, and I don't want Eldon Warman -- I don't want the
13 Respondent feeling that -- and I am going to use very
14 colloquial language, but that we are ganging up on
15 Eldon Warman.

16 If Eldon Warman were here, I would be
17 happy to include him in that kind of language. I was
18 simply trying to somehow distinguish between the two
19 Warmans that I am dealing with in this case.

20 I just want something on the record
21 to deal with that.

22 I also want to say something to the
23 Commission. It is just a suggestion, if that is the
24 right word. I would appreciate in the future, in a
25 case like this, if the Commission would consider

1 calling expert evidence. I don't think it is a problem
2 in this case. We are dealing with a case where the
3 material in front of me, really, is offensive, and
4 quite offensive, on the face of the material.

5 However, I think that we found
6 ourselves in the situation with Mr. Warman -- someone
7 in my position, you really do feel that you need a bit
8 of background and a bit of context, and I simply wanted
9 to suggest that, in this kind of situation, it would be
10 helpful, I think, for the Tribunal to hear from an
11 expert who can speak to movements like the detax
12 movement and the individuals involved.

13 It is just a suggestion. It is just
14 a comment. I don't think we have to deal any further
15 with it.

16 I am prepared to make a finding on
17 liability. I suggested yesterday and, on reflection, I
18 take the same position that I did yesterday -- I think
19 it is in the public interest to make a finding on
20 liability and deal with the matter as expeditiously as
21 possible.

22 I think the public interest probably
23 requires that written reasons be provided in a case of
24 this nature. There is no reason to wait for a decision
25 on the question of liability, however. The material

1 entered into evidence speaks for itself.

2 I have reviewed the evidence and the
3 jurisprudence provided by the Commission. I am
4 satisfied, on a balance of probabilities, that the
5 postings that were entered into evidence are
6 communications from Eldon Warman, within the meaning of
7 section 13 of the Canadian Human Rights Act.

8 I am not here to regulate the free
9 exchange of ideas. There may be an element of
10 legitimate political debate in the material entered
11 into evidence and the Respondent has a right to his
12 views. Some of the postings go beyond the legal
13 parameters of public debate, however, and contravene
14 the provisions of the Act.

15 My concern is with the sentiments
16 expressed in this material. The postings from the
17 Respondent express an open hatred of Jews. They demean
18 and vilify Jewish people. They promote hatred and
19 contempt. This strikes at the dignity of all persons
20 and harms the public good.

21 I am satisfied that the complaint has
22 been substantiated, and I will provide the parties with
23 written reasons at a later date.

24 So you have a finding of liability.
25 I think, in terms of the order, that I will move to the

1 order and then I will hear from the Commission.

2 ORDER BY THE TRIBUNAL

3 I have already heard from the parties
4 on remedy and there is no need for further submissions
5 on the request for an order under section 54(1)(a) and
6 section 53(2)(a) of the Canadian Human Rights Act. I
7 am prepared to grant an order, in the general terms set
8 out in the decision of this Tribunal in Warman v.
9 Kyburz, the citation being 2003 CHRT 18, at paragraph
10 83.

11 I hereby order the Respondent, Eldon
12 Warman, who has identified himself as Eldon-Gerald of
13 the Warman family, to cease the discriminatory practice
14 of posting messages or other material on the internet
15 that is likely to expose Jews or any other member of an
16 identifiable racial, religious or ethnic group to
17 hatred or contempt.

18 I would ask the Commission to provide
19 me with a formal order. I will simply make the general
20 order on the record. I assume that you want a more
21 specific order dealing with the material that was
22 before me. If you have drafted an order, I would be
23 happy to see it and review it at this time.

24 I wonder if we could take five
25 minutes. I want to be careful. Normally, in an order

1 like this, we would have a respondent present, and I
2 would ask the respondent to consent to the form of the
3 order. Obviously we don't have a respondent. In the
4 circumstances, I do want to be somewhat careful in
5 terms of the wording of the order, so I would
6 appreciate if I could have five or ten minutes to look
7 at the order.

8 If you want to make copies at the
9 same time, you could do that.

10 MS PHILLIPS: That's fine. I didn't
11 make copies, as I was anticipating that we would need
12 to make some changes today.

13 THE CHAIRPERSON: Of course. You are
14 ahead of me.

15 MS PHILLIPS: I have it on disk, and
16 we can do that.

17 THE CHAIRPERSON: Why don't we take
18 five or ten minutes to let me look at the order, I will
19 come back, and we will see where we are.

20 --- Upon recessing at 1:40 p.m.

21 --- Upon resuming at 1:43 p.m.

22 THE CHAIRPERSON: I don't have any
23 difficulty with the general form of the order, and I do
24 appreciate the reference to the exhibits, which, it
25 seems to me, is a convenient way to identify

1 specifically what we have been dealing with.

2 I do have a problem --

3 Do you have a copy in front of you,
4 Ms Phillips?

5 MS PHILLIPS: No, I don't, but that's
6 fine.

7 THE CHAIRPERSON: On the second page
8 you have the sentence: "The Tribunal orders that the
9 Respondent, Eldon Warman, and any other individuals who
10 act in concert with the Respondent..." I am a little
11 uncomfortable with that.

12 Insofar as he is a party -- I don't
13 know if that is the right word. If you have a
14 respondent who wants to defeat the purposes or the good
15 intentions of the order and somehow does so through the
16 agency of others, I would think that that is at least
17 implicitly covered by the order, but I don't know that
18 I have the jurisdiction under the Act to direct other
19 individuals to act in concert --

20 I am then getting into a situation
21 where I am ordering individuals who have not been the
22 subject of a hearing, and not the subject of a finding
23 of liability --

24 I am uncomfortable with that.

25 As I say, I think the Commission can

1 take some comfort from the fact -- if you have someone
2 who is trying to defeat the order and using other means
3 to do so, I think it is implicit in the order that that
4 is not acceptable, and I would think that that
5 contravenes the order. So I would want to delete the
6 reference to other individuals.

7 Obviously, the order applies to Eldon
8 Warman, and the order is that he cease and desist in
9 whatever or any way in which he is discriminating
10 against other people by virtue of postings.

11 I think the order covers indirect as
12 well as direct means of discrimination, if that is the
13 right word to use.

14 Do you want to comment on that, or
15 does Mr. Warman want to comment on that?

16 MS PHILLIPS: If I could explain;
17 firstly, the wording I took directly from the Kyburz
18 order, which was similar.

19 Secondly, it is really reflecting the
20 wording of section 13, which I think envisages --

21 THE CHAIRPERSON: Can you give me
22 section 13? I don't have it in front of me.

23 --- (Pause)

24 MS PHILLIPS: My colleague is
25 mentioning that that was also the wording of the order

1 in Schnell.

2 THE CHAIRPERSON: Unfortunately, I
3 read section 13 in a different way.

4 It seems to me that under section 13
5 you could lay a complaint against a group of persons
6 acting in concert. That is one of the possible
7 complaints under the Act, but I don't read it as
8 somehow extending this complaint to Eldon Warman, and
9 Eldon Warman perhaps acting in concert with other
10 people.

11 I am simply going to ask you to
12 remove that line. I don't think it affects the
13 integrity of the order.

14 Then, at the following paragraph, I
15 was going to suggest that we strengthen it somewhat.
16 This is the reference to Google, "The Tribunal would
17 encourage the proprietors of the Google.com website to
18 give serious consideration to removing the offending
19 material from the site."

20 I would suggest, "The Tribunal would
21 encourage the proprietors of the Google.com website to
22 remove the offending material from its site." It is
23 stronger wording.

24 I am not going to apologize to
25 anyone. I will put it on the record. I would like

1 Google to remove this material. It is clearly
2 offensive, it is discriminatory, it offends the
3 Canadian Human Rights Act and it should be removed.

4 I would like to do that.

5 The final change, which I am afraid I
6 must insist on, is that the order states that I will
7 issue reasons for my decision "shortly". I think we
8 will change that to "in due course". I just want to be
9 realistic. It is going to be some time before I get to
10 it.

11 MS PHILLIPS: That's fine.

12 THE CHAIRPERSON: With those changes,
13 I have no difficulty with the order.

14 Are you satisfied with the order, Mr.
15 Warman?

16 MR. WARMAN: I am fine with the
17 order, as the proposed changes have been read. The
18 only concern that I might express in regard to leaving
19 out the persons acting in concert with is that, with
20 the Kyburz case, there was an incident where another
21 individual attempted to resurrect elements of the
22 Kyburz website, minus the discriminatory practice --
23 minus the materials that were covered in the order, and
24 there has been a history of attempts to transfer
25 ownership of websites in order to evade --

1 THE CHAIRPERSON: Although, of
2 course, in this case we are not talking about shutting
3 down a website.

4 MR. WARMAN: No, certainly.

5 THE CHAIRPERSON: If that was a
6 concern, there might be other ways to strengthen it. I
7 do mean, very sincerely, that my order extends to any
8 means that Eldon Warman might use to continue this kind
9 of discriminatory practice. I am quite emphatic in
10 that.

11 As I say, I am a member of a
12 statutory tribunal and we do have limited jurisdiction,
13 and I don't think it extends to individuals who are not
14 before the Tribunal.

15 The rest of it you are fine with, Mr.
16 Warman?

17 MR. WARMAN: Yes, I agree with it.

18 THE CHAIRPERSON: Am I right, Ms
19 Phillips -- I think we should do this now.

20 MS PHILLIPS: That's fine.

21 THE CHAIRPERSON: It seems to me,
22 again, that it is in the public interest to get it
23 done.

24 Why don't we adjourn for 10 or 15
25 minutes, you can make copies, and I am certainly happy

1 to sign a copy. That will be done, and then we will
2 deal with the issue of penalty.

3 MS PHILLIPS: Dr. Groarke, it is my
4 understanding that the Tribunal will have to assist me
5 in formatting it properly and --

6 THE CHAIRPERSON: Let's go off the
7 record.

8 --- (Off record discussion)

9 --- Upon recessing at 1:50 p.m.

10 --- Upon resuming at 2:10 p.m.

11 THE CHAIRPERSON: I have a couple of
12 questions.

13 Can we double-check the exhibits to
14 make sure that we have the right exhibit numbers?

15 Are you confident of that? I haven't
16 checked the exhibit numbers.

17 MS PHILLIPS: I was just speaking
18 with Madam Registrar about that and I indicated that my
19 recollection and my notes say that the first three
20 exhibits dealt with the issue of service, so HR-4 to
21 the end would be the complaint form and then all of the
22 materials.

23 The last exhibit I have is HR-49,
24 which is tab B42 of the joint book of documents.

25 THE CHAIRPERSON: Is that in keeping

1 with your records, Ms Barber?

2 THE REGISTRAR: Yes, it is.

3 THE CHAIRPERSON: Would you like all
4 copies signed?

5 Sometimes one runs into difficulty
6 and you need an original. Shall I mark one as an
7 original? Should I write "original" on it, but sign
8 all copies?

9 Would that make sense?

10 MS PHILLIPS: Yes. The Commission
11 would request the original.

12 THE CHAIRPERSON: Do you want just an
13 original signed, and then you can make copies, or do
14 you want me to sign all of these?

15 I have an original and three copies.
16 Do you want them all signed?

17 MS PHILLIPS: I think there should be
18 a signed copy for the Commission, the Complainant, the
19 Tribunal and the Respondent.

20 THE CHAIRPERSON: Shall I put
21 something on the Commission document to indicate it is
22 the original? Should I write "original" on it?

23 MS PHILLIPS: I think an original
24 signature is sufficient.

25 THE CHAIRPERSON: All right. It is

1 just, when you start filing things with the courts,
2 sometimes there is some confusion.

3 That's fine, I will sign all four.
4 That is the original.

5 THE REGISTRAR: Mr. Chair, I can
6 stamp the other three "Copy".

7 THE CHAIRPERSON: Do you have a
8 problem with that?

9 MS PHILLIPS: That's fine.

10 THE CHAIRPERSON: They will just be
11 duplicate copies, or duplicate originals I suppose.
12 But, still, one should be the definitive order.

13 I have signed the order. You have
14 the order.

15 Is there anything else that we need
16 to deal with before we deal with penalty?

17 MS PHILLIPS: I don't believe so.

18 THE CHAIRPERSON: You have had a
19 chance to think about the situation, and I don't know
20 what position the Commission takes on penalty.

21 I did express some concern on the
22 record. I still have those concerns. I haven't made
23 up my mind on anything.

24 What is the Commission's position?

25 MS PHILLIPS: I have prepared a very

1 brief submission on the issue of additional notice, if
2 I could put that on the record.

3 We are simply speaking about
4 additional notice to the Respondent that the Commission
5 is seeking the penalty.

6 THE CHAIRPERSON: Right.

7 MS PHILLIPS: I want to state at the
8 outset that the Commission understands the Tribunal's
9 discomfort with awarding a penalty under section 54 in
10 the absence of the Respondent, but I would like to
11 outline the Commission's position for the record.

12 The first point is that it is the
13 position of the Commission that the law and its
14 penalties are considered to be known to all persons in
15 Canada once published in the Canada Gazette.

16 The version of the Act we are relying
17 on was published in 2002.

18 The Respondent has chosen to evade
19 service and, once personally served, he chose to return
20 the documents.

21 Service does not require that the
22 Respondent open the documents.

23 The Respondent has constructive
24 notice of the Commission's intention to seek a penalty
25 under the Act, which was effected through twice

1 attempting to deliver documents by mail to his home
2 address, his post office box, and then by personal
3 service of all documents, including the Statement of
4 Particulars, which set out the remedy we are seeking
5 today.

6 The Respondent has demonstrated
7 actual knowledge that he is facing a financial penalty.
8 At Exhibit HR-3, which is at tab C1 of the joint book
9 of documents, he states in an e-mail to Mary Dufford:

10 "I don't have any assets they
11 can find, so they can do
12 whatever they wish."

13 THE CHAIRPERSON: Is that the
14 wording? I don't recollect that.

15 Could you read the entire paragraph
16 for me?

17 MS PHILLIPS: Yes. It is in tab C1
18 of the joint book of documents --

19 THE CHAIRPERSON: You can just read
20 it for me. I don't need it in front of me.

21 MS PHILLIPS: The full paragraph that
22 I am referring to is:

23 "I don't have any assets they
24 can find, so they can do
25 whatever they wish. My website

1 is on a server in Panama, so
2 Canada de facto gov cannot do
3 too much about that."

4 Any further attempts to give notice
5 to the Respondent would likely be futile, in light of
6 Eldon Warman's determination to evade service.

7 I would like to also provide the
8 Tribunal with additional information, which
9 unfortunately I don't have in evidence at this moment,
10 but I am attempting to get an additional affidavit of
11 service from the process server because, when Mr. Eldon
12 Warman was personally served, the process server
13 informed the Commission that Mr. Eldon Warman took a
14 rock and threw it at him and threatened to kill him.

15 The process serving company didn't
16 put that in their affidavit of service that was filed.
17 The process serving company undertook this morning to
18 provide a supplementary affidavit of service which
19 outlines the details of the service, and I will
20 undertake to have that sent to the Tribunal.

21 THE CHAIRPERSON: I am not clear. I
22 will let you finish, and then you can explain how you
23 want to proceed.

24 MS PHILLIPS: Additional notice is
25 not required under section 54 of the Act. Adding

1 requirements, placing an unnecessary and unreasonable
2 burden on the Commission's good faith efforts to uphold
3 its responsibility under the Act, would be
4 unnecessarily onerous. However, the Commission is
5 willing to consider an alternative, should the member
6 remain concerned about this issue.

7 We have outlined our position on
8 personal service and what we believe to be the
9 difficulties with personal service, and the Tribunal
10 has had its own experience with that.

11 THE CHAIRPERSON: Yes.

12 MS PHILLIPS: Yesterday, Mr. Richard
13 Warman raised the possibility of sending an e-mail. To
14 date, e-mail is the only mode of communication to which
15 the Respondent has actually responded.

16 So the Commission is suggesting that
17 if the Tribunal member remains concerned, we would
18 undertake --

19 THE CHAIRPERSON: I remain concerned.

20 Can I ask you something?

21 It occurred to me after we finished
22 yesterday that, presumably, you intend by some means to
23 serve my order on Mr. Warman. Is there any real
24 difficulty in serving some kind of notice, a one-page
25 letter, stating very simply that the Commission is

1 seeking a penalty in the order of \$10,000 from the
2 Tribunal, and giving a date as to when the hearing will
3 resume?

4 If you are going to go through the
5 exercise of serving him with the formal order -- and I
6 would assume that one has to and should. Legally, I
7 would assume that is what you need to do at this stage.
8 Is there any harm in --

9 With all respect to Eldon Warman --
10 and he has his rights, and I respect those rights. We
11 are not going to come back and re-litigate the
12 complaint. The only issue on the table is the penalty.

13 But if you are going to be serving
14 the formal order -- and I would assume that you would
15 be serving it -- as I say, I don't see --

16 It is better, certainly, to be
17 cautious and to make every attempt to ensure that Eldon
18 Warman is aware that he is facing this kind of penalty.

19 I even think that, in all likelihood,
20 it is in the Commission's interest, and perhaps in the
21 Complainant's interest, in that, if the matter ever did
22 go further, it would simply be abundantly clear that
23 every possible means was used to provide him with an
24 opportunity to respond to the request for a penalty.

25 Is that feasible?

1 MS PHILLIPS: I would ask whether the
2 Tribunal would consider an alternate order regarding
3 service. I think that what we have outlined --

4 THE CHAIRPERSON: Do you mean
5 substitutional service?

6 MS PHILLIPS: Substitutional service.
7 What we have outlined is the
8 difficulty with personal service. You are quite
9 correct that we would attempt to serve him with the
10 order. My concern is, again, a delay in the hearing.

11 THE CHAIRPERSON: We are looking at a
12 long delay anyway. I am thinking that we could resume
13 in 30 days. That is well within the parameters. Given
14 that I have made a finding on liability, this has been
15 a very expeditious hearing, given the way in which
16 hearings usually run.

17 I think it would have to be personal
18 service, but if you make an attempt to serve and he
19 evades service, then you simply --

20 We would presumably adjourn the
21 hearing to a specific date. He would be provided with
22 the formal order and with a notice indicating that the
23 hearing will resume on a specific date, at a specific
24 location, and that the Commission is asking for a
25 penalty of \$10,000.

1 If the process server is unable to
2 serve the documents on him, you would simply put in an
3 affidavit of attempted service. They don't have to
4 take heroic measures to try and serve this gentleman,
5 they just have to do what process servers normally do.

6 I know it is a charged situation
7 emotionally, but, quite frankly, as a lawyer myself,
8 process servers are quite familiar with -- have
9 experience in these kinds of situations. They know
10 very well what is appropriate and to what extent they
11 should go.

12 My concerns arise, I think, later in
13 the process. If we do get into a situation where I
14 award a penalty and there are attempts to enforce that
15 penalty, and that leads to -- I have no idea what, but
16 you suggested yourself that it could lead to a contempt
17 of court citation, or something of that nature, I want
18 things done properly, so that if those kinds of
19 problems occur in enforcing the order, or executing --
20 I don't know what the right term is -- executing the
21 order --

22 I would like to give Eldon Warman one
23 more chance and endeavour to bring it directly to his
24 attention that he is facing, very specifically, this
25 penalty. If he chooses to avoid service, evade

1 service, or accept service and chooses not to
2 participate, as I said yesterday, he will have to
3 accept the consequences.

4 MS PHILLIPS: I am wondering if I
5 could state what the proposed compromise is.

6 THE CHAIRPERSON: Yes.

7 MS PHILLIPS: In terms of the actual
8 method of service, maybe we could get back to that.
9 The Commission is proposing e-mail because of the
10 difficulties with personal service, but maybe we could
11 get back to that --

12 THE CHAIRPERSON: But before you
13 do --

14 I'm sorry, I thought you had
15 finished.

16 MS PHILLIPS: What we are proposing
17 is e-mail, or some form of service, and Mr. Eldon
18 Warman would then have ten days to notify the
19 Commission whether he intends to make submissions on
20 the issue of penalty, and the Commission would notify
21 the Tribunal after that ten-day time period has passed.
22 If not, then the Tribunal would be in a position to
23 make its decision.

24 THE CHAIRPERSON: Is there a reason
25 why you want that?

1 I want Eldon Warman to know that the
2 Commission is seeking this penalty, and I want him to
3 know that the hearing will proceed on a specific date.
4 That's all he needs to know.

5 MS PHILLIPS: So we will adjourn to a
6 particular date?

7 THE CHAIRPERSON: Yes. I would think
8 that the obvious thing to do would be to adjourn and
9 come back in 30 days. In the meantime, the Commission
10 can make its attempts to serve him. As long as you
11 make legitimate, sincere, reasonable efforts to serve
12 him, as I say, when we return, you can simply put in an
13 affidavit and we can resume the discussion of the
14 penalty.

15 MS PHILLIPS: That's fine.

16 THE CHAIRPERSON: The only thing I
17 would say on the e-mail is, it strengthens your case.
18 If the Commission wants to send an e-mail, that would
19 be appreciated. But, in all honesty, we all know that
20 an e-mail is ten minutes' work. I think I would like
21 to do something more.

22 If you want to do an e-mail as well,
23 since he does clearly receive e-mail and we have an
24 indication that he may -- there is some possibility
25 that he might respond. If you want to do that, as

1 well, I think that would be sufficient. It would be
2 helpful and it would reassure me even further.

3 I think we are talking about an
4 attempt to personally serve him with a legal document,
5 which is short and to the point, which states very
6 explicitly, "Mr. Warman, the Commission has received an
7 order against you. It is now seeking a penalty of
8 \$10,000. The hearing will resume on such-and-such a
9 date, at which time the Tribunal will decide whether to
10 award the penalty against you. If you have any
11 position on the matter or wish to make submissions,
12 please advise the Tribunal accordingly."

13 I don't think the Commission has to
14 trouble itself with communications with Eldon Warman,
15 unless you wish to. If you wish to invite Mr. Warman
16 to communicate with the Commission and you wish to deal
17 with him, I have no difficulty with that, but I don't
18 think the Commission has to encourage that or invite
19 that.

20 I think all the Commission has to do,
21 in terms of reassuring me and in terms of proceeding --
22 what the Commission has to do to reassure me is to
23 endeavour to provide him with the information that he
24 is facing this fine and that I am going to deal with it
25 on a specific date.

1 As I say, if he -- actually, I won't
2 speculate as to what Eldon Warman will do. He may
3 respond, he may not. If he doesn't respond, we will
4 simply proceed. We are certainly not going to go
5 through this exercise again.

6 If the Commission is prepared to do
7 that, I would certainly appreciate that. I think that
8 is the cautious way to do it.

9 MS PHILLIPS: Could we have a moment
10 to discuss, Dr. Groarke?

11 THE CHAIRPERSON: Okay.

12 MS PHILLIPS: Thank you.

13 --- Upon recessing at 2:25 p.m.

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

15 THE CHAIRPERSON: Before I hear from
16 you, Ms Phillips, I considered the situation myself in
17 the break, and I think the most sensible thing to do,
18 and what I would like to do, is simply adjourn the
19 hearing -- what remains of it -- for approximately 30
20 days.

21 I leave it to the Commission to take
22 whatever position it feels is appropriate.

23 I am guessing that there is some
24 concern on the part of the Commission with setting a
25 precedent. At least I have that sense.

1 We can simply adjourn this part of
2 the hearing for 30 days, come back and you can consider
3 your position. That will give you time to consider
4 your position. If you feel it is appropriate to
5 provide some kind of notice, you can do so. If the
6 Commission, in its best judgment, feels that it is not
7 appropriate, then the Commission doesn't have to do
8 that. We will simply come back in 30 days, I will hear
9 from the parties on the question of penalty, and we
10 will go from there.

11 If the Tribunal hears from Eldon
12 Warman in the meantime, we may have to accommodate him,
13 in terms of resuming the hearing. But, basically, I
14 think there has been enough discussion. I can, at
15 least, sense your position. You are familiar with my
16 concerns. Why don't we leave the matter for 30 days.
17 You have the cease and desist order. You can deal with
18 that. We will come back in 30 days, I will hear the
19 parties on penalty, and we will go from there.

20 Does that make sense?

21 MS PHILLIPS: Yes.

22 The Commission is prepared to consent
23 to attempt personal service of a letter that includes
24 notice with the service of the order.

25 THE CHAIRPERSON: I would appreciate

1 that very much, and I think that that is in the
2 interests of justice. I know it is difficult, but
3 Eldon Warman is also entitled to a certain amount of
4 consideration in this. I know he has made it
5 difficult, but I think we have to go out of our way to
6 see that he is given some opportunity to respond.

7 I must say that the governing
8 principle under the Act is natural justice, and natural
9 justice does, at its most basic, involve giving
10 everyone concerned in the matter full and ample
11 opportunity to respond.

12 Whether it is necessary or not is an
13 issue that can be dealt with at some other time. I am
14 not suggesting it is necessary. Certainly, if you are
15 going to err, I would assume that is the direction in
16 which one would want to err.

17 If the Commission could do that, I
18 would appreciate it. We can simply come back in 30
19 days.

20 MS PHILLIPS: I have two quick
21 questions. The first is whether it will be the
22 Tribunal that will advise Mr. Eldon Warman of the
23 adjournment date, or should we include that in our
24 letter?

25 Secondly, you would like me to defer

1 my submissions on penalty until our adjournment date, I
2 am assuming.

3 THE CHAIRPERSON: I think it would
4 make sense.

5 Perhaps I could put this on the
6 record even now. This works both ways. If Eldon
7 Warman refuses to -- ignores the process entirely, and
8 he has been given his full chance, I think I am
9 probably going to have a question as to whether or not
10 that is a consideration in itself -- a factor that
11 should be considered in terms of assessing a penalty,
12 assuming that I feel a penalty is appropriate.

13 So there are, I think, still a few
14 issues that I want to hear from the parties on on
15 penalty.

16 I don't think it makes sense to hear
17 from the parties now; I think it makes sense to hear
18 them at a later date.

19 I don't want to overstate my
20 concerns. I think it is sufficient if one party -- I
21 don't think the Commission and the Tribunal both have
22 to go through an attempt of personal service. I was
23 going to discuss it with the officer.

24 What has happened on the Tribunal
25 side, I suppose, is that I have already given an order

1 for substitutional service. I think we would provide
2 Eldon Warman with notice, under the substitutional
3 service order, of the fact that the hearing has been
4 adjourned for 30 days, but if the Commission is
5 prepared to attempt personal service, I think that is
6 sufficient.

7 Ms Barber, would you agree with me?
8 I think we would provide him with the ordinary notice
9 that the hearing has been adjourned.

10 THE REGISTRAR: Yes.

11 MS PHILLIPS: I think we will need to
12 set the date today, then.

13 THE CHAIRPERSON: Yes. Is the 26th
14 of May available?

15 We need half a day, I would think.
16 So morning or afternoon, whatever is most convenient.

17 Mr. Warman, I don't mean to leave you
18 out of this. Are you satisfied with how we are
19 proceeding?

20 MR. WARMAN: Yes, I am, and the 26th
21 in the afternoon would be fine.

22 MS PHILLIPS: Dr. Groarke, I remember
23 at one point that both you and I were scheduled to be
24 at a mediation around that time in Toronto.

25 THE CHAIRPERSON: There was a

1 mediation, I think RCMP v. Daniel White, but my
2 understanding is that that mediation has now collapsed.

3 That was on the 27th, and my
4 information is that that has collapsed.

5 If there is any difficulty with
6 anything of this nature, we can deal with it outside
7 the hearing.

8 Let's resume the hearing on May 26th,
9 at 1:30 p.m. If anyone needs to make adjustments --
10 and that would include Eldon Warman -- we will deal
11 with that as the need arises.

12 MS PHILLIPS: That's fine. Thank
13 you.

14 THE CHAIRPERSON: We will leave it at
15 that for today. Thank you very much for your
16 attendance.

17 --- Whereupon the hearing adjourned at 2:40 p.m.,
18 to resume on Thursday, May 26, 2005 at 1:30 p.m.

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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



Susan B. Villeneuve
Verbatim Court Reporter

StenoTran