

**CANADIAN
HUMAN RIGHTS
TRIBUNAL**



**TRIBUNAL CANADIEN
DES DROITS
DE LA PERSONNE**

BETWEEN/ENTRE:

RICHARD WARMAN

Complainant

le plaignant

and/et

CANADIAN HUMAN RIGHTS COMMISSION

Commission

la Commission

and/et

MARC LEMIRE

Respondent

l'intimé

and/et

ATTORNEY GENERAL OF CANADA;
CANADIAN ASSOCIATION FOR FREE EXPRESSION;
CANADIAN FREE SPEECH LEAGUE;
CANADIAN JEWISH CONGRESS;
FRIENDS OF SIMON WIESENTHAL CENTER
FOR HOLOCAUST STUDIES;
LEAGUE OF HUMAN RIGHTS OF B'NAI BRITH

Interested Parties

les parties intéressées

BEFORE/DEVANT:

ATHANASIOS D. HADJIS

CHAIRPERSON/
PRÉSIDENT

LINE JOYAL

REGISTRY OFFICER/
L'AGENTE DU GREFFE

FILE NO./N^o CAUSE:

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

HEARING HELD AT THE DAYS INN, 1677 WILSON AVENUE, TORONTO,
ONTARIO, ON MONDAY, FEBRUARY 5, 2007 AT 10:02 A.M. LOCAL TIME

CASE FOR HEARING

IN THE MATTER of the complaint filed by Richard Warman dated November 23rd, 2003 pursuant to section 13(1) of Canadian Human Rights Act against Marc Lemire. The complainant alleges that the respondent has engaged in a discriminatory practice on the grounds of religion, sexual orientation, race, colour and national or ethnic origin in a matter related to the usage of telecommunication undertakings.

APPEARANCES/COMPARUTIONS

Richard Warman	On his own behalf
Giacomo Vigna	For the Canadian Human Rights Commission
Barbara Kulaszka	For the Respondent
Simon Fothergill	For the Attorney General of Canada
Paul Fromm	For the Canadian Association for Free Expression

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1 Toronto, Ontario

2 --- Upon resuming on Monday, February 5, 2007

3 at 10:02 a.m.

4 MR. VIGNA: I just wanted to provide
5 you with the photocopies that represents the face of
6 the CD-ROMs, which dates had been discussed at one
7 point. The CD-ROMs. There were dates on the CD-ROMs,
8 and what I have is what I'm providing. It's basically
9 a title and the date of the CD-ROM.

10 THE CHAIRPERSON: So you are
11 disclosing this to the other side? It's not being
12 entered into evidence?

13 MR. VIGNA: It's not being entered
14 into evidence. It was discussed, as of my undertaking
15 at one point, that they wanted the date of the CD-ROMs.
16 And I had mentioned there's no official stamp, but what
17 I have is what I'm providing, which is basically a
18 handwritten inscription on the CD-ROM itself which
19 indicates the date.

20 MR. WARMAN: Just with respect to
21 your witness exclusion order. I note there is a
22 proposed witness in the room.

23 THE CHAIRPERSON: Okay.

24 MS KULASZKA: Bernard Klatt is
25 present and he's an expert witness. Usually the expert

1 witnesses are allowed to attend the hearings.

2 THE CHAIRPERSON: Okay.

3 MR. WARMAN: That's certainly not my
4 understanding. I don't see what the difference in the
5 status of the witness is.

6 THE CHAIRPERSON: No, an expert
7 witness is entitled to be in the room to hear the
8 evidence upon which he will then be able to provide his
9 expertise. He is an expert witness. He's been
10 declared as such? Mr. Vigna?

11 MR. VIGNA: I'm not admitting to his
12 qualities as an expert witness other than perhaps the
13 issue of some familiarity on Internet matters. Maybe
14 we can explore the issue of the area of expertise on
15 which he wants to testify because --

16 THE CHAIRPERSON: Isn't there a
17 report that's been filed?

18 MR. VIGNA: There's a report that's
19 been filed, but in terms of what extent he can testify,
20 I would like to have some clarity. Is it only on
21 Internet matters or -- because I'm contesting if he's
22 presenting himself as a forensic computer type of --

23 THE CHAIRPERSON: Well, that's part
24 of the process. We always engage in that prior to the
25 person leading his evidence. But he's being proffered

1 as an expert. Experts are allowed in the hearing room
2 in order to hear the evidence upon which they can
3 testify.

4 MR. VIGNA: I'm not challenging that,
5 Mr. Chair. I'm aware there is an exception for
6 experts.

7 THE CHAIRPERSON: Right. Okay. So
8 then that settles the matter.

9 MR. FROMM: There are precedents
10 involved. The Zundel case and --

11 THE CHAIRPERSON: No need to go
12 further. Mr. Klatt can stay in the room.

13 MS KULASZKA: Just to clarify. The
14 only fact evidence he would be giving is just to prove
15 some documents from the Internet that he printed off.

16 THE CHAIRPERSON: I don't have the
17 report in front of me. It probably was provided to the
18 Tribunal. His testimony has to be in keeping with his
19 expert's report.

20 MS KULASZKA: That's correct.

21 MR. LEMIRE: Plus --

22 THE CHAIRPERSON: Plus the?

23 THE REPORTER: I can't hear you, sir.

24 MS KULASZKA: Plus the WHOIS. He's
25 going to show how the WHOIS registration was done.

1 THE CHAIRPERSON: I do recall having
2 mentioned that, did I not?

3 MR. VIGNA: I just want to mention
4 that part of his expert testimony will be objected to
5 and when he will testify we'll raise that objection.

6 THE CHAIRPERSON: That's how it
7 works.

8 MS KULASZKA: Mr. Lemire is just
9 handing out some further disclosure to the parties on
10 matters that have arisen during the cross-examination.
11 CROSS-EXAMINATION BY MS KULASZKA (cont'd)

12 MS KULASZKA: Mr. Warman, we left off
13 at tab 4 in the respondent's binder.

14 THE CHAIRPERSON: Just a moment.
15 Mr. Warman is entitled to receive that disclosure as
16 well, Ms Kulaszka. So let him have it.

17 MR. VIGNA: Perhaps I would suggest
18 that questions relating to these documents, since they
19 have just been provided, be asked after the break to
20 give the witness a chance to apprise himself --

21 MS KULASZKA: I'll try to do it after
22 lunch.

23 THE CHAIRPERSON: Whatever.
24 Particularly the witness, the complainant, the
25 opportunity to view the documents. If possible, in the

1 future if that type of disclosure occurs, I would
2 prefer it occur before we start because now we lose
3 some time while the papers get exchanged. It's
4 precious time. So five, 10 minutes before the hearing
5 begins would be helpful.

6 MS KULASZKA: Mr. Warman, we
7 finished -- just finishing off at tab 4. I wanted to
8 ask you, you stated that you had -- you used something
9 called -- is it private messaging on the Stormfront
10 forum? It's not a post on a forum itself. It's a type
11 of private messaging, is that what it's called?

12 MR. WARMAN: That's my understanding.

13 MS KULASZKA: Did you ever use that
14 facility to contact either Marc Lemire or Paul Fromm?

15 MR. WARMAN: Not that I recall.

16 MS KULASZKA: Now, these documents in
17 tab 4 were disclosed to us about a year ago, correct?

18 MR. WARMAN: I'm sorry, I don't
19 recall when they were.

20 MS KULASZKA: It's a good few months
21 ago though, correct?

22 MR. WARMAN: Again, I'm sorry, I
23 don't recall the date.

24 THE CHAIRPERSON: Which documents are
25 you referring to?

1 MS KULASZKA: These are the documents
2 in tab 4.

3 THE CHAIRPERSON: Well, Ms Kulaszka,
4 they were disclosed as part of your disclosure?

5 MS KULASZKA: Yes. And the
6 Commission was aware for at least 2005 that you were in
7 fact Axetogrind; is that correct?

8 MR. WARMAN: I'm not sure. You would
9 have to ask the Commission that.

10 MS KULASZKA: Did you not give
11 testimony in a hearing, in the Winnicki hearing that
12 you were, in fact, Axetogrind?

13 MR. WARMAN: I believe I did, yes.

14 MS KULASZKA: And in the Bahr case,
15 or Bahr case, did you testify that you were pogue
16 mahone?

17 MR. WARMAN: I believe I did, yes.

18 MS KULASZKA: So my question is, the
19 mandate of the Commission is to prevent discrimination,
20 correct?

21 MR. WARMAN: I'm not sure. You would
22 have to look at their enabling legislation.

23 MS KULASZKA: Are you familiar with
24 their enabling legislation?

25 MR. WARMAN: I have a copy of it in

1 front of me, but I'm sure you have access to that as
2 well.

3 MS KULASZKA: You used to work for
4 them?

5 THE CHAIRPERSON: Look, I don't want
6 this to become a debate. Get straight to your
7 question.

8 MS KULASZKA: It was a simple
9 question.

10 THE CHAIRPERSON: No points are being
11 scored by either of you right now in engaging in this
12 type of a discussion. Get straight to your question,
13 Ms Kulaszka, and, Mr. Warman, answer it.

14 MS KULASZKA: The point I'm making,
15 Mr. Warman is the Commission has been aware for a very
16 long time that you're making these postings on
17 Stormfront and the VNN forum. Has anyone at the
18 Commission spoken to you about these postings?

19 MR. VIGNA: Mr. Chair, I don't see
20 the relevance of these questions.

21 THE CHAIRPERSON: Mr. Vigna, I'm
22 going to allow it. You can make those arguments at the
23 end. We waste way too much time on these types of
24 arguments.

25 Go ahead, Ms Kulaszka. Has anyone at

1 the Commission ever contacted you, Mr. Warman?

2 MS KULASZKA: No, spoken to him
3 concerning the postings he is making on Stormfront and
4 VNN forum.

5 MR. WARMAN: I'm sorry, in what
6 sense?

7 MS KULASZKA: Are they -- have they
8 spoken you to? Not in what sense, just have they
9 spoken to you about them?

10 MR. WARMAN: Meaning like at hearings
11 when the matter was actually raised?

12 MS KULASZKA: Has anyone at the
13 Commission spoken to you about the postings you make on
14 Axetogrind?

15 MR. WARMAN: I'm sure they have.

16 MS KULASZKA: What have they stated
17 to you?

18 MR. WARMAN: I have no real
19 recollection. They may have asked me in relation to
20 the Winnicki hearing as to the nature of them.

21 MS KULASZKA: They are calling you as
22 a witness and they are using you as a witness, and yet
23 you yourself are making these postings. I'm asking has
24 the Commission shown any concern whatever about your
25 activities on Stormfront and VNN?

1 MR. WARMAN: Again, they may have
2 spoken to me about it in the context of actual hearings
3 or they may have spoken to me in the context of
4 Mr. Kulbashian's vexatious complaints that he filed.

5 MS KULASZKA: Mr. Kulbashian made a
6 complaint against you; is that correct?

7 MR. WARMAN: That is correct.

8 MS KULASZKA: What did the Commission
9 ask you?

10 MR. WARMAN: Well, they would have
11 sent me their standard form letter, requests for
12 information.

13 MS KULASZKA: And that was the extent
14 of it?

15 MR. WARMAN: Well, you know, they
16 would have processed it in the normal case and
17 responded to my section 41 objection.

18 MS KULASZKA: And this was all done
19 in writing?

20 MR. WARMAN: To the best of my
21 recollection, although it's possible I may have had
22 some sort of telephone conversation with them at some
23 point simply in relation to obtaining submissions.

24 MS KULASZKA: What happened to
25 Mr. Kulbashian's complaint against you?

1 MR. WARMAN: Well, to the best of my
2 knowledge, one of them is still outstanding and the
3 other has been dismissed as being trivial, frivolous,
4 vexatious and/or made in bad faith.

5 MS KULASZKA: And the first time you
6 said the Commission spoke to you about these postings
7 was in relation to hearings. What was said about that?

8 MR. WARMAN: Again, I'm not sure if
9 it was, but that's my guess and I have no real
10 recollection of what they said. They may have simply
11 asked questions with regard to the nature of the
12 postings themselves.

13 MS KULASZKA: Would you agree the
14 Commission isn't too concerned about what you are doing
15 on those two websites?

16 MR. WARMAN: I'm afraid you would
17 have to ask the Commission as to what their opinions
18 are.

19 MS KULASZKA: I want to just go back
20 to the posting you made concerning Liz Lampman. What
21 is "One Peoples Project"?

22 MR. WARMAN: To the best of my
23 knowledge, it's an anti-racism or human rights group
24 website in the United States.

25 THE CHAIRPERSON: What's it called

1 again?

2 MS KULASZKA: It was a posting that
3 Mr. Warman made. It was tab 4, page 8. Wait a minute.
4 That's not it. Page 10. Tab 4, page 10. It was a
5 link that Mr. Warman posted. It was the letter by Liz
6 Lampman and could you just -- I miss that.
7 Onepeoplesproject.com is what?

8 MR. WARMAN: An anti-racist or human
9 rights group in the United States.

10 MR. VIGNA: Tab 4, page 10?

11 THE CHAIRPERSON: Yes, page 10.

12 MS KULASZKA: A few of your postings
13 you refer to recommienetnetwork.com. Is that a name
14 you made up, with the "commie" in there.

15 MR. WARMAN: I believe it would have
16 been my posting. It was not the actual name of the
17 website.

18 MS KULASZKA: So the actual name of
19 the website is recomnet.org -- recomnetwork.org,
20 correct?

21 MR. WARMAN: I don't have the actual
22 website in front of me, but that sounds accurate.

23 MS KULASZKA: If you can turn to tab
24 5. The first page is -- it's a page actually printed
25 off archive.org because this website appears to be down

1 these days. But it wasn't quite an active website, was
2 it not?

3 MR. WARMAN: Well, again, it depends
4 on your definition of "quite an active", but it was an
5 active website.

6 MS KULASZKA: Do you know what's
7 happened to it?

8 MR. WARMAN: Not off the top of my
9 head, no.

10 MS KULASZKA: Page 1 on the
11 right-hand of the top it says:

12 "This website is a project of
13 the Canadian Anti-Racism,
14 Education and Research Society.
15 The website is dedicated to
16 tracking and monitoring hate
17 crime and providing solutions to
18 racism. We depend on your
19 support," et cetera. And it
20 asks for donations.

21 Do you recognize that statement from
22 your visits to the website?

23 MR. WARMAN: I don't recall it, but
24 it doesn't seem out of place.

25 MS KULASZKA: So this website is the

1 website of Canadian Anti-Racism, Educational and
2 Research Society or CAERS for short, correct?

3 MR. WARMAN: It states it's a project
4 thereof, so whether it's the actual website, per se, or
5 whether they have others is another question. But this
6 is one of their websites, I believe.

7 MS KULASZKA: Further down one of the
8 links given is the International Network Against Cyber
9 Hate. Is that the organization that you're a member
10 of?

11 MR. WARMAN: I am a member thereof,
12 yes.

13 THE CHAIRPERSON: Where did you read
14 that? Sorry.

15 MS KULASZKA: It's on the right-hand,
16 there's three little flags and it's almost opposite the
17 third little flag on the right. "International Network
18 Against Cyber Hate".

19 THE CHAIRPERSON: Oh, okay.

20 MS KULASZKA: What is that
21 organization?

22 MR. WARMAN: It is an international
23 organization of individuals and groups that are
24 interested in the issue of hate on the Internet.

25 MS KULASZKA: Do you pay a membership

1 fee?

2 MR. WARMAN: Not personally, no.

3 MS KULASZKA: So you join as an
4 individual?

5 MR. WARMAN: That's correct.

6 MS KULASZKA: Do you hold any kind of
7 position with that organization?

8 MR. WARMAN: Other than member, no.

9 MS KULASZKA: The next page is
10 actually numbered page 1. This is a posting of a human
11 rights complaint against Glenn Bahr. This is your
12 complaint against Glenn Bahr. Did you post that?

13 MR. WARMAN: No, I did not.

14 MS KULASZKA: Do you know who did?

15 MR. WARMAN: No, I do not.

16 MS KULASZKA: Do you know who the --
17 who cynthia is, the person who uses the pseudonym
18 cynthia is?

19 MR. WARMAN: No, I do not.

20 MS KULASZKA: Do you recognize this
21 document at all? It would go from page 1 to page 4.

22 MR. WARMAN: It has the appearance of
23 being a copy of a slightly modified version of the
24 human rights complaint I filed against Mr. Bahr and
25 Western Canada For Us.

1 MS KULASZKA: Are you aware this had
2 been posted on the website?

3 MR. WARMAN: At some point it may
4 have come to my attention, yes.

5 MS KULASZKA: So you would have seen
6 this document at the time?

7 MR. WARMAN: Not necessarily. I was
8 aware that it may have been posted, but whether I
9 actually looked at it on their website I don't recall.

10 MS KULASZKA: Do you have any idea
11 how this complaint would end up on this website?

12 MR. WARMAN: It was posted there by
13 someone, I would guess.

14 MS KULASZKA: Did you give a copy of
15 the complaint to someone?

16 MR. WARMAN: I had circulated a copy
17 of the complaint to other individuals.

18 MS KULASZKA: In electronic form?

19 MR. WARMAN: Yes.

20 MS KULASZKA: Who were those people?

21 MR. WARMAN: I'm sorry, I don't
22 recall exactly. It would have been other individuals
23 within the human rights milieu in Canada.

24 MS KULASZKA: People like Matt
25 Lauder?

1 MR. WARMAN: It's possible, but I
2 don't recall.

3 MS KULASZKA: CAERS itself?

4 MR. WARMAN: Again, it's possible but
5 I don't recall exactly who it was distributed to.

6 MS KULASZKA: Can you turn to page 5.
7 This is a posting, appears to be about Madeleine
8 Albright. If you turn to page 6 towards the bottom it
9 says, the fine print:

10 "The following comments are
11 owned by whoever posted them.
12 We are not responsible for them
13 in any way."

14 THE CHAIRPERSON: Where does it say
15 that? Oh, there.

16 MS KULASZKA: Was this a type of
17 message board on Recomnetwork, do you know?

18 MR. WARMAN: Not that I'm aware of.
19 I believe it was the posting of articles and people
20 could leave -- it appears people could leave comments
21 on articles.

22 MS KULASZKA: This one accuses
23 Madeleine Albright of being a Jewish war criminal,
24 correct? It states:

25 "Zionist war criminal Madeleine

1 Albright should be the one on
2 trial at that kangaroo court in
3 The Hague. Protesting her, I
4 never thought I'd see the day
5 when I would agree with anything
6 posted here."

7 If you can turn to the next page, 7,
8 at the end of that posting. Turn to page 8. There's a
9 posting about Tomasz Winnicki. Seem to have left off
10 the "i" there.

11 "Injunction To Stop Internet
12 Hate". It's also posted by
13 Gabriel and it concerns Tomasz
14 Winnicki who posted as Thexter3D
15 on the VNN forum. Did you post
16 that?

17 MR. WARMAN: No, I did not.

18 MS KULASZKA: It indicates there were
19 27 comments about this posting. Again, underneath fine
20 print:

21 "The following comments are
22 owned by whoever posted them.
23 We are not responsible for them
24 in any way."

25 There are a number of postings about

1 this. And if you turn to page 9, a lot of the postings
2 are extremely critical of what's happening to Tomasz
3 Winnicki. If you look at Anonymous on Sunday, October
4 9th:

5 "Your pre-emptive justice in
6 Canada is just as unjust as our
7 pre-emptive war in Iraq".

8 And it goes on.

9 The next one, "Abolish the CHRC." It
10 criticizes the fact that truth is not a defence. It
11 calls for that abolition of the Commission.

12 Then there's discussion, "Good work,
13 Mr. Warman", by Anonymous. And he says:

14 "I see the slugs have crawled
15 out from under the rocks to
16 comment on the 'injustice'
17 suffered by Tom Winnicki".

18 Then someone else comes back:

19 "Give me a break. Winnicki is
20 no martyr."

21 "Warman must be doing something
22 right to garner as much
23 attention as he has."

24 That's on page 10.

25 So you would agree that even on an

1 anti-racism website there is a lot of controversy about
2 proceedings under section 13, correct?

3 MR. WARMAN: There are comments that
4 have been left here that are unsupportive of the
5 Canadian Human Rights Act, section 13, sure.

6 MS KULASZKA: And the webmaster or
7 the -- I assume it's CAERS, this is one of their
8 projects -- they have made it very clear they are not
9 going to be responsible for the posts, correct?

10 MR. WARMAN: That's what it states.

11 MS KULASZKA: Would you recognize
12 that kind of clause as exempting them from liability
13 under section 13?

14 MR. WARMAN: That's a legal question.

15 MS KULASZKA: Would you file a
16 complaint against someone who had such a clause or
17 would you recognize it?

18 MR. WARMAN: It would depend on the
19 context.

20 MS KULASZKA: On page 13, these are
21 more posts on recomnetwork.org. On page 13:

22 "Re: Give me a break! Winnicki
23 is no martyr."

24 "Yes, I do admit to being a
25 racist, but as a defensive of

1 response against all the
2 anti-white racism throughout
3 society."

4 And he complains about double
5 standards.

6 The next posting:

7 "Re: Give me a break! Winnicki
8 is no martyr."

9 He's talking about the gay rights
10 lobby and why does the gay rights lobby devote so much
11 time to gay teens.

12 And he's very critical of -- says:

13 "Maybe gays will tell you that
14 it's hell to be gay. If this is
15 so, we ought to be discouraging
16 them from becoming so, if at all
17 possible."

18 On the next page, page 14, just past
19 the middle of the page:

20 "Re: Give me a break! Winnicki
21 is no martyr."

22 It's by Anonymous. He states:

23 "Oh, I almost forgot. You
24 mentioned the homos. That's
25 another soapbox. If the homos

1 would stick to themselves, quit
2 slobbering all over each other
3 in public, quit acting 'campy'
4 in public and keep their
5 cotton-picking perverted mitts
6 off our kids, I could tolerate
7 them. But no, they not only try
8 to sue the New Jersey Supreme
9 Court to judicially sodomize the
10 Boy Scouts of America, but
11 they've seeded our high schools
12 nationwide with these homosexual
13 embassies, sugarcoated under the
14 innocent sounding title of
15 Gay-Straight Alliance."

16 And it goes on in that manner.

17 The next posting:

18 "O.K., so Mr. Winnicki's syntax
19 is a bit extreme at times.
20 However, it is no less truthful
21 for the most part. There's the
22 double standard between whites
23 and minorities."

24 And it goes on to discuss the double
25 standards.

1 If you flip over to page 16, they're
2 still discussing the Winnicki case. The first full
3 posting:

4 "Censorship is Intolerance.
5 Doesn't Canada pride itself on
6 'Freedom of Speech'?"

7 It ends off by:

8 "Punishing individuals for
9 expression of personal
10 ideologies is, in itself,
11 criminal. Why so threatened by
12 the words of one?"

13 The next posting:

14 "Good work, Mr. Warman???
15 You've got to be kidding me!!!
16 Don't you realize what this thug
17 is all about? He's the Morris
18 Dees of Canada."

19 It goes onto criticize human rights
20 tribunals, stating hate is subjective.

21 The next posting says:

22 "Canada has really gone down the
23 Juedo Communist path."

24 Next posting:

25 "It's sad that Canada has sunk

1 so low as to muzzle people who
2 disagree with Jews. Is Canada
3 now a Jewish republic? To
4 borrow from Ralph Nader's
5 comments (that there's more free
6 speech in Israel than
7 Washington, D.C.), I'd say
8 there's probably more free
9 speech in Israel than in Canada.
10 Thanks for letting me comment on
11 this story. Anon".

12 The next page, 17, the posting is
13 headed, "Abolish the CHRC."

14 "The CHRC has already ruled it
15 is not interested in truth."

16 And I think we're getting into more
17 postings we've already located at.

18 Would you agree that in tone and
19 content a lot of these postings are similar to what we
20 could see on VNN or Stormfront or the Freedom site?

21 MR. WARMAN: No, I would not.

22 MS KULASZKA: Why not?

23 MR. WARMAN: Because posting
24 certainly that I witnessed on the Freedom site called
25 explicitly for genocide. I don't see that anywhere

1 here, at least not in anything you've drawn my
2 attention to. There is material here that is clearly
3 problematic and it's my understanding that Recomnetwork
4 blocked the ability, subsequently blocked the ability
5 of persons to leave messages or comments in response to
6 articles that had been posted.

7 But if you are asking me some if
8 these comments are problematic, I would say yes, I
9 agree.

10 MS KULASZKA: In fact, the postings
11 on Freedomsite that called for people to be killed or
12 families to be killed or -- were all done by Craig
13 Harrison, correct?

14 MR. WARMAN: At least a number of
15 them. Again, but there's another difference between
16 this. This is a human rights website and not a website
17 that has been established pursuant to a white
18 supremacist or neo-Nazi agenda.

19 MS KULASZKA: We'll go back over
20 that, what the Freedomsite is. Do you think that
21 excuses these posts?

22 MR. WARMAN: No, I consider these
23 posts to be problematic.

24 MS KULASZKA: So there was a
25 complaint laid against this website, correct?

1 MR. WARMAN: Yes, by an associate of
2 Mr. Lemire's, I believe.

3 MS KULASZKA: Do you know what
4 happened to the complaint?

5 MR. WARMAN: No, I do not at this
6 point.

7 MS KULASZKA: Do you know who the
8 person is?

9 MR. WARMAN: Individual named Andrew
10 Guille, Guille being G-U-I-L-L-E, the brother of
11 Melissa Guille, whom I understand Mr. Lemire to have
12 dated at one point and who is the head of the
13 organization from London, Ontario called the CHA,
14 Canadian Heritage Alliance, and who is also the subject
15 of a section 13 Canadian Human Rights complaint.

16 MS KULASZKA: And who told you about
17 this complaint?

18 MR. WARMAN: It's possible that CAERS
19 did, or someone else affiliated with them.

20 MS KULASZKA: What did CAERS do in
21 response to the complaint?

22 MR. WARMAN: To the best of my
23 knowledge, they responded to it through the Canadian
24 Human Rights Commission.

25 MS KULASZKA: And they removed their

1 postings, did they not?

2 MR. WARMAN: To the best of my
3 knowledge, he removed any of these posts that they
4 considered to be problematic.

5 MS KULASZKA: The last one down to
6 page 32 of tab 5. There's another -- just another
7 post, another example.

8 "The Dark Side of Diversity.
9 The social engineers who wrote
10 immigration laws didn't think
11 about this beforehand. They
12 naturally thought everyone would
13 be thrilled to have the entire
14 world brought to their doorstep.
15 They didn't figure the diversity
16 would bring baggage as well as
17 benefits.

18 First, they shouldn't have
19 allowed so many into the
20 country. Second, assimilate,
21 assimilate, assimilate!"

22 And it goes on about immigration.

23 It ends off by saying:

24 "This is not a 'diversity' we
25 bargained for."

1 Correct?

2 And on page 34, this is another
3 posting from Recomnetwork under their disclaimer:

4 "The Fine Print: The following
5 comments are owned by whoever
6 posted them. We are not
7 responsible for them in any
8 way." It's called, "Protection
9 of the "Holocaust". Holocaust
10 is in quotes. By "Anonymous".

11 It states:

12 "It's difficult to believe that
13 the inspiration for a
14 Declaration of Independence and
15 the constitution ever came from
16 Europe. Europe is becoming a
17 totalitarian dictatorship. How
18 can it be a crime to present a
19 different point of view on a
20 subject and why is it that the
21 Jewish Holocaust and only the
22 Jewish Holocaust receives this
23 protection? David Irving would
24 be free to discuss alternative
25 points of view regarding

1 slavery, the reformation, 75
2 years of Bolshevik slavery in
3 Russia, and even gravity. But,
4 no, the Holocaust, for some
5 reason, is off limits."

6 It goes on the last couple of pages.
7 "Yet only" -- lines, sorry.

8 "Yet only the Jewish Holocaust
9 gets publicity. Only the Jewish
10 Holocaust gets protection.
11 Think about it. "

12 Would you agree that's the kind
13 posting that could be on what you called neo-Nazi
14 sites?

15 MR. WARMAN: Just for the record
16 before I make any comment, I should note I've never
17 seen this document and I have no recollection of the
18 number of documents you've shown me over the past few
19 minutes from -- towards the end of tab 5. I do
20 consider this posting to be problematic? Yes, I
21 certainly would.

22 MS KULASZKA: Why didn't you ever lay
23 a complaint against CAERS?

24 MR. WARMAN: Because I did not feel
25 the need to.

1 MS KULASZKA: So to be honest, you're
2 targeting political sites that you don't like?

3 MR. WARMAN: No, I believe that's
4 incorrect.

5 MS KULASZKA: What is correct?

6 MR. WARMAN: Something other than the
7 proposition you just put to me.

8 MS KULASZKA: Which is what? You
9 have to tell me.

10 MR. WARMAN: That I will file
11 complaints against groups and/or individuals that I am
12 concerned are violating section 13 sub (1) of the Act.

13 MS KULASZKA: So you are saying you
14 didn't know about any of these postings?

15 MR. WARMAN: No, what I'm saying is
16 that certainly the last couple that you've shown me I
17 have no knowledge of, and a number of other ones I have
18 no certainty I've ever seen them before.

19 MS KULASZKA: So you don't recognize
20 any of these pages?

21 MR. WARMAN: Again, certainly not the
22 last two, and a number of the previous ones I have no
23 recollection of having seen them, although it's
24 possible I have.

25 MS KULASZKA: Do you recognize any of

1 the pages, just for production purposes?

2 THE CHAIRPERSON: Does it appear to
3 you to resemble Recomnet postings at the time? Do you
4 have any reason to doubt that Recomnetwork did not use
5 this logo and did not appear as such?

6 MR. WARMAN: Well, the problem is I
7 can't really comment. This is roughly what the website
8 looked like, but can I comment did I ever see these --

9 THE CHAIRPERSON: That's all I'm
10 looking for. It's for the purposes of production. It
11 certainly appears to be printouts from the
12 Recomnetwork. I think for purposes of production, I'm
13 satisfied with your indication. So they are produced,
14 the entire tab.

15 MS KULASZKA: Thank you. I just want
16 to point out one more post, Mr. Warman. That's the one
17 on page 21.

18 THE CHAIRPERSON: Page 21 of tab 5.

19 MS KULASZKA: Tab 5, page 21. It's
20 titled, "6 million lies." Talking about the "lousy
21 kikes...always bitching about the holohoax." You would
22 agree that that posting is also problematic for you?

23 MR. WARMAN: Certainly, yes.

24 MS KULASZKA: Let's go to tab 2.

25 MR. VIGNA: Mr. Chair, I won't object

1 at this point, but I will argue in the pleadings.

2 THE CHAIRPERSON: I understand.

3 MS KULASZKA: Tab 2 of the
4 respondent's binder.

5 THE CHAIRPERSON: I'm sorry, tab 2 of
6 binder?

7 MS KULASZKA: Respondent's binder. I
8 think you indicated to the Tribunal you that recognize
9 these documents?

10 MR. WARMAN: Certainly that I
11 recognize a number of them. I haven't had a chance to
12 look through all of them.

13 MS KULASZKA: Well, just go through
14 them. Do you recognize --

15 THE CHAIRPERSON: Hold on. Do you
16 have an objection, Mr. Warman?

17 MR. WARMAN: Yes. Well, if there is
18 any attempt to introduce any of these documents the
19 objection is on the basis of relevance. None of them
20 have been entered as material pursuant to the
21 complaint, and I'm just wondering if Ms Kulaszka could
22 perhaps establish any sort of relevance to this
23 complaint whatsoever.

24 THE CHAIRPERSON: I don't know what
25 we're talking about here. Let me take a good look

1 here.

2 MS Kulaszka, maybe you can give me a
3 summary of what these documents are, and what the
4 relevance is to this case.

5 MS KULASZKA: The relevance was set
6 out in the statement of particulars.

7 Basically what happened is that
8 Mr. Warman began a series of complaints under section
9 13, and Paul Fromm of the Canadian Association for Free
10 Expression began sending out press releases. He used
11 the FreedomSite Announce mailing list and he was
12 criticizing the fact that the lawyer for the Canadian
13 Human Rights Commission, namely Mr. Warman, was laying
14 these complaints.

15 He felt there was a conflict of
16 interest; that the Commission shouldn't be allowing him
17 to do that. He called them an enemy of free speech.
18 And basically we can go through these -- I'll call them
19 press releases. But they are put out through the
20 FreedomSite mailing list.

21 Then Mr. Fromm had a series of
22 protests concerning what the Commission was doing and
23 what the -- that they were allowing Mr. Warman to make
24 these complaints.

25 And in the end, Mr. Fromm made a

1 complaint, in fact the chief commissioner, asking the
2 chief commissioner if this was proper.

3 It was --

4 THE CHAIRPERSON: Commissioner of the
5 Canadian Human Rights Commission?

6 MS KULASZKA: Yes, of the Canadian
7 Human Rights Commission. He made a formal complaint
8 with the chief commissioner.

9 It was at that point that Mr. Warman
10 runs off the messages that he lays the complaint
11 against the FreedomSite, and he sued Mr. Fromm for
12 libel.

13 So it's the thesis of the respondent
14 that in fact Mr. Warman had been well aware of the
15 FreedomSite for years, years, and in fact it's obvious
16 from the testimony already given.

17 And he only laid the complaint in
18 response to what was happening. He was starting to --
19 he was being protested against. He was -- complaint
20 had been laid against him with his employer. And
21 basically what this was was retaliation and a way of
22 silencing Mr. Fromm and the FreedomSite.

23 THE CHAIRPERSON: Is that it?
24 Because I'm not sure how that's relevant to the
25 complaint, or even to the Charter argument.

1 MS KULASZKA: By laying the complaint
2 against Marc Lemire, it prevented Marc Lemire from --
3 it silenced him completely because if Marc Lemire ever
4 said anything then Mr. Warman could lay a retaliation
5 charge against Mr. Lemire and open him up to very, very
6 substantial fines. And in fact Mr. Lemire has not
7 mentioned Mr. Warman since.

8 THE CHAIRPERSON: But --

9 MS KULASZKA: It's a way that the Act
10 can be used that I don't think was ever contemplated by
11 the people who passed the Act. It's a political use of
12 the Act. It's another effect of the Act and, in fact,
13 you can use it to silence your political opponents.

14 When this Act was passed, it's
15 thinking of a vulnerable minority working for a big
16 corporation or a big employer or the government who is
17 being discriminated against and has no resources.

18 But in this case it's just -- it's
19 flipped. And most of these people who have complaints
20 laid against them, they are the ones with no money and
21 no power, and it's the state going after them. It's
22 just --

23 THE CHAIRPERSON: It's just that the
24 argument will be -- please have a seat. The argument
25 will be that --

1 MS KULASZKA: The effect of the
2 complaint was to silence Mr. Lemire and to stop the
3 public -- the publicity and the protest concerning how
4 he was -- the actions of Mr. Warman and whether the
5 actions of the Commission -- whether this was a
6 conflict of interest, was it proper what the Commission
7 was doing letting a lawyer make --

8 THE CHAIRPERSON: My question is
9 this: This can arise in any circumstance, not just
10 section 13, where there may be a background before
11 filing a complaint. But a Tribunal will be concerned
12 about whether there is a breach of the Act.

13 Put this out of the section 13
14 scenario. Let's suppose it's a situation where someone
15 witnesses harassment that's going on in a workplace,
16 and lets it go. But a certain point it goes too far
17 and the best friend of the victim of the harassment
18 gets fired.

19 Well, that's enough. I'm upset
20 enough I'm going to file a complaint. And that person
21 files a complaint which, based on all the evidence, is
22 discriminatory under the Act.

23 Does that mean -- does the fact that
24 the motivation for the individual who filed the
25 complaint, the victim of the harassment, was because

1 enough was enough when that friend got fired that we
2 should not make a finding of discrimination with regard
3 to the basic --

4 MS KULASZKA: I think in this case --
5 well, in this case it affects freedom of speech
6 tremendously. It literally stopped the criticism of
7 Mr. Warman by the respondent. And, in an examination,
8 what was a very serious examination of how section 13
9 was being used, so it affects the guarantee to freedom
10 of expression.

11 THE CHAIRPERSON: Any filing of a
12 complaint -- let's leave Mr. Lemire out of this and
13 Mr. Warman out of this.

14 Let's suppose anyone files a
15 complaint alleging a breach of section 13. The
16 reaction might be on other side that they will stop
17 speaking in the manner that they had been speaking
18 alleged in the complaint while the complaint is
19 processed.

20 Let's put in another context. Let's
21 suppose a female employee alleges sexual harassment on
22 the part of her employer in a complaint. It's not been
23 proven yet. It's certainly possible that that employer
24 from that moment on will stop speaking to that employee
25 or will avoid that employee in order to avoid any

1 further incident that may give rise to an allegation of
2 harassment.

3 Then the case goes to hearing and the
4 employer -- the manager, the male manager let's say, is
5 justified. He did not harass that individual. It was
6 ordinary course of business and wasn't harassment under
7 the Act.

8 Does it somehow undermine the ability
9 of someone to file the complaint?

10 MS KULASZKA: The speech that is
11 complained about -- let's look at Craig Harrison's
12 post. It's one of the things that Mr. Warman
13 complained about. That is not the speech that was
14 stopped by laying the complaint.

15 The speech that was stopped was a
16 political criticism of Mr. Warman.

17 So let's look at it this way. Say a
18 woman works in an office and her boss keeps saying very
19 sexual things to her. She lays a complaint of
20 discrimination and he has to stop saying those things
21 to her.

22 In that case, that's how it's
23 supposed to work. But --

24 THE CHAIRPERSON: It's an allegation.
25 She just files a complaint. It's an allegation. There

1 are many cases, I've ruled on several, where I do not
2 find that discrimination has occurred in that type of a
3 fact situation.

4 MS KULASZKA: I'm talking about
5 speech here. What speech? If he kept harassing her
6 then that speech could be found to be retaliation,
7 correct, or some other speech? He could start saying
8 other things to her that are very nasty. They might
9 not be sexual but -- and that could be taken to be
10 retaliation.

11 THE CHAIRPERSON: Could be
12 retaliation, yes.

13 MS KULASZKA: In this case, the
14 complaint is laid against speech primarily, and
15 postings, messages, which deal with -- we'll use Craig
16 Harrison's postings.

17 That's not the speech that is being
18 affected by the fact that a retaliation order can be
19 found. If Mr. Lemire went on the web and said, Look at
20 Warman, he's laid this complaint and the only reason
21 he's done it so to stop criticism of him, something
22 like that. Mr. Warman could lay a retaliation.

23 THE CHAIRPERSON: Are you saying that
24 because the postings were by one individual on this
25 forum, it had the effect of muzzling the entire message

1 board? Is that the concern you are raising?

2 MS KULASZKA: It had the effect of
3 muzzling Mr. Lemire saying anything else about
4 Mr. Warman really without really putting himself in
5 jeopardy of a retaliation charge. So, yes, it was very
6 effective.

7 THE CHAIRPERSON: This could arise
8 under any -- it could arise with libel suits as well.
9 The press may make a remark about an individual and
10 then it gets slapped with a lawsuit. Be careful not to
11 broach the topic any further just in case they don't
12 get sued again. This may happen.

13 Anyway, I see how it could raise an
14 argument. Before you get up, it's an argument. We now
15 know what the argument will be. Can we get to an
16 agreed fact or statement of facts that, at a certain
17 time after -- Mr. Fromm did perhaps make some
18 allegations and in temporally thereafter Mr. Warman
19 filed a complaint, a human rights complaint?

20 MS KULASZKA: I would be happy just
21 to put the documents in, and I think they speak for
22 themselves. I've got Mr. Warman's statement of claim
23 against Mr. Fromm at the end of that tab, tab 2.

24 THE CHAIRPERSON: Listen, I don't
25 want us to get too caught up on the evidence because it

1 will always boil down to the argument. I think the
2 debate I just engaged in with Ms Kulaszka is what you,
3 all of you, will engage on the last day.

4 Why does it trouble you so much,
5 Mr. Warman, Mr. Vigna, that this material be there.

6 MR. VIGNA: Mr. Chair, there's
7 several concerns that I have. I understand that we can
8 always argue at the end, but apart from that, we have
9 to also be aware that there's -- in the civil court, a
10 lawsuit between Mr. Warman and Mr. Fromm. And if there
11 is an examination on discovery that can be taking place
12 in the civil process, we cannot have a double
13 examination taking place here and then it can be used
14 there, for a case that's totally irrelevant for the
15 present case before you.

16 THE CHAIRPERSON: All the more reason
17 why I'm saying let's avoid that whole component of it.
18 Let's just say, here are documents -- I mean, if
19 there's documents that have been filed in the court
20 records it's not even privileged documentation, then
21 just leave it there and I'll let you all argue it at
22 the end. This is a ten-minute argument.

23 MR. VIGNA: If that's the case,
24 Mr. Chair, then I will do it with the reservation that
25 there will be strong objections at the pleadings on the

1 relevance and --

2 THE CHAIRPERSON: On the relevance to
3 the big issue. I'm sure you will raise the same
4 argument that I just put to Ms Kulaszka. She will
5 rebut that argument in the manner she just said, and
6 the Tribunal will take it under advisement.

7 Mr. Warman?

8 MR. WARMAN: The elastic of
9 admissibility has been stretched, in my respectful
10 submission, extremely far in these proceedings. And to
11 let materials that have no relationship --

12 THE CHAIRPERSON: What's the
13 downside? The standard is relevance versus prejudicial
14 effect. What's the prejudicial effect?

15 I'm telling you right now, I don't
16 care what these documents may say. What I do care
17 about is that we have an ample opportunity to argue the
18 legal arguments, particularly on the Charter issue
19 that's been raised.

20 So what's the downside? Where is the
21 prejudicial effect? This is not a jury here. I can
22 disabuse myself of information I don't need to take
23 into account.

24 So where is the downside? There is
25 relevance according to what Ms Kulaszka has said.

1 Arguable relevance maybe, but what's the downside?

2 MR. WARMAN: Mr. Chair, there are a
3 couple of points. The first one is you cannot stretch
4 the elastic of admissibility to permit Ms Kulaszka to
5 enter anything she wants. She cannot enter my
6 kindergarten grade report, she --

7 THE CHAIRPERSON: I won't let her.

8 MR. WARMAN: Okay. I am concerned
9 that there appears to be the possibility that you will
10 permit the admissibility of evidence that has no
11 relevance whatsoever to these proceedings, and whether
12 you indicate to me that you will disabuse yourself of
13 any prejudicial effect that they may have, the fact is
14 that they are nothing but bad character. That's all
15 they are. They contain bad things that are untruthful
16 and that I consider so damaging to me that I have
17 launched a defamation suit on the basis of them.
18 That's my first objection.

19 The second objection is that what Ms
20 Kulaszka is attempting to do is launch a judicial
21 review of the admissibility of this complaint which is
22 only, of course, subject to the jurisdiction of the
23 Federal Court. And if she had a concern about the
24 nature of this complaint, section 41 exists under the
25 Act.

1 They did not enter a section 41
2 objection to the complaint.

3 The second thing is, that if they
4 have concerns about how the Commission processed the
5 complaint and referred it to the Tribunal, that is the
6 exclusive jurisdiction of the Federal Court and not a
7 matter before this Tribunal.

8 The third thing is these are
9 Mr. Fromm's documents. These are not Mr. Lemire's
10 documents. Mr. Fromm has continued with what I would
11 submit is a pattern of defamation of me and continues
12 to this day. And that is the ongoing subject of a
13 defamation suit.

14 These documents were not
15 Mr. Lemire's. The fact that they were distributed
16 through Mr. Lemire's service is irrelevant. Mr. Lemire
17 has not.

18 And the fourth thing is that Ms
19 Kulaszka submits that Mr. Lemire has somehow been
20 muzzled from criticizing section 13. He has not. He
21 has continued and we've seen with abundance that he --

22 THE CHAIRPERSON: I think that last
23 point -- why I do need to see any of Mr. Fromm's
24 material, Ms Kulaszka? Honestly, if the point is that
25 Mr. Warman filed a complaint and thereafter -- if you

1 can -- just show me the material that relates to
2 Mr. Lemire, that's fine. I don't see why I have to
3 have Mr. Fromm's material. That will confuse the
4 record. I'm a little concerned I'm broaching an area
5 that relates to Mr. Fromm's civil suit.

6 MS KULASZKA: Mr. Warman subscribed
7 to a mailing list that you could subscribe to on the
8 FreedomSite. It was a mailing list you could subscribe
9 to. They've put it into evidence in their --

10 THE CHAIRPERSON: Okay. So?

11 MS KULASZKA: HR-3. And Mr. Warman
12 subscribed to that. It is through that subscription
13 that he receives these SS announcements. They're
14 FreedomSite announcements. They went through the
15 e-mail. They were also posted on the site.

16 And this material appeared on the
17 web. It was very critical of Mr. Warman and his
18 actions.

19 THE CHAIRPERSON: Okay, and then?
20 Then what happened? I'm flipping through it. Help me
21 here. Without my entering it into evidence yet. I see
22 a whole bunch of these announcements, so I'm assuming
23 they reference this civil litigation between Mr. Warman
24 and Mr. Fromm.

25 MS KULASZKA: They describe a protest

1 that Mr. Fromm had organized. At the beginning of this
2 hearing Mr. Warman alleged Mr. Lemire was in protect.
3 He was not at that protest but he appeared to believe
4 he was at a protest.

5 Then a press conference was held in
6 the Parliamentary press gallery and the FreedomSite
7 carried a release from CAFE concerning that press
8 conference. The statements made by the people at that
9 press conference, the statements made by the people at
10 that press conference on Parliament Hill were
11 reproduced on the FreedomSite.

12 THE CHAIRPERSON: I don't see anybody
13 from the FreedomSite here, do I?

14 MR. VIGNA: FS Announce. At the top.
15 That's FreedomSite Announce. So these were sent out by
16 the FreedomSite in -- to the mailing list. They were
17 also archived on the website itself.

18 THE CHAIRPERSON: This is the same
19 FreedomSite that --

20 MS KULASZKA: Yes.

21 THE CHAIRPERSON: -- the complaint
22 alleged was discriminatory.

23 MS KULASZKA: Yes. If you look at
24 the respondent's binder HR-3.

25 THE CHAIRPERSON: No, it's the

1 complainant's.

2 MS KULASZKA: Sorry, the Commission's
3 binder, HR-3, and if you look at tab C --

4 THE CHAIRPERSON: Of? 7?

5 MS KULASZKA: Of HR-3. It's the
6 small binder. Tab C?

7 MR. WARMAN: Yes.

8 MS KULASZKA: And actually the pages
9 aren't numbered, but pretty well in the middle of that
10 tab. If you flip through it's very difficult, it's a
11 very big tab. It's just about the middle. You'll see
12 "Freedomsite mailing list". You'll just have to flip
13 through because they are not just numbered. But the
14 title is Freedomsite mailing list.

15 THE CHAIRPERSON: I see it.

16 MS KULASZKA: I see it. You'll see
17 FS Announce. That's what this is. If you look at the
18 materials I've reproduced at tab 2, that's FS Announce
19 at the top.

20 So you would subscribe to that. You
21 would get these e-mails in your box and then they were
22 also posted to the website.

23 THE CHAIRPERSON: This demonstrates
24 to me I would find, under FS Announce, which was
25 produced by the Commission. Under tab C.

1 MS KULASZKA: Yes, that's right.

2 That's where they come from.

3 THE CHAIRPERSON: So that's the first
4 bunch of papers at tab 2 of R-1. And then there's a
5 statement of claim where Mr. Warman sued Mr. Fromm.

6 And that's it? So the rest of what
7 you explained is not found here?

8 MS KULASZKA: It goes to the
9 constitutional argument, and I would be happy if they
10 were just made exhibits and I could make argument on
11 them.

12 THE CHAIRPERSON: Two-thirds of this
13 relates directly to material you produced, Mr. Warman
14 and Mr. Vigna.

15 MR. WARMAN: In fact, it does not.
16 This material does not appear in any of the materials
17 that we submitted to you as being evidence.

18 THE CHAIRPERSON: No, they are
19 completing your evidence. You opted to select the
20 first page of FS Announce. Now they are showing me
21 what the ideas has. If they're right -- I mean, you've
22 opened the door in a way. You originally allege that
23 the entire FreedomSite message board, at least, but the
24 entire site was certainly suggested is in breach of the
25 Act as a whole. You're asking me to shut down the

1 site. She's giving me part of the site to look at.

2 No, the first part is in. Next?

3 MR. VIGNA: Mr. Chair --

4 THE CHAIRPERSON: What's wrong with
5 the statement of claim? You can just -- I don't need
6 the details of the statement of claim. There was a
7 lawsuit against Mr. Fromm, right? We've already heard
8 mention of that in evidence. Do I need to actually see
9 the actual text of the statement of claim, Ms Kulaszka?

10 MS KULASZKA: It was put in just to
11 show if in fact a statement of claim was filed and it
12 relates to the Freedom site.

13 THE CHAIRPERSON: What precedes from
14 the Freedom site --

15 MS KULASZKA: Yes. Those --

16 THE CHAIRPERSON: Alleging that it
17 constitutes --

18 MS KULASZKA: That's right.

19 MR. VIGNA: Mr. Chair, I have a
20 question. Regarding the exhibit you signed, the
21 Commission's HR-3 regarding the FS Announcement, it's
22 my understanding when you click on the --

23 THE CHAIRPERSON: FS Announcement?

24 MR. VIGNA: You don't see at least
25 this day anything relating to what is -- was this

1 stuff -- this material there at a certain point in time
2 or was it -- is it still there today? Because from my
3 own visit on the site there has been no -- I we cannot
4 access by clicking anything at this point in time.

5 THE CHAIRPERSON: 2003 I see here.
6 The date that appears here is 2003.

7 MR. WARMAN: That says -- I would
8 like to know at what point in time this document wasn't
9 there any more.

10 THE CHAIRPERSON: Are you able to
11 tell us that just so we can advance here, Ms Kulaszka?
12 Was it removed? Is that what happened? Were these
13 announcements removed?

14 MS KULASZKA: Well, FS Announce was
15 part of what was read by Mr. Warman as being part of
16 his case.

17 MR. WARMAN: Right. But this
18 material there Mr. Vigna claims he visited it and not
19 found it there, this actual material. Is that what you
20 mean, Mr. Vigna?

21 MR. VIGNA: When you click on it you
22 don't seem to be able to access.

23 THE CHAIRPERSON: Activate.

24 MS KULASZKA: Did he click on the
25 bottom part to see the collection of prior postings to

1 the last visit, the FS Announce archives?

2 MR. WARMAN: See, Mr. Vigna? There's
3 two things to click on under FS Announce in your tab C.
4 One is called "subscribe" and the other is "FS Announce
5 archives".

6 MR. VIGNA: To my knowledge, I
7 remember clicking on both and nothing seemed to appear.
8 If that's not the case I would like to have --

9 THE CHAIRPERSON: Maybe we can work
10 that out in the evidence.

11 Now, I gather Mr. Warman is not
12 familiar with this material. Are you familiar with it?
13 Perhaps you are. Of course, it's the object of
14 litigation.

15 MS KULASZKA: Yes, he's very familiar
16 with it.

17 THE CHAIRPERSON: So it was at one
18 point on the FS Announce mailing list, was it not,
19 Mr. Warman?

20 MR. WARMAN: To the best of my
21 knowledge.

22 THE CHAIRPERSON: Hence the
23 litigation that ensued thereafter.

24 Honestly, it completes the FS list.
25 So I'm going to allow all those documents.

1 Now, as to the statement of claim. I
2 do hesitate, Ms Kulaszka in introducing other
3 litigation. It's a fact that's not being denied by
4 anyone that there was litigation thereafter.

5 Is it absolutely necessary that I
6 read the material that's in the statement of claim?
7 There's a statement of claim that's been made.

8 MS KULASZKA: No, it has the
9 FreedomSite URLs, but it's not necessary to put the
10 statement of claim in. He has stated under oath there
11 is --

12 THE CHAIRPERSON: It was mentioned
13 earlier. I didn't quite know the context. Mr. Warman
14 had mentioned it earlier.

15 MS KULASZKA: No, it doesn't matter.

16 THE CHAIRPERSON: I'm removing that
17 material.

18 MS KULASZKA: That starts at page --

19 MR. VIGNA: Just for the record, I
20 would like to make it clear that we will be arguing
21 strongly against the relevance this material,
22 particularly that motivation we will be arguing is not
23 something that can be considered by the Tribunal.

24 THE CHAIRPERSON: I made your
25 argument a minute ago.

1 MR. VIGNA: That's fine.

2 THE CHAIRPERSON: But I'm not going
3 to -- we're not at the argument stage. I made an
4 interesting argument but I think it's one I'm going to
5 allow the party to make at the end.

6 Mr. Fothergill?

7 MR. FOTHERGILL: Thank you,
8 Mr. Hadjis. I'm sorry to prolong the discussion.

9 But in my submission it is a very
10 important discussion that we do need to be having
11 sooner rather than later. I would like specifically to
12 address the issue of prejudice because you've expressed
13 some interest in that.

14 THE CHAIRPERSON: Mm-mmm.

15 MR. FOTHERGILL: From the Attorney
16 General's perspective, we do feel prejudiced by some of
17 the evidence that has been lead and, more particularly,
18 evidence that will continue to be lead based on the
19 proposed witnesses for the respondent.

20 You've heard me say before, and I
21 think Mr. Warman has said something similar, about the
22 jurisdictional limitations what the Tribunal can do.
23 And I align myself with Mr. Warman, at least insofar as
24 he points out, that concerns about the manner in which
25 the Commission exercises its jurisdiction are properly

1 preserved the Federal Court and not this Tribunal.

2 Turning to the question of prejudice.

3 If you are going to allow this evidence in on a
4 preliminary basis, it raises at least a possibility
5 that those of us who are responding to constitutional
6 argument may need somehow to rebut some of this
7 information which is being lead. And I am in no
8 position to do that.

9 So, from the Attorney General's
10 perspective, we really would prefer to have some kind
11 of directional ruling from the Tribunal. And in my
12 respectful submission, is there something that can be
13 done on an initial basis before we need to, for
14 example, respond to Mr. Fromm's proposed testimony
15 about others who have filed complaints that were
16 rejected.

17 Of course, those of us who are
18 responding to the constitutional challenge cannot lay a
19 countervailing factual circumstance because we don't
20 have access to that sort of information.

21 And we have three employees from the
22 Commission, and the same sort of issue arises. We are
23 definitely prejudiced in terms of just responding to
24 this factual information if it is ultimately going to
25 be ruled as relevant to the constitutional issue.

1 And so just to conclude that thought,
2 in my submission this is something where the Tribunal
3 could make a ruling at this time. Essentially on the
4 basis that the Tribunal cannot evaluate the
5 Commission's actions and -- so I would ask that you do
6 make some sort of ruling about the admissibility of
7 this kind of information before we are required to
8 respond to it.

9 THE CHAIRPERSON: I've already
10 indicated to you that I have no intention of reviewing
11 the Commission's actions.

12 Now, you raise an interesting point
13 to me with regard to Mr. Fromm's summary of evidence.
14 He alludes to -- there's reference by Ms Kulaszka made
15 that Mr. Fromm will be testifying about other incidents
16 where complaints have been filed and rejected by the
17 Commission. Is that what it says?

18 MR. FOTHERGILL: As I understand it,
19 yes. I'm just reading from the explanation here:

20 "Mr. Fromm has represented
21 various persons brought before
22 tribunals under section 13, or
23 has personal knowledge about
24 others whom he did not
25 represent. He will provide

1 testimony concerning the
2 respondents and their cases. He
3 will identify documents he's
4 received from persons who have
5 complaints under section 13
6 which were refused by the
7 Commission".

8 THE CHAIRPERSON: These -- have they
9 been disclosed, Ms Kulaszka?

10 MS KULASZKA: Yes, they have.

11 THE CHAIRPERSON: Documents have been
12 disclosed, I'm told.

13 MR. FOTHERGILL: But the question I'm
14 asking, is it a reasonable use of the state's resources
15 to try to respond to this kind of factual basis when
16 it's abundantly clear, in my respectful submission,
17 that the Tribunal has no jurisdiction to deal with it.
18 And it's not sufficient for Ms Kulaszka to say, well,
19 it shows how the statute might be abused by somebody
20 for political ends, for example, which is essentially
21 the argument I hear making.

22 That, of course, will not invalidate
23 the statute. That might invalidate specific instances
24 of the application of the statute, but that's what puts
25 us in the jurisdiction of the Federal Court and not the

1 Tribunal. It's rather like people who complain they
2 were stopped by the police driving an expensive car
3 because they happen to be black, colloquially referred
4 to as "driving while black".

5 This apparently is a real issue.
6 It's been dealt with by the courts. But the point is
7 nobody argues that the Criminal Code or the Highway
8 Traffic Act is unconstitutional because it is abused in
9 certain circumstances.

10 In my respectful submission that's
11 precisely the argument that's raised here. It may be
12 that in certain instances, the Canadian Human Rights
13 Act is used for ulterior purposes. That may even be
14 improper, but that does not invalidate the statute. It
15 simply allows somebody to pursue the matter in the
16 proper forum which, with the greatest respect, is not
17 this Tribunal.

18 THE CHAIRPERSON: I gather the
19 argument from the respondent's side is that is a
20 consideration that courts do take into account when
21 assessing the constitutionality of the statute, its
22 effect, how it is, in effect, used. And that's why
23 this evidence is being introduced.

24 I thought that read that her
25 material. Is that an argument that will never be

1 received positively by the courts? Is that your
2 submission?

3 MR. FOTHERGILL: My submission is
4 that that would not invalidate the statute. That might
5 invalidate the application of the statute in this
6 specific circumstance which would put us in the
7 jurisdiction of the Federal Court and not this
8 Tribunal.

9 MR. LEMIRE: Ms Kulaszka?

10 MS KULASZKA: Oh, I would disagree
11 with that if the effect is so substantial it will
12 affect the constitutionality of the provision.

13 And this isn't a jury trial. If the
14 arguments of the respondents are rejected, you can
15 disabuse yourself of any irrelevant evidence. And the
16 Attorney General also has, I hope, the right of
17 correction on these issues of any witness.

18 THE CHAIRPERSON: Well, as the
19 constitutional issue, of course.

20 MR. FOTHERGILL: That, of course, is
21 precisely my point. My ability to cross-examine
22 effectively on the facts to which I have no access by
23 virtue of the fact that this is -- I cannot adequately
24 cross-examine Mr. Fromm, for example, because of course
25 I have no knowledge. I cannot be expected to have

1 knowledge about these complainants who have filed
2 complaints elsewhere and whether they were rejected or
3 why.

4 And, ultimately, it is prejudicial to
5 the Attorney General to have to be put in a position to
6 cross-examine on facts that, on their face, that have
7 no application of constitutional issue.

8 THE CHAIRPERSON: I'm not prepared at
9 this time to definitively agree with you on that point.
10 Certainly the scenarios you describe do give rise to
11 challenges to the application of the Act, not the Act
12 itself. That's true.

13 But I don't know if the position that
14 you take is shared by the respondent here with regard
15 to whether the application in fact of legislative
16 provisions have no bearing in this constitutional
17 analysis of the statutory provision.

18 Unless you have an authority that
19 could bring to me that is definitive on that point, I'm
20 not prepared to say so at this point.

21 Do you have something you wish to
22 bring in front of me that says under no circumstances
23 will any reviewing court or Tribunal reviewing a
24 statutory provision under the Charter, under no
25 circumstances will it ever take into account the

1 application of the Act, its effect?

2 It seems to me Taylor seemed to
3 indeed look at the effect of the litigation and how it
4 would be used. That was the whole discussion about the
5 remedial application thereof, seems to me to be looking
6 at the effect of the legislation.

7 Isn't that part of what the record
8 that any reviewing court would want to have?

9 MR. FOTHERGILL: I won't be able to
10 provide you with a definitive authority on that
11 provision. What I will be able to provide you with are
12 cases where similar sort of argument is being made and
13 they have been understood to be challenges to the
14 application or operability of the statute, rather than
15 the statute itself. I'm confident in saying right now
16 I cannot give you a definitive authority to say the
17 argument --

18 THE CHAIRPERSON: I fail to see how I
19 can deny the respondent the opportunity to make the
20 argument -- there's always a first time -- to make the
21 argument that this legislation has had -- I think the
22 word may have been used a couple times -- a perverse
23 effect, that it ends up creating unintended
24 consequences that the legislator did not intend,
25 perhaps, and which have an effect that goes beyond what

1 the Charter describes.

2 MR. FOTHERGILL: I'll say one more
3 thing and then I'll sit down. Essentially it is
4 because it is a balancing exercise, ultimately. And I
5 think -- I'm pleased to have had the opportunity to
6 address you on this because I'm satisfied that you're
7 aware of the nature of the objection.

8 It's probably the most comprehensive
9 discussion we've had about it.

10 So you are aware that, in my
11 submission, the complainant, the Commission and now the
12 Attorney General, have all raised very significant
13 objections that now needs to be balanced against
14 prejudicial effect. I've said something about
15 prejudicial effect.

16 Ultimately, you also need to think
17 about, if I may say so, the proper application of
18 resources in this hearing. Because you've also
19 permitted subpoenas to be issued for three employees of
20 the Commission, and I gather their evidence will be
21 heard after the currently scheduled dates.

22 If you look at virtually all the
23 evidence that's going to be adduced by the respondent,
24 it's about this issue which, in our submission, is of
25 some tenuous relevance to the constitutional issue.

1 And if we continue along this track, all I can say is
2 that this hearing will continue to be protracted and
3 complicate --

4 THE CHAIRPERSON: Be mindful, it will
5 not be protracted. This is why I'm urging everyone to
6 stay within the time limits that they have undertaken.

7 Let's be clear about this. Ms
8 Kulaszka was in good faith. Had she wanted to be
9 difficult about those two Commission lawyers, she would
10 have insisted that they show up here and we have the
11 whole debate about resources.

12 Ms Kulaszka said she is willing to
13 come up to Ottawa where they are residing and working.
14 It sounds to me that evidence will be perhaps a half,
15 or a day or a day, those witnesses. I don't foresee it
16 as being complicated.

17 I know the Tribunal has no interest
18 in spending unnecessary costs either. But we've seen a
19 lot worse, I must say. To deal with such a complicated
20 case and set it aside for two weeks and everyone seems
21 to be undertaken to be able -- four weeks, in total --
22 is quite impressive. So as long as everyone stays on
23 target.

24 Look, there's cooperation going on
25 here. We're going to have each expert testify in one

1 day. I don't think our resources are being
2 unnecessarily depleted, given the issues at stake.

3 Numerous complaints have been filed
4 under section 13 over the few years. If this is an
5 issue that needs to be addressed, it shall be
6 addressed. I think more resources will be spent after
7 we're done with this file than while we're dealing with
8 this file.

9 MR. VIGNA: Just so there's no
10 surprises, there might be a motion regarding the three
11 witnesses from the Commission that will be served and
12 there may be a motion to quash that might be presented
13 at some point. We are presently considering it so
14 there should be no surprises.

15 THE CHAIRPERSON: To quash the
16 subpoenas.

17 MR. VIGNA: Yes. We haven't received
18 them yet but there may be a motion as well on the
19 admissibility of the testimony of Mr. Fromm, would be
20 probably encompassed in the same type of motion because
21 we are of the view that his testimony is totally
22 irrelevant and this type of inquiry would be, I concur
23 with my colleague from justice, of solely the Federal
24 Court.

25 And I understand the practical course

1 of action that you are proposing saying we can argue it
2 at the end.

3 But, nevertheless, I think there
4 needs to be at least a certain consideration whether a
5 certain issue can even be considered by the Tribunal.

6 The issue that's being about to
7 effect of the legislation being put forth to you
8 regarding the constitution, we are of the view it's not
9 something that is an argument that can be entertained
10 by the Tribunal.

11 THE CHAIRPERSON: You just made the
12 statement. "We are on the view". They are not.
13 That's why hearings take place.

14 Unless you can tell me, here's why,
15 the Supreme Court says that you will never ever be able
16 to entertain such motions. I cannot do that. I have
17 to give them a chance to be heard. Alde alter impartum
18 (ph). Latin.

19 MR. VIGNA: I'm of the view we should
20 have the legal debate before having the factual debate.

21 THE CHAIRPERSON: Right.

22 MR. VIGNA: Anyway, I will consider
23 seeing if we can find the case law regarding what you
24 mentioned, the application of the legislation on the
25 constitutional validity. And I just -- I will look

1 into whether we can find some case law to re-submit
2 this issue once again to you. But I think it's
3 important that we don't necessarily undertake a
4 factual --

5 THE CHAIRPERSON: Mr. Vigna, you
6 should know, you're familiar with the jurisprudence and
7 judicial reviews of tribunal action.

8 Quite frequently the occasions where
9 decisions of Tribunals have been sent back, is when we
10 get too restrictive in allowing the evidence in. I
11 think it's far more prudent and fair to all parties
12 that the evidence be allowed -- and provided there is
13 no prejudicial effect and it's being allowed in -- and
14 thereby enabling thereafter to argue. And that's where
15 you see a waste of energy, waste of resources, when the
16 Federal Court sends it right back to be heard again on
17 a minor fact that wasn't allowed to be entered in. And
18 then we achieve the same result.

19 You've experienced that yourself
20 with other cases, and there are some that have been
21 sent back right now for that precise reason.

22 Let's work it through. And I'm
23 looking for the spirit of cooperation on these things.
24 It's not controversial. These are postings that were
25 on the website you yourself introduced. They're there.

1 They're there.

2 MR. VIGNA: I understand your point
3 of view, Mr. Chair. The only concern and worry I have
4 is that I don't want this to become a judicial review
5 of the case A, B, C and D.

6 THE CHAIRPERSON: It's not.

7 MR. VIGNA: And a royal inquiry on
8 what the Commission can do and --

9 THE CHAIRPERSON: You know I won't be
10 doing that. I can assure you of that. You've seen my
11 other decisions. That's not what we're engaged in
12 here. What we are doing here is dealing with the
13 issue. That's all.

14 So these documents are going to be
15 entered in. Do we need to go through them, Ms
16 Kulaszka, or can you just bring to my attention the
17 important material in argument.

18 MS KULASZKA: I just would like to go
19 through some of them with you with regards to
20 Mr. Warman's communications with ISPs, and ask him
21 about the importance of this in his investigative
22 process.

23 THE CHAIRPERSON: Ask your question.
24 I remember I'm dealing with the complaint here, not....

25 MS KULASZKA: Mr. Warman, did you

1 ever attempt to find out who the server of FreedomSite
2 was, or the ISP of FreedomSite?

3 MR. WARMAN: I'm sorry, I don't
4 recall if I did or didn't.

5 MS KULASZKA: Did the Commission?

6 MR. WARMAN: I hate to disabuse you
7 of this notion. But, again, I'm not the Commission.
8 So if you have questions for the Commission, perhaps it
9 would be most conservative of all of our time that you
10 ask the Commission and not me, because I do not know
11 that answer.

12 MS KULASZKA: Well, you are the
13 witness for the Commission and I only know after
14 asking.

15 THE CHAIRPERSON: Do you have any
16 personal knowledge?

17 MR. WARMAN: I just stated I do not
18 know.

19 THE CHAIRPERSON: He does not.
20 That's the answer. Go ahead.

21 MS KULASZKA: Would you say a regular
22 part of your complaint process is to contact an ISP, if
23 possible, to see if they will remove the material?

24 MR. WARMAN: It would depend on the
25 individual circumstances.

1 MS KULASZKA: I see in the Winnicki
2 case that you in fact did contact Bell Sympatico; is
3 that correct?

4 MR. WARMAN: That is.

5 MS KULASZKA: Did Bell Sympatico
6 cooperate with you and remove the material?

7 MR. WARMAN: Ultimately, yes.

8 MS KULASZKA: But only after --

9 MR. WARMAN: Sorry, I should say,
10 only a small portion of the material that was
11 complained of.

12 MS KULASZKA: And only after you went
13 to the press; is that correct?

14 MR. WARMAN: I believe that time line
15 would be correct.

16 THE CHAIRPERSON: Sorry?

17 MR. WARMAN: That time line would be
18 correct.

19 MS KULASZKA: Have you ever
20 approached any other ISP?

21 MR. WARMAN: Yes, I have.

22 MS KULASZKA: Could you tell us which
23 ones?

24 MR. WARMAN: No, I'm sorry, I can't.
25 Over the past five or six years, I've probably

1 contacted a number of them.

2 MS KULASZKA: Did you ever contact
3 QWest?

4 MR. WARMAN: Mr. Chair, I'm wondering
5 what the relevance of this question is?

6 THE CHAIRPERSON: I don't even know
7 what it is.

8 MS KULASZKA: QWest is an ISP in the
9 United States.

10 THE CHAIRPERSON: Okay. Did you
11 contact -- most of those ISPs you contacted, was one of
12 them QWest?

13 MR. WARMAN: Mr. Chair, there's no
14 allegation that QWest is somehow relevant to this case
15 or that QWest was somehow the ISP of the FreedomSite.
16 Again, there has been no relevance established that
17 QWest has any relation to the facts that are here
18 before you.

19 THE CHAIRPERSON: What's QWest?

20 MS KULASZKA: QWest was the ISP that
21 hosted the Zundel site and it received a letter from
22 the Canadian Human Rights Commission and, as a result,
23 it took down the Zundel site.

24 If you look at -- tab 10 would be
25 helpful, of the respondent's binder. This is from the

1 Canadian Jewish News website. It's a reproduction of
2 an article that was in the National Post by Adrian
3 Humphreys. It was entitled:

4 "A large U.S. Internet Service
5 Provider Hosting Ernst Zundel's
6 Website has Pulled the Plug on
7 the Controversial Site."

8 At the third paragraph it states:

9 "We have an acceptable use
10 policy and when the Canadian
11 Human Rights Commission brought
12 to our attention that Mr. Zundel
13 was publishing hateful material
14 we worked to see it was removed,
15 said Claire Maledon, spokesman
16 for QWest. QWest policy
17 prohibits distribution of
18 material that is hateful,
19 obscene, abusive or excessively
20 violent."

21 THE CHAIRPERSON: So the Zundel site
22 is not at issue here.

23 MR. WARMAN: Exactly.

24 THE CHAIRPERSON: But the broader
25 issue is that I've dealt with before. And the question

1 was simple. Did you ask QWest to shut down the Zundel
2 site?

3 MR. WARMAN: No, I personally did
4 not.

5 THE CHAIRPERSON: There we go.

6 MS KULASZKA: Do you know who wrote
7 the letter doing that? Was it an investigator?

8 MR. WARMAN: I don't have -- I don't
9 recall who would have sent the letter on behalf of the
10 Canadian Human Rights Commission.

11 THE CHAIRPERSON: You mentioned this
12 into evidence. Is there any dispute from a larger
13 sense -- this is a posting from the Canadian Jewish
14 Congress newsletter? I just want to keep the record
15 complete. She read it in. It's produced.

16 I ask Mr. Warman because if you could
17 just go back to tab 4 and page 59. Page 58, 59.

18 You can see a posting there by
19 yourself as pogue mahone. And you say:

20 "Yeah, sorry, I see it's there
21 but the quote before me said the
22 Freedomsite is under attack,
23 that's why I thought it might be
24 cause they were using the same
25 server that Stormfront was. I'm

1 afraid I'm still not any wiser."

2 So you were using your postings on
3 Stormfront to try to find out who the server of
4 Freedomsite was, or the ISP?

5 MR. WARMAN: I don't believe so
6 because I think I could have easily gotten that
7 information otherwise.

8 MS KULASZKA: How would you get it?

9 MR. WARMAN: By doing either a trace
10 route search or looking at the registration
11 information.

12 MS KULASZKA: But you never did
13 approach the ISP then. Did you find out who the ISP
14 was?

15 MR. WARMAN: I have no recollection
16 of that.

17 MS KULASZKA: You would agree that
18 you were looking at the Freedomsite from at least the
19 summer of 2002; is that correct?

20 MR. WARMAN: In terms of -- is there
21 a specific document? I mean --

22 MS KULASZKA: That would be tab 11.
23 That is what I would be referring to or relying upon.
24 Tab 11 was the e-mail that Matthew Lauder sent you to
25 regarding Craig Harrison and his identity. That was

1 December 2002.

2 MR. WARMAN: So perhaps it's easiest
3 to say at least from December 2002.

4 MS KULASZKA: And it's obvious you
5 were looking at the site before that because Craig
6 Harrison had come to your attention. You were
7 obviously -- had been searching for his identity,
8 correct?

9 MR. WARMAN: Again, I don't have any
10 exact recollection of when I first started looking at
11 the FreedomSite. But I think that this document can
12 show it was at least in December of 2002.

13 MS KULASZKA: Did you ever contact
14 Marc Lemire by e-mail or by post to complain about what
15 was on the website?

16 MR. WARMAN: No, not that I'm aware
17 of.

18 MS KULASZKA: Why not?

19 MR. WARMAN: Because I didn't think
20 it would be productive.

21 MS KULASZKA: Well, you don't know
22 until you try; isn't that right?

23 MR. WARMAN: No, I had pretty good
24 suspicion. I had a pretty good basis for my belief.

25 MS KULASZKA: What was your basis?

1 MR. WARMAN: That the very nature of
2 the FreedomSite was within a milieu that was inherently
3 discriminatory and likely to violate section 13 of the
4 Act, and the fact that there was discriminatory
5 material there did not come as any surprise to me, nor
6 do I believe it came as any surprise to Mr. Lemire.

7 MS KULASZKA: But in your initial
8 complaint you actually complain about very few things.
9 It's just the joke section on the message board, which
10 must have been a very small part of that message board,
11 and maybe three articles, three or four articles at
12 most. I'm told one article -- let's look at the
13 complaint.

14 If we could look at your complaint --

15 MS KULASZKA: I believe it's HR-1.

16 THE CHAIRPERSON: Just a moment,
17 please.

18 MS KULASZKA: Looking at page 2.
19 Listing a lot of jokes, correct, that come from the
20 Jokes and Trivia section?

21 MR. WARMAN: The bottom half of page
22 2 contains material from the Jokes section, yes.

23 MS KULASZKA: Look over on page 3.
24 It starts off with another posting from the Jokes
25 section. You also complain about an article or a

1 little posting by Ian Macdonald called Holocaust
2 Statistics.

3 MR. WARMAN: Actually, I believe it
4 was a posting by Mr. Lemire.

5 MS KULASZKA: Yes, it was posted by
6 Mr. Lemire but it was written by Ian Macdonald,
7 correct?

8 MR. WARMAN: Yes.

9 MS KULASZKA: There's another
10 posting -- basically everything is off the Chat
11 Freedom site correct? Chat Freedom site was a message
12 board, correct?

13 MR. WARMAN: No, that's not correct.
14 The -- page 3 indicates a specific article. And,
15 again, my concern would be you are confusing
16 sufficiency versus totality.

17 This is a maximum three-page document
18 that I'm able to provide to the Commission, the
19 complaints. And therefore the fact that I supply X
20 number of examples that will fit within three pages
21 does not mean that I have taken the time to go through
22 the entirety of the Freedom site website and develop a
23 catalog of what I believe to be in violation of section
24 13 that is not, A, within the boundaries that are given
25 to me by the Commission in order to file the complaint,

1 and, B, that's not required.

2 MS KULASZKA: So your technique is to
3 take a few very extreme kind of postings, such as those
4 of Craig Harrison, use those as examples and then ask
5 for the entire website to be taken down; is that
6 correct?

7 MR. WARMAN: No, that's not.

8 MS KULASZKA: That's what you're
9 asking for, isn't it?

10 MR. WARMAN: No, I don't believe so.

11 MS KULASZKA: What are you asking
12 for?

13 MR. WARMAN: Madam, I believe that
14 question has been asked repeatedly and answered.

15 THE CHAIRPERSON: You know, I want to
16 clarify something on that point. Your answer is
17 indicative of something I thought I came across.

18 You've asked for an order,
19 Mr. Warman, similar to the one in the Kyburz case?

20 MR. WARMAN: Yes, paragraph -- I
21 believe it's 113 sub(1).

22 THE CHAIRPERSON: That doesn't
23 request the entire website be shut down. It just says
24 the individual cease -- remove all material that is in
25 violation of section 13 and cease -- and never post

1 that kind of material again. Am I correct?

2 MR. WARMAN: Indeed, and that is what
3 I am requesting.

4 MS KULASZKA: So I want to be clear
5 in my mind, then. Technically you are not asking
6 necessarily for the entire website to be shut down. I
7 don't know what you may have discussed in your previous
8 settlement discussions. I think that was sort of
9 alluded to, sort of en passant in some of our
10 discussions a couple of days ago.

11 For the purposes of remedy you are
12 not asking that the "website" -- I'm putting quotation
13 marks here -- be shut down.

14 MR. WARMAN: I personally am not.

15 THE CHAIRPERSON: In terms of what
16 you are asking.

17 MR. WARMAN: Yes.

18 THE CHAIRPERSON: You are asking for
19 a remedy similar to the one in sub (1) of Kyburz?

20 MR. WARMAN: As well as a penalty?

21 THE CHAIRPERSON: Yes, penalty aside
22 from that.

23 MR. VIGNA: Mr. Chair, the
24 Commission -- perhaps at the beginning I had mentioned
25 the entire website, but I did revise my position in

1 terms of saying what we're looking for is basically all
2 material that violates section 13 on the website. But
3 not in -- the shut down on the website. If there's no
4 material that's in violation of section 13. So I want
5 to clarify that. I think I did at one point after --

6 THE CHAIRPERSON: I picked up on the
7 discrepancy in some of our discussions after looking
8 through my notes. Ms Kulaszka, I need you to be
9 familiar with that in terms of your questioning.

10 MS KULASZKA: Okay. Now, you laid
11 your complaint in November of 2003 and Mr. Lemire
12 learned about it, I believe, in March 2004. By that
13 time he had already taken the message board down, it
14 had been down some months already, prior to receiving
15 notice of the complaint, correct? But you continued
16 with the complaint, correct?

17 MR. WARMAN: The complaint has
18 continued to this day.

19 MS KULASZKA: Did you have any
20 discussions with the investigators you worked with at
21 the Commission with respect to this?

22 MR. WARMAN: I just want to make sure
23 that I'm clear on what your question is. Did I, in my
24 capacity as an investigator or as counsel, discuss this
25 matter with them?

1 MS KULASZKA: You made a complaint,
2 correct? Most of the complaint was concerning the
3 message board, correct? Those are the examples you
4 gave.

5 MR. WARMAN: No. Again, Madam, you
6 are confusing sufficiency and totality. The complaint
7 is with regard to Mr. Lemire's conduct, writ large, in
8 terms of its violation of section 13.

9 Again, the examples that were
10 available and provided on a three-page piece of paper,
11 some of which is limited by pro forma wording that must
12 be included in it, does not provide an entirety of my
13 concerns in relation to the FreedomSite.

14 MS KULASZKA: But you probably put
15 the worst examples you could find in the complaint,
16 correct?

17 MR. WARMAN: Certainly the examples
18 that are contained in there are of the more extreme
19 variety.

20 MS KULASZKA: Okay. And
21 overwhelmingly, those were the postings of Craig
22 Harrison, correct?

23 MR. WARMAN: Again, Madam, you are
24 confusing what was provided within the three-page
25 complaint form that was filed, given all of my previous

1 caveats. The material that was provided pursuant to
2 the complaint, was largely that of Mr. Harrison's.

3 MS KULASZKA: Yes, I asked you a very
4 specific question.

5 THE CHAIRPERSON: That's what I
6 understand, because you've done the Harrison's hearing
7 since then, right?

8 MR. WARMAN: Yes.

9 THE CHAIRPERSON: It's been
10 established. So of the complaint form as we see in
11 HR-1, can you give me a percentage or how many of these
12 were ultimately attributed to Mr. Harrison?

13 MR. WARMAN: All of the postings that
14 were submitted had been the work of Mr. Harrison, or I
15 believe found to be those of the work of Mr. Harrison.

16 THE CHAIRPERSON: Dealing with the
17 complaint that's been filed against Mr. Lemire. This
18 five -- is it five-page document -- six-page document.
19 It contains some excerpts. It's in the form I've seen
20 many times before in other complaints. So there are
21 jokes and messages and so on.

22 Are you able to attribute, having
23 done the Harrison case, a number of these to
24 Mr. Harrison based on the evidence that was introduced
25 there?

1 MR. WARMAN: No. And I think there's
2 a distinction that needs to be drawn because the
3 problem is, is that pages 4, 5 and 6 of this
4 document --

5 THE CHAIRPERSON: Yes.

6 MR. WARMAN: -- were what were
7 ultimately hived off, if you will, and constituted the
8 complaint against Mr. Harrison.

9 THE CHAIRPERSON: You did point out
10 this whole front top of HR-1, the first page, was
11 Mr. Harrison, was a reference to Mr. Harrison.

12 MR. WARMAN: Well, it was a reference
13 to the identities and locations, contact information
14 that I knew of for the individual respondents along
15 with the --

16 THE CHAIRPERSON: So -- hold on a
17 second. One of the problems was there's a stamp here,
18 a date stamp that sort of blocks my ability to read the
19 third line of page 2. It says, "Particulars relating
20 to Marc Lemire and the Freedomsite."

21 MR. WARMAN: Yes, so in reality only
22 pages 2 and 3 that contain examples from the
23 Freedomsite.

24 THE CHAIRPERSON: Yet page 4 says at
25 the top:

1 "Particulars relating to Marc
2 Lemire, the FreedomSite, and
3 Craig Harrison."

4 MR. WARMAN: Yes, but that is based
5 on the argument that under the Act Mr. Lemire was
6 either responsible for the posting or was part of a
7 group of persons responsible for the posting.

8 THE CHAIRPERSON: So in answer to my
9 question, essentially everything that I see at pages 4,
10 5 and 6, until we get to the general comments about the
11 complaint, right -- is material and can be attributed
12 to Mr. Harrison for which it is your assertion that
13 your claim that Mr. Lemire should be held responsible
14 as well.

15 MR. WARMAN: Yes, under the
16 "communicated" or "cause to be communicated".

17 THE CHAIRPERSON: Right, I
18 understand.

19 MS KULASZKA: And most of those
20 postings listed in the complaint happen to -- are part
21 of your case. They are in the binder, HR-2, of the
22 Commission, correct?

23 MR. WARMAN: I believe all or most of
24 them are included.

25 THE CHAIRPERSON: I understand his

1 last answer just prior to that as well, and how it came
2 to be part of this case.

3 MS KULASZKA: How many actual
4 postings by Marc Lemire do you rely on?

5 MR. WARMAN: Whatever has been
6 entered into evidence.

7 MS KULASZKA: Yes. If you could
8 review that.

9 THE CHAIRPERSON: You want him to go
10 through all the evidence right now?

11 MS KULASZKA: As far as I know,
12 there's only two postings.

13 THE CHAIRPERSON: Actual postings by
14 Mr. Lemire, okay.

15 MR. WARMAN: So all of the evidence
16 related to JRBooksOnline, the allegation is that
17 Mr. Lemire communicated or caused to be communicated
18 either on his own or as part of a group of persons.

19 MR. VIGNA: Which tabs? Perhaps we
20 can identify the tabs.

21 MR. WARMAN: This is HR-2, tabs 1 to
22 7-E; tab 13; tab 16; tab 20, page 14, I believe; tab
23 21.

24 THE CHAIRPERSON: That's it.

25 MR. WARMAN: As far as I can see,

1 yes. Again, that certainly does not encompass the
2 totality of the complaint or the evidence that has been
3 submitted.

4 THE CHAIRPERSON: No. But in the
5 evidence before us those are the materials which you
6 attribute directly to Mr. Lemire having communicated,
7 or is it more broad than that?

8 MR. WARMAN: Because the question
9 becomes whether he communicated or caused to be
10 communicated.

11 THE CHAIRPERSON: Ms Kulaszka, were
12 you trying to make a distinction between communicated
13 and caused to be communicated?

14 MS KULASZKA: Yes. He has different
15 bases of liability for Marc Lemire. Some are direct
16 posts they he made, say, to the message board or to the
17 Freedomsite. But in the case of JRBooksOnline, he's
18 alleging he's a webmaster. And with the message board,
19 as far as I can tell, he's just alleging he should have
20 known about the postings.

21 THE CHAIRPERSON: Some of those were
22 direct postings by Mr. Lemire we just saw.

23 MS KULASZKA: That's right. That's
24 what I said.

25 THE CHAIRPERSON: So this is the

1 combination of the two in this case, causing -- let's
2 not get caught up in the language of the Act, because
3 the statute doesn't make a distinction. One or the
4 other leads to the same liability.

5 In terms of facts, how many of
6 those -- of these documents, were ones that you can
7 identify that Mr. Lemire directly posted, I guess,
8 identifying himself, if that's what you are saying, or
9 using one of his pseudonyms?

10 MS KULASZKA: No, he didn't use
11 pseudonyms. He uses his name, posted as Marc Lemire.

12 THE CHAIRPERSON: In this list I saw
13 them just now. For instance, tab 21, was it?
14 Something from Lemire, I can see that.

15 Tab 20 at page 14 was -- I think I
16 saw it and it said, "from Marc Lemire".

17 Tab 16, has Marc Lemire's picture
18 right there.

19 Tab 13, again says, "from Marc
20 Lemire".

21 Now, HR-2, tabs 1 through 7, those
22 are the JRBooksOnline documents; is that right?

23 MR. WARMAN: Yes.

24 THE CHAIRPERSON: So those is more
25 along the lines of causing to be communicated. Is that

1 your position, Mr. Warman?

2 MR. WARMAN: Well, you know, I'll
3 save my closing arguments for my closing arguments.

4 THE CHAIRPERSON: The distinction I'm
5 drawing from what we just saw before I saw Mr. Lemire's
6 name and photo.

7 MR. WARMAN: Yes.

8 THE CHAIRPERSON: The other ones are
9 with a little bit more interpretation of the facts
10 related to Mr. Lemire, in your view?

11 MR. WARMAN: Yes.

12 MR. VIGNA: Just for purposes of
13 clarity, the Commission is also relying on the material
14 like on Books Online, for example, the David Duke book,
15 My Awakening, in which we produced an exhibit from
16 Customs saying it's a prohibited book in Canada. So
17 those aspects of that nature that we produced in
18 evidence we'll be relying --

19 THE CHAIRPERSON: JRBooksOnline writ
20 large is --

21 MR. VIGNA: That's in FreedomSite,
22 the book. JR's Online is one site, and FreedomSite --
23 there's the --

24 THE CHAIRPERSON: Store.

25 MR. VIGNA: Material in the store

1 which are the nature of the My Awakening by David Duke
2 for which we produced also the additional exhibit from
3 Customs Canada. We're relying on that also for the
4 Commission.

5 THE CHAIRPERSON: You know what?
6 You've already declared what the exhibits are and
7 you're obviously going to invoke all the exhibits.

8 I think the question that Ms Kulaszka
9 asked, at least that's how I understood it, was what
10 can be directly attributed to Mr. Lemire in the sense
11 of it's identifying. Would that be correct, Ms
12 Kulaszka?

13 MS KULASZKA: Yes.

14 THE CHAIRPERSON: So through my
15 questioning I've seen at least these tabs, 13, 16, 20
16 at page 14, and 21.

17 MS KULASZKA: Yes, I think that
18 clarifies it.

19 THE CHAIRPERSON: Okay.

20 MS KULASZKA: Could you turn to tab
21 23 of HR-2? You did a search --

22 MR. WARMAN: I'm sorry, can you just
23 give me....sorry? Tab?

24 MS KULASZKA: It's tab 23 of HR-2.

25 MR. WARMAN: Yes.

1 MS KULASZKA: These are the search
2 results you did for Marc Lemire's e-mail; is that
3 correct?

4 MR. WARMAN: Yes, well the address
5 marc@lemire.com.

6 MS KULASZKA: You had testified you
7 did a previous search for just "marc" and "lemire"?

8 MR. WARMAN: Yes.

9 MS KULASZKA: And you didn't disclose
10 those results?

11 MR. WARMAN: I didn't keep them.

12 MS KULASZKA: How many results did
13 you get?

14 MR. WARMAN: I'm sorry, I have no
15 recollection. More than 212.

16 MS KULASZKA: Far too many to be
17 useful, correct?

18 MR. WARMAN: No. Again, my answer is
19 that I don't recall.

20 MS KULASZKA: So instead you did a
21 search on his e-mail. Did you look at all these
22 postings?

23 MR. WARMAN: I looked through a great
24 number of them. Whether I looked at all of them, I
25 don't know.

1 MS KULASZKA: You looked at number
2 109, posting 109.

3 THE CHAIRPERSON: Will you find that,
4 please.

5 MS KULASZKA: The numbers are on the
6 left-hand side. Did you look at that posting?

7 MR. WARMAN: That one? Not that I
8 recall.

9 MS KULASZKA: Do you think Marc
10 Lemire posted that?

11 MR. WARMAN: Whether Mr. Lemire
12 posted that or posted within that thread, I don't know.

13 MS KULASZKA: I want to analyze these
14 search results by postings by Marc Lemire by time. If
15 you could look in the last page. I think that starts
16 off in 1999, correct?

17 MR. WARMAN: Yes.

18 MS KULASZKA: How many days did
19 Mr. Lemire post on the message board in 1999?

20 MR. WARMAN: It would appear on one
21 date.

22 MS KULASZKA: So although he makes
23 multiple postings, it's just one day, correct?

24 MR. WARMAN: If you could just give
25 me one moment, please. I just want to refer to

1 something in my file.

2 MS KULASZKA: Maybe we could cut off
3 here. I would just say to Mr. Warman. I wanted to go
4 through -- maybe over lunch maybe you could have a look
5 at this exhibit and just have a look at how many days
6 Mr. Lemire actual posts and for each year. That would
7 save us a bit of time.

8 THE CHAIRPERSON: How are we doing on
9 time, speaking of time? Are you on track?

10 MS KULASZKA: Yes.

11 THE CHAIRPERSON: Great. So then why
12 don't we take -- is this a good time?

13 MS KULASZKA: Yes.

14 THE CHAIRPERSON: We'll take our
15 break at this time. If I said 1:00 o'clock? 1:30?

16 MS KULASZKA: How is 1:15?

17 THE CHAIRPERSON: 1:15.

18 --- Recessed at 11:45 a.m.

19 --- Resumed at 1:19 p.m.

20 MS KULASZKA: Mr. Warman, we're back.
21 We're just dealing with the searches you made for
22 marc@lemire.com. I think it's HR-2. Have you got
23 that?

24 MR. WARMAN: I do.

25 MS KULASZKA: Did you check out the

1 number of days that Mr. Lemire actually posted each
2 year? I have he posted one day in 1999, correct?

3 MR. WARMAN: That appears to be
4 correct.

5 MS KULASZKA: He went on-line and I
6 think he posted about 25 messages, correct, roughly?

7 MR. WARMAN: Give or take.

8 MS KULASZKA: Most of those messages
9 seem to be about freedom of speech or immigration.
10 Would you agree?

11 MR. WARMAN: Well, I mean, it depends
12 on what your definition of free speech is.

13 MS KULASZKA: Well, the first one,
14 we'll start with 187. That appears to be the -- we'll
15 start from there, 1999.

16 "Ernst Zundel barred from
17 Parliament".

18 Did you read that?

19 MR. WARMAN: I believe I did.

20 MS KULASZKA: And that was about
21 Ernst Zundel not being able to have a press conference
22 in the press gallery in the Parliament buildings,
23 correct?

24 MR. WARMAN: Ernst Zundel, the
25 notorious Holocaust denier, yes.

1 MS KULASZKA: I note some hostility
2 there. You don't like Ernst Zundel?

3 MR. WARMAN: Oh, no, it's not
4 hostility, it's more observation. I believe Justice
5 Blais in fact made the notations and considered him a
6 security threat to Canada. I believe he was actually
7 your former client as well.

8 MS KULASZKA: Yes, he was.

9 Now, next is:

10 "Truth, no defence in Zundel
11 hearing."

12 That was about the hearing before the
13 Canadian Human Rights Tribunal and there was a ruling
14 that truth was no defence. Did you read that posting
15 by Marc Lemire?

16 MR. WARMAN: As I recall, yes.

17 MS KULASZKA: But you haven't
18 reproduced it here before this Tribunal as a hate
19 message, correct, either one of those two?

20 MR. WARMAN: No.

21 MS KULASZKA: The next one:

22 "Immigration can 'kill' you."

23 That was about immigration. Did you
24 read it?

25 MR. WARMAN: I did. In fact, I

1 believe it's reproduced within the materials.

2 MS KULASZKA: Which tab?

3 MR. WARMAN: I believe it's one of
4 the HF, Heritage Front, postings but -- you know, I
5 don't know where it is exactly.

6 MS KULASZKA: It's not 13. It's not
7 16; it's not page 14 of 20.

8 MR. WARMAN: Sorry. It's possible I
9 was confusing it with the first one at tab 13, which is
10 the immigration legislation hearings.

11 MS KULASZKA: Right. So it was not
12 included in these materials, correct?

13 MR. WARMAN: Well, without going
14 through it all, I can't say either way. But if you are
15 telling me you don't see it then --

16 MS KULASZKA: Did you read that
17 posting?

18 MR. WARMAN: As I recall, yes.

19 MS KULASZKA: "Recall our troops to
20 protect Canada." Did you read that?

21 MR. WARMAN: No, not that I recall.

22 MS KULASZKA: New hate law changes.
23 Says, "Sign our petition." Looks like petition. Did
24 you read that?

25 MR. WARMAN: I believe I did.

1 MS KULASZKA: That's not included in
2 these materials either, correct?

3 MR. WARMAN: I believe that the
4 petition is, but the actual posting itself, no.

5 MS KULASZKA: Okay. So all of these
6 postings in 1999, are any of them included in the
7 materials?

8 MR. WARMAN: Sorry, I should change
9 that. I don't think that that is the correct position.
10 Sorry, what was the question?

11 MS KULASZKA: The postings that Marc
12 Lemire -- we don't actually know if he made those
13 postings, but on the assumption he did, are any of
14 these postings from 1999 included in this case?

15 MR. WARMAN: If they are, they are
16 already in evidence. And if not, then no.

17 MS KULASZKA: Okay. Let's go look at
18 the postings in this list from the year 2000. Now, my
19 count is that Marc Lemire posted 10 days in the year
20 2000. Can you check that?

21 MR. WARMAN: Yes, that seems to be
22 accurate.

23 MS KULASZKA: And he posted the posts
24 are numbered 140 to 186, correct?

25 MR. WARMAN: Yes.

1 MS KULASZKA: Now, are any of those
2 posts included in this case?

3 MR. WARMAN: Again, if they are, then
4 they have already been entered into evidence; if not,
5 then no.

6 MS KULASZKA: Did you read most of
7 those posts?

8 MR. WARMAN: I would have read a
9 number of them. Whether I read most, I can't say.

10 MS KULASZKA: And, again, most of
11 them appear to deal with freedom of speech or
12 immigration, correct?

13 MR. WARMAN: Again, it depends on how
14 widely you wish to cast your net of free speech.

15 But there are a number of them that
16 appear within the "free speech" category, if you will.
17 There are others that appear in the FreedomSite mailing
18 list, "general messages", "music", "media propaganda",
19 "enemies of freedom", "Canadian Heritage Alliance",
20 "history and historical revisionism", "news", "stay
21 up-to-date", "single", "companionship", "Heritage
22 Front".

23 Those are the headings that I can
24 see. So a fairly broad presence within a wide number
25 of forums.

1 MS KULASZKA: Yes. But most of them
2 deal with such things as immigration, "Sikh
3 ethno-politics in Calgary"; that's number 180?

4 MR. WARMAN: I'm not sure that that
5 is an immigration thing off of top of my head.

6 THE CHAIRPERSON: I saw some other
7 things here that don't strike me as either of those
8 topics.

9 MS KULASZKA: Start at 151, "Simon
10 Wiesenthal's 'irresponsible' 'Hate' list".

11 Next one is about immigration, at
12 least it's classified as immigration.

13 154 is about the first Christmas in
14 Canada.

15 THE CHAIRPERSON: Right. I'm saying
16 that doesn't strike me as immigration or free speech.

17 MS KULASZKA: No, no.

18 THE CHAIRPERSON: I saw a few of
19 those, that's why I was kind've surprised by your
20 question. "Letter to an unknown soldier".

21 MS KULASZKA: In the year 2001 I've
22 got that Mr. Lemire posted on 22 days.

23 MR. WARMAN: I'm sorry?

24 MS KULASZKA: 22 days?

25 MR. WARMAN: Yes, that appears to be.

1 MS KULASZKA: Two of these messages
2 seem to be very derogatory of Marc Lemire. One is 89
3 and one is 109. It looks as if it's the same posting
4 posted twice. Do you see that? "Marc Lemire is gay".

5 MR. WARMAN: I see it, yes.

6 MS KULASZKA: One is at 89, one is at
7 109, correct?

8 MR. WARMAN: Uh-huh.

9 MS KULASZKA: You didn't have a look
10 at those, I think you testified. You didn't look at
11 that, correct?

12 MR. WARMAN: No, not that I recall.

13 MS KULASZKA: Did you look at most of
14 these posts?

15 MR. WARMAN: Again, I looked at a
16 large number of them. Whether I looked at most or not,
17 would be impossible for me to say.

18 MS KULASZKA: I think post 119 is
19 included in this case, "Ian Macdonald Holocaust
20 Statistics", correct?

21 MR. WARMAN: I believe it is.

22 MS KULASZKA: In the year 2002 I've
23 got that there were postings on nine days?

24 MR. WARMAN: I believe there are 27
25 postings in September and 17 postings in July, and I

1 think your total is correct in terms of the days on
2 which those were distributed.

3 MS KULASZKA: Did you read those
4 messages?

5 MR. WARMAN: Again, I would have read
6 a large number of them.

7 MS KULASZKA: The year 2003 he posted
8 nine days again. That's what I counted up. Would you
9 agree with that?

10 MR. WARMAN: Yes, seven times in
11 July, nine times in May and 16 times in April.

12 MS KULASZKA: Did Marc Lemire ever
13 post to Jokes and Trivia?

14 MR. WARMAN: Not according to this
15 list that I'm aware of.

16 MS KULASZKA: Did you ever find a
17 posting by him in that section?

18 MR. WARMAN: Not that I recall.

19 MS KULASZKA: I would like to now
20 look at Craig Harrison's postings. That would be tab
21 22 of HR-2. Now, I handed up a little table that we
22 had prepared. I think the Tribunal has it as well?

23 THE CHAIRPERSON: I do.

24 MS KULASZKA: Craig Harrison
25 postings. This is an analysis of what Craig Harrison

1 is doing on the Freedom site. This is using the search
2 results for "craig" and "harrison" at tab 22 and the
3 messages which he actually posts which have been
4 disclosed and are being relied upon in this case and
5 are included in HR-2.

6 THE CHAIRPERSON: Would you like to
7 produce this?

8 MS KULASZKA: Yes, I would like to
9 produce it.

10 THE CHAIRPERSON: Have you had a
11 chance to review it, Mr. Warman? It's a summary again.

12 MS KULASZKA: Perhaps we can go
13 through it and at the end we could just produce it.

14 THE CHAIRPERSON: It's been suggested
15 perhaps to me we should put it -- let me just look
16 here. I note Ms Kulaszka believed that toward the end
17 of the binder you have some empty tabs.

18 MS KULASZKA: Yes, there are empty
19 tabs.

20 THE CHAIRPERSON: Maybe we could put
21 it in one of those tabs.

22 MS KULASZKA: Yes, that would be
23 handy. The three holes are already in there.

24 THE CHAIRPERSON: We'll do it after.
25 We want to give Mr. Warman the opportunity to review

1 the document.

2 MS KULASZKA: In your materials in
3 HR-2, the first Craig Harrison post appears. It looks
4 like, page 4 of tab -- let me see -- maybe you could
5 help me out here.

6 Where do the postings start? I
7 think, is it 13? 12? I think 11 wasn't produced, so
8 we're starting at tab 12 of HR-2. Just flipping
9 through the messages the first Harrison post appears on
10 page 4 correct, of tab 12? At the bottom.

11 MR. WARMAN: Yes, that appears to be
12 correct.

13 THE CHAIRPERSON: Hold on. May 14th,
14 2002? Is that the one?

15 MR. WARMAN: Yes.

16 MS KULASZKA: May 14th, 2002 at 3:43.
17 And I wonder if we could just tick these off because
18 the way they've been put in the book is actually out of
19 order. And so what I did was go through them all and
20 put them by day and time so we can see exactly what
21 he's doing on the message board.

22 I would appreciate it if, on the
23 Craig Harrison postings little thing I've given you, if
24 you could just tick it off so you can see it's been
25 included. Then afterward we can discuss what he's

1 doing. It's called "The New Hate Laws", it's May 14th
2 at 3:43. So it's the second posting.

3 THE CHAIRPERSON: Of May 14th.

4 MS KULASZKA: Turning to page 5,
5 "realcanadianson". The first one, I can't actually
6 even read it. It's not realcanadianson. It's from
7 Jokes and Trivia. It's the second one.

8 Realcanadianson is Tuesday, May 14th, 2002, at 12:06
9 a.m.

10 THE CHAIRPERSON: I don't see that in
11 your list. Which one is it?

12 MS KULASZKA: No, it's not included.
13 We'll have to include that. May 14th, 12:06 a.m.

14 THE CHAIRPERSON: What's the title?

15 MS KULASZKA: Jokes and Trivia. It
16 doesn't seem to have a title. I've added that. I've
17 added it to mine just above the 12:47. We're missing a
18 whole slew of these.

19 THE CHAIRPERSON: Perhaps it might be
20 better for you to revise it and submit it an updated
21 document.

22 MS KULASZKA: Let's see just how many
23 we've missed here. He goes on again at 12:08. Maybe
24 there's just two. I'll just add this in and see if I
25 can -- hopefully we'll pick up the rest of them.

1 That is also on May 14th. On page 6,
2 realcanadianson. May 13th at 11:33 p.m., that is
3 included.

4 Return to page 7, there's a posting
5 by realcanadianson May 14th, 12:47. That is included.

6 To page 8, a posting by
7 realcanadianson, May 14th at 4:41. That's included.
8 "Why you are people all so yellow?"

9 We turn the page to page 9.
10 Realcanadianson is the second posting. May 14th, 2002
11 at 4:27. Title, "Just what is a Canadian supremacist?"

12 Turn to page 10, realcanadianson
13 posting, "Immigration", May 14th, 2002 at 4:34.
14 "Topics Bill C-11".

15 Turning to page 11, realcanadianson,
16 May 14th, 2002 at 4:36 p.m.

17 Turning over to page 12, first
18 posting is realcanadianson, May 14th, 2002 at 4:44.

19 Over page 13, realcanadianson, May
20 14th, at 4:51 p.m.

21 Turning to page 14, realcanadianson
22 is the first posting, May 14th, 2002 at 4:58 p.m.

23 Turning to tab 13, page 4,
24 realcanadianson, he posts to May 14, 2002 at 10:55 p.m.

25 THE CHAIRPERSON: Page 4, you said?

1 MS KULASZKA: It's tab 13 at page 4.

2 THE CHAIRPERSON: 4, okay. Step
3 behind.

4 MS KULASZKA: Turning the page to
5 page 5, realcanadianson posts on May 21st, 2002 at
6 12:30.

7 Turning the page to page 6,
8 realcanadianson posts on May 16th, 2002, 10:38.

9 Turning to page 7, realcanadianson
10 posts on May 15th, 2002, at 9:38.

11 Turning to page 8, realcanadianson
12 posts on May 21st, 2002, at 12:37.

13 Turning to page 9, realcanadianson
14 posts on May 31st, 2002, at 12:52 p.m.

15 Turning to page 10, realcanadianson
16 posts on May 21st, 2002 at 12:42.

17 Turning to page to 11,
18 realcanadianson is the first posting. He posts on May
19 21st, 2002 at 12:53 p.m.

20 Turning to page 12, there is no
21 e-mail there but I think Mr. Warman's testimony was
22 that person assigned "CSHA realcanadian" is
23 Mr. Harrison, correct? That's on page 12 of tab 13.

24 MR. WARMAN: Yes.

25 MS KULASZKA: He posts on November

1 13th, 2002 at 4:43 p.m.

2 THE CHAIRPERSON: Are we done? I
3 don't have 4:17 and 4:19 p.m. ticked off on May 14th.
4 Did I miss that?

5 MS KULASZKA: Which one? May 14th?
6 No, it's probably just further along.

7 THE CHAIRPERSON: Okay.

8 MS KULASZKA: Turning to page 14 of
9 the same tab. Realcanadianson posts on May 15th, 2002
10 at 9:37 a.m.

11 Turning to page 15. In this case the
12 pseudonym is "rump", and Mr. Warman's testimony is that
13 rump also is Craig Harrison, correct?

14 MR. WARMAN: Yes.

15 MS KULASZKA: He posts on January
16 21st, 2003, and that hasn't been included but I'm just
17 going to -- perhaps we can just write it in so the
18 record would be complete, January 21st, 2003 at 10:16
19 a.m. The title is "Globe Columnists Advocates. The
20 Swamping of European".

21 Turning the page to page 16 of tab
22 13. This is also a posting by Craig Harrison as well.
23 And he posts on January 21st, same day, at 10:03 a.m.
24 heading "Press Release".

25 Turning to page 17 Craig Harrison as

1 "rump" posts on January 19th, 2003 at 9:45 p.m. title
2 "London Free Press".

3 Turning to page 18, Mr. Harrison, as
4 rump, posts on January 19th, 2003 at 9:42 p.m. title
5 "White Pride Versus Black Pride".

6 Turning to page 19, Mr. Harrison
7 posts again as rump, same day January 19th, 2003 at
8 9:56 p.m. the title is "Top 10 most wanted".

9 Turning to page 20, this is another
10 posting by Mr. Harrison as rump on January 19th, at
11 10:03 p.m. with the title "I am unemployable".

12 Turning to 21, Mr. Harrison posts as
13 rump on January 21st, 2003 at 9:26 a.m., "Vox Populi".

14 MR. VIGNA: Have you put that in
15 evidence?

16 THE CHAIRPERSON: I thought the
17 entire tab was.

18 MR. WARMAN: I don't believe it was
19 entered. It's just for the -- I don't believe it was
20 entered. I believe we skipped it.

21 MS KULASZKA: Was this excluded?

22 THE CHAIRPERSON: The entire tab was
23 put into evidence.

24 MR. VIGNA: I think that's because on
25 that page 21, just for clarity, I put an X on it. I

1 had the impression it wasn't put in evidence. I just
2 wanted to double check.

3 MS KULASZKA: Some of them weren't
4 disclosed, but I was never clear which one. We should
5 delete them then.

6 THE CHAIRPERSON: Let me back up. I
7 have to go back and check. My understanding was we
8 were putting entire tabs in at the time.

9 MS KULASZKA: The problem is some of
10 these hadn't been disclosed and he looked for them and
11 couldn't find if they had ever been disclosed. Maybe
12 we could deal with it now. I submit they should be
13 deleted.

14 THE CHAIRPERSON: Perhaps -- if
15 everybody is in agreement. I want to make sure it
16 wasn't in evidence. Let me just go back.

17 MR. VIGNA: I may be wrong,
18 Mr. Chair, I just had an X over it.

19 THE CHAIRPERSON: Let me see if I can
20 look at my notes here. I don't think we addressed it.

21 MS KULASZKA: No, I don't think we
22 clearly addressed it. Mr. Vigna and I have spoken back
23 and forth about it but it's never been addressed before
24 the Tribunal.

25 THE CHAIRPERSON: So I don't think

1 there was any evidence related thereto, is there? Does
2 anyone recall? I can't find it in my notes at this
3 moment. I'm perfectly willing to remove it.

4 THE REGISTRAR: I didn't take any
5 notes that that wasn't produced.

6 THE CHAIRPERSON: It wasn't produced
7 because we produced the entire tab.

8 MR. VIGNA: This 121, I read it and I
9 recall more. I'm pretty sure that we didn't produce it
10 and I would want that it be excluded because it's not
11 really relevant. It has to do with something else.

12 THE CHAIRPERSON: All right then. So
13 maybe during the break we can have it removed from our
14 documents. I would like you all just to verify --

15 MR. VIGNA: From memory, I have a
16 flash back when we got to this tab Mr. Warman made it
17 specific that this tab, this page 21, wasn't to be
18 included. That's my recollection when we got here.

19 Do you recall, Mr. Warman, on page
20 21?

21 MR. WARMAN: I don't recall exactly
22 what I stated or what I didn't state. It goes simply
23 to the question of the identity of Mr. Harrison, so
24 it's not directly related to these proceedings.

25 THE CHAIRPERSON: What was page 21?

1 Our version of page 21 -- it's something called "Topic:
2 Vox Populi Hopelessly Hypocritical," 2 of 2.

3 Just in case it has to come back at
4 some point, I'll describe it. It was from "rump" and
5 the day was Tuesday, January 21st, 2003 at 9:26. But
6 I'm removing the document since it was apparently not
7 intended to be produced. I'm removing it from tab 13
8 of HR-2. And, therefore, I'm not including it in your
9 list either, Ms Kulaszka.

10 MS KULASZKA: It was Mr. Lemire who
11 brought it up to me. It's the ones that are on the
12 very different kind of paper. It's on this shiny
13 paper. And he stated to me that he cannot remember
14 seeing these, so it would go from page 15 to 21.

15 MR. WARMAN: Mr. Chair, if it's of
16 any assistance, I can state quite clearly why it's on
17 the shinier paper.

18 THE CHAIRPERSON: Okay. We don't
19 have to go there.

20 MR. WARMAN: It's not --

21 THE CHAIRPERSON: We've looked at the
22 other material, haven't we? All this other material is
23 in evidence. Just page 21 was not in evidence. Is
24 that what you're saying, Mr. Vigna?

25 MR. VIGNA: That's exactly what I'm

1 saying. 21 was for a totally different purpose.

2 THE CHAIRPERSON: I recall having
3 seen this other stuff.

4 MS KULASZKA: I meant in the
5 disclosure to the respondent.

6 THE CHAIRPERSON: We're in evidence
7 now. That is the issue here. 21 apparently wasn't
8 used in evidence and it wasn't intended to be used.

9 MS KULASZKA: We'll go onto 23. I
10 don't have a page 22.

11 THE CHAIRPERSON: 23 is the back end
12 of the last sheet, right?

13 MS KULASZKA: I see, I see. Okay.
14 Go to page 23, first posting is realcanadianson, May
15 14th, 2002, at 4:17 p.m.?

16 THE CHAIRPERSON: Okay.

17 MS KULASZKA: Also the second posting
18 on May 14th, 2002, at 4:19, with the heading "Canadian
19 Politics".

20 Also at the bottom, November 13th,
21 2002, and that is not included in here -- oh, yes, it
22 is. November 13th, 2002 at 4:56. No, it's not. 4:56
23 p.m.

24 THE CHAIRPERSON: What's the title?

25 MS KULASZKA: With the title

1 "Canadian Politics".

2 THE CHAIRPERSON: I've taken these
3 notes down. I think it may be helpful for you to have
4 perhaps print off this so it's more official. I'll
5 compare it with my notes and if there's any discrepancy
6 I'll bring it up at that time.

7 In the meantime, though, I would like
8 to have produced since we've been talking about it and
9 you can proceed with your questions. We've been
10 through the material. I don't think there's any
11 problem in producing this.

12 The last tab that I have in your
13 binder, Ms Kulaszka, is I believe 23. That is to say,
14 the first open tab without a paper attached to it. Is
15 that the same for everyone?

16 MS KULASZKA: Let me just check 23.
17 That's fine.

18 THE CHAIRPERSON: So I'm placing it
19 at tab 23, subject to your submitting a typed-up
20 version of what we've all prepared --

21 MS KULASZKA: Yes.

22 Mr. Warman, I'm going to go through
23 this with you to see exactly what Craig Harrison was
24 doing on the Freedom site.

25 He signs on late on May 13th at 11:33

1 and he posts something. Within half an hour he posts
2 on the next day, early in the morning, on May 14th at
3 12:06. Then he makes another posting within 40
4 minutes. Then he must go to bed or do something
5 because he comes back in the afternoon at 3:43.

6 MR. WARMAN: Sorry, I don't want to
7 interrupt you but I just note that I have a note here
8 saying there was another posting that day at 12:08 --
9 12:06, 12:08 --

10 MS KULASZKA: That's right. He comes
11 on, goes on, posts at 12:06 a.m.

12 THE CHAIRPERSON: And 12:08.

13 MS KULASZKA: And then within a
14 minute or two he makes another posting. So he makes
15 three postings that night. He comes on the next -- or
16 in that morning -- he comes on at --

17 THE CHAIRPERSON: In the morning.

18 MS KULASZKA: Yes, that morning,
19 early, early that morning.

20 Comes on at 3:43 p.m., makes a
21 posting. Within about just over half an hour he makes
22 another posting, at 4:17. In two minutes he makes
23 another posting at 4:19. Within eight minutes he's
24 making another posting at 4:27. Within five minutes
25 he's making another posting at 4:34. Within two

1 minutes he makes another posting at 4:36. Within about
2 five minutes he's making another posting at 4:41.
3 Within three minutes he makes another posting, 4:44.
4 Within about six minutes he makes a posting at 4:51.
5 Another seven minutes he makes another posting, 4:58.
6 He then comes back on late that night at 10:55 p.m. and
7 makes one posting.

8 The next morning he comes on, he
9 makes a posting at 9:37, and within a minute makes
10 another posting at 9:38.

11 Comes on the next day at 10:38 he
12 makes one posting.

13 He's away a few days, comes back on
14 May 21st, 12:30 p.m. Within seven minutes he makes
15 another posting, within five minutes he makes another
16 posting at 12:42. Within 10 minutes he makes another
17 posting 12:52. Makes another posting within one
18 minute, at 12:53.

19 Then he stays away for a long time.
20 He comes back in November. November 13 at 4:43 p.m.,
21 he makes a posting, and within about just under 10
22 minutes he makes another posting at 4:56. He comes
23 back in January of 2003 he makes a posting at 10:16 --
24 I haven't got it in order -- I think first one is
25 10:03.

1 THE CHAIRPERSON: He began on the
2 19th.

3 MS KULASZKA: Right. He comes back
4 on the 19th, that's right. He makes his first posting
5 at 9:45 -- sorry, 9:42. Three minutes later he makes
6 another posting at 9:45. The next one just a few
7 minutes later at 9:56. About five minutes later, six
8 minutes later, very short time, at 10:03 he makes
9 another posting which is his -- the last posting which
10 you reproduced in evidence.

11 Would you agree that -- then he goes
12 on on January 21st at 10:03 and 10:16. And those
13 include all the posts of Craig Harrison in evidence,
14 correct?

15 MR. WARMAN: No, I would disagree
16 with that. Sorry, in evidence, yes.

17 MS KULASZKA: Did we miss some?

18 MR. WARMAN: No, sorry. There's a
19 fairly substantive difference between the number of
20 posts he made and the number of posts that have
21 actually been entered into evidence, just to be clear.

22 MS KULASZKA: We're dealing with the
23 ones you entered in evidence.

24 MR. WARMAN: Well, tab 22 has also
25 been entered into evidence, so I would submit that is

1 also evidence that is before the Tribunal.

2 MS KULASZKA: Tab 22 shows 71
3 messages found. Of those 71 you included, you included
4 how many in evidence? It's quite a few.

5 THE CHAIRPERSON: 71, right? Let me
6 back up here. These are the message search results at
7 tab 22 with the words "craig" and "harrison" in them?
8 Is that it?

9 MR. WARMAN: Yes.

10 THE CHAIRPERSON: So ones would have
11 been "rump" or "realcanadianson", are they included in
12 here?

13 MR. WARMAN: Yes.

14 THE CHAIRPERSON: Oh. Because
15 "craig" and "harrison" were always -- I forgot perhaps.
16 How is it you were able to find ones that were signed
17 off as rump?

18 MR. WARMAN: Because when you
19 conducted the search on the FreedomSite's message board
20 it provided all of those postings as well. So it
21 clearly showed there was an affiliation between that
22 name and those postings, and if you compared the two
23 it's quite easy to see that it's the same individual
24 who's doing the posting.

25 THE CHAIRPERSON: I'm saying this

1 search that you would have done of "craig" and
2 "harrison" would have picked up every "rump" and every
3 "realcanadianson" posting. That's what I'm trying to
4 understand.

5 MR. WARMAN: To the best of my
6 knowledge.

7 THE CHAIRPERSON: So there's 71 in
8 total?

9 MR. WARMAN: Yes, that's what it
10 indicates.

11 MS KULASZKA: So you included roughly
12 about 31 postings? Is that generally correct?

13 MR. WARMAN: I'm sorry, however many
14 you've got listed here, plus the ones we've added in.

15 MS KULASZKA: Now, you included these
16 because I gather you see these as the most extreme,
17 worst examples of Craig Harrison's postings?

18 MR. WARMAN: I can't state that with
19 any certainty. There's a good chance that I targeted
20 ones that provided, A, extreme content, B, targeted
21 different groups under section 13 and, C, it would have
22 been limited by space just by virtue of the fact that
23 there was a three-page limit, some of which was taken
24 up by pro forma information.

25 MS KULASZKA: Were all of these

1 included in the complaint?

2 MR. WARMAN: Well, the complaint
3 itself merely states that Mr. Harrison is committing a
4 violation of section 13 and provides examples.

5 MS KULASZKA: Right. And you
6 disclosed these to the respondent as part of the case
7 against him, correct?

8 MR. WARMAN: I'm not sure that I did
9 personally. Normally, what happens is the Commission
10 receives all the evidence that I submit to them and the
11 Commission does the actual disclosure.

12 MS KULASZKA: Was this not a joint
13 disclosure?

14 THE CHAIRPERSON: Okay, I understand,
15 Mr. Warman. The actual process of sending the
16 documents to you was done through the Commission.
17 That's what I understand.

18 MR. WARMAN: And I wasn't actually
19 clear whether she was referring to Mr. Lemire as the
20 respondent or Mr. Harrison as the respondent. In both
21 cases that would be the case.

22 MS KULASZKA: I want to look at tab
23 13, page 12. What does "CSHA Realcanadian stand for?

24 MR. WARMAN: My understanding is that
25 it's actually -- CSH are the initials of Mr. Harrison

1 and, a real Canadian is a statement.

2 MS KULASZKA: I notice that "from" --
3 there's no e-mail there. I don't have anything. It
4 looks like it's been whited out.

5 THE CHAIRPERSON: 12?

6 MS KULASZKA: It's tab 13, page 12.

7 MR. WARMAN: I've listed it as "rump"
8 with an underline; rump being in all small capitals --
9 small letters.

10 MS KULASZKA: Yes, in my copy I don't
11 have anything. It's blank.

12 MR. VIGNA: Which page? I gave my
13 copy to the Tribunal, I believe.

14 MS KULASZKA: It's general messages,
15 "Life of an injun".

16 THE CHAIRPERSON: Yes, right after
17 that it says "from rump".

18 MS KULASZKA: Yes, I've got a blank
19 page.

20 THE CHAIRPERSON: At the break you
21 can obtain a clean copy, Ms Kulaszka, perhaps from
22 Mr. Vigna.

23 MS KULASZKA: Okay.

24 THE CHAIRPERSON: Or somebody, maybe
25 from the Tribunal.

1 MS KULASZKA: When you read this
2 posting he says:
3 "People do not realize where the
4 first europeans arrived in
5 Canada about 70% of the land had
6 not been stepped on by anyone,
7 including indians. So when you
8 say Indian land; is it really?
9 History tells us no, but
10 professional aggitaters say yes.
11 And by the way pre european
12 numbers in Canada was a
13 population of about 300000 to
14 400000 presently in Canada,
15 there are 1200000 indians at
16 last count and that doesnt add
17 up to genocide in my book,
18 considering with the
19 evolutionary flow the indians
20 were heading for exctinshon.
21 They should be thanking the
22 white man. These statements are
23 all true. Signed CHA real
24 canadian."

25 When you compare that posting, which

1 is relatively coherent, to the rest of Craig Harrison's
2 postings, I'm going to suggest to you he was drunk,
3 absolutely, when he did the -- made of the rest of the
4 postings. He's shooting off these postings so fast I
5 don't even know how he could read the threads.

6 Do you see what I mean? Some of them
7 there's a minute between postings. He's just shooting
8 them off. Five minutes, seven minutes. And they are
9 postings which have no relation to this posting.

10 He's saying things like -- I'll give
11 an example. For example, on May 15th, 2002, he swears:

12 "F buying it back. I say go out
13 and kill anything not white and
14 ensure yourself a place beside
15 god."

16 Most of them are almost one-liners.
17 Maybe we'll just go through them page by page.

18 Would you agree with that,
19 Mr. Warman? There's a very good chance he was drunk?

20 MR. WARMAN: I can state with some
21 degree of certainty that I was not there. If you are
22 telling me you were in his presence and he was
23 intoxicated, I'll take that for what it's worth.

24 But I personally was not there and I
25 have no idea about his drunkenness or not.

1 MS KULASZKA: Well, would you agree
2 that when this section was first brought in it was
3 concerning telephone taped messages. So in the Taylor
4 case Mr. Taylor and the Western Guard Party that he
5 represented would write out their messages, was in the
6 Taylor case. Mr. Taylor wrote the messages out and
7 apparently either he and other party members, or just
8 himself. Then it would be recorded on a tape, then it
9 was put in the machine and set up so that a member of
10 the public could access it.

11 Would you agree that was what was
12 done in the Taylor case?

13 MR. WARMAN: In the roughest sense,
14 sure.

15 MS KULASZKA: It was a production.
16 It had to be produced. It wasn't simply shot off every
17 two minutes, correct?

18 MR. WARMAN: I have not reviewed the
19 evidence in the Taylor case recently. To the best of
20 my recollection, the case involved taped messages that
21 were then put on a telephone machine that you could
22 call up and receive a recorded message.

23 MS KULASZKA: Correct. The message
24 generally stayed up a week or so. I think the Heritage
25 Front was the same. They'd put it up for a certain

1 length of time. Then it was taken down. A new message
2 was recorded. And it was put up with a certain length
3 of time, normally a week. Something like that.
4 Correct?

5 MR. WARMAN: Again, I haven't
6 reviewed the evidence in either of those cases, in
7 quite a bit of time, if ever.

8 MS KULASZKA: I suggest to you that
9 what Craig Harrison was doing, Doug Christie has come
10 up with a good term called "The Thoughtless Thought
11 Crime".

12 He's not even thinking. He's
13 shooting off these messages. He's not even thinking.
14 He's barely reading the threads, as far as I can see.
15 He's posting these things so quickly. Would you agree?

16 MR. WARMAN: No. But I would be
17 quite interested in you wish to call Mr. Harrison as a
18 witness and ask him what he actually thinks, because I
19 can't speak for him.

20 MS KULASZKA: Well, obviously I'll be
21 making argument about this and what kind of intent --
22 this obviously is a different situation from a
23 telephone taped messages, isn't it?

24 MR. WARMAN: Meaning that one was on
25 the Internet and one was through the telephone? Sure.

1 MS KULASZKA: Sure. And you can see
2 from your own experience people are sitting in the
3 comfort of their own home. They are on their
4 computers, they could have their beer sitting beside
5 them. They are signing on to these message boards and
6 in their mind it's like a private conversation, isn't
7 it?

8 MR. WARMAN: I don't believe that.

9 MS KULASZKA: They see something that
10 makes them emotional, they get mad. They type out a
11 fast message and they just hit that "send" button, that
12 "post" button very quickly, as in the case of
13 Mr. Harrison, correct?

14 MR. WARMAN: Again, you would be Best
15 placed to ask that of Mr. Harrison himself.

16 MS KULASZKA: I don't think you need
17 to call Mr. Harrison. You just have to look at what
18 he's doing on his website and how fast he's posting
19 these things. There's virtually no thought going into
20 this.

21 THE CHAIRPERSON: Ms Kulaszka, I
22 appreciate your thoughts on this point. I understand
23 what your thoughts are. But let's go more towards
24 questions that elicit information from the witness
25 rather than establishing what your arguments will be

1 later on.

2 MS KULASZKA: I think you'll agree
3 from your experience with Mr. Harrison -- did you just
4 meet him once at the hearing?

5 MR. WARMAN: I have no recollection
6 of ever having encountered him apart from the hearing.

7 MS KULASZKA: In the hearing he got
8 extremely angry, didn't he, and he jumped up and he
9 called you, you know, bad names and then he and his --
10 I believe his wife -- left the room, very angry,
11 correct?

12 MR. WARMAN: I believe that was the
13 answer given on a previous day's testimony.

14 MR. VIGNA: Mr. Chair, just a small
15 point on these series of questions where in a civil
16 proceeding mens rea and intent is not necessarily
17 something that the Tribunal can consider in terms of
18 this issue about drunkenness and all that. Plus, there
19 is no evidence on the issue so --

20 THE CHAIRPERSON: In a civil
21 proceeding yes, but mens rea might have some role in a
22 civil sense. But we are of course in a human rights
23 context here where intent is not necessarily a factor
24 in human rights -- in discrimination law, I should say.
25 I'm mindful of your point. I don't think it's going

1 there with Ms Kulaszka. I think she means to use it in
2 another sense.

3 MS KULASZKA: I'll be marking
4 argument about it and --

5 THE CHAIRPERSON: And that's my
6 point, Ms Kulaszka. You can put it to this witness,
7 obviously because he's a party, but you made your point
8 on the first question then I think you should move on.

9 MS KULASZKA: Would you agree that
10 Marc Lemire has an extensive history of posting on the
11 Internet on Stormfront and a lot of posts on the
12 Freedomsite, but you produced almost just a tiny, tiny
13 percentage of postings in this hearing against him,
14 correct?

15 MR. WARMAN: Again, the question goes
16 to the issue of sufficiency versus totality. So what I
17 produced were materials that were sufficient, in my
18 view, to substantiate a section 13 violation on the
19 part of Mr. Lemire, whether directly or indirectly.

20 I make no case that I reviewed every
21 posting that Mr. Lemire has ever made either to the
22 Freedomsite or elsewhere on the Internet.

23 MS KULASZKA: I'm going to look at
24 HR-2, tab 16. I notice by the URL that you were using
25 something called "thecloak.com". What is that?

1 MR. WARMAN: The cloak is anonymous
2 re-direction website that allows you to enter a
3 specific URL and to go there without revealing your
4 Internet protocol or IP address.

5 MS KULASZKA: Why did you use it for
6 this posting?

7 MR. WARMAN: At the time when I was
8 surfing this particular page, that was what I used. I
9 have no recollection as to why on that particular day.
10 Some days I do, some days I don't.

11 MS KULASZKA: Does the cloak change
12 the content of the website?

13 MR. WARMAN: Not that I'm aware of.
14 Certainly not that I've ever witnessed.

15 MS KULASZKA: This posting above Marc
16 Lemire's name, it says, "Today at 12:15 a.m.", correct?

17 MR. WARMAN: Yes.

18 MS KULASZKA: Did you check
19 stormfront.org every day?

20 MR. WARMAN: No. Well, it depends on
21 over what period.

22 MS KULASZKA: So it was just
23 coincidence you signed on that day?

24 MR. WARMAN: I can't answer that. I
25 was on Stormfront on that day.

1 MS KULASZKA: It's true that Hannya
2 Rizk, the investigator, could not find this page; is
3 that correct?

4 MR. WARMAN: I'm not sure, you would
5 have to ask her.

6 MS KULASZKA: It was in the
7 investigator's report that she stated she could not
8 find the posting on stormfront.org; is that correct?

9 MR. WARMAN: I'm not sure, I would
10 have to look at the actual investigator's report.

11 MS KULASZKA: Do you have it in front
12 of you?

13 MR. WARMAN: No, I do not.

14 MS KULASZKA: Was it Hannya Rizk that
15 signed the investigator's report, do you know?

16 MR. WARMAN: I don't know. If you
17 see her signature there then I would suggest she's the
18 one that signed it.

19 MS KULASZKA: Actually it was whited
20 out on my copy.

21 THE CHAIRPERSON: This is a document
22 that is in front of me? Is this a document before me?

23 MS KULASZKA: No, they have never
24 entered it into evidence. I'm going to just refer it
25 to here, refresh Mr. Warman's memory.

1 MR. WARMAN: Could you perhaps
2 provide me with a copy of it, please.

3 THE CHAIRPERSON: Mr. Vigna is
4 pulling something out.

5 MS KULASZKA: Mr. Vigna, do you have
6 a -- it's on page 7.

7 MR. VIGNA: April 14th, 2005, by
8 Suzanne Best? Or is that another one?

9 MS KULASZKA: Investigator's report,
10 April 4th, 2005. It starts on page --

11 MR. VIGNA: The investigator I have
12 is Suzanne Best, not Hannya Rizk.

13 MS KULASZKA: It's "Suzanne Best
14 for" -- and then the name is whited out. Suzanne Best
15 signed for someone.

16 Her report stated the complainant
17 provided a copy or a poem titled "Canadian Immigrant
18 Poem" which he intends Lemire posted on the Stormfront
19 website forum. The copy provided by the complainant
20 identifies the --

21 MR. WARMAN: Sorry, is there a
22 specific paragraph?

23 MS KULASZKA: Paragraph 30. Page 7,
24 the one at the bottom.

25 THE CHAIRPERSON: For the record,

1 this document is not in front of the Tribunal at this
2 time. It's being put to the witness to refresh his
3 memory. Is that why you are putting it to him?

4 MS KULASZKA: Actually, they said --
5 before the hearing they said they were relying on it,
6 but they are not including it now in evidence.

7 THE CHAIRPERSON: As I indicated at
8 some point, these reports don't normally come before
9 the Tribunal. This might be a reason it could come, if
10 it's some sort of contradiction in the evidence or
11 something. Let's see where we're going.

12 MS KULASZKA: I think Mr. Warman will
13 just admit what's in it.

14 On page 31 it states:

15 "The investigator searched
16 Stormfront website forum and did
17 not find the poem."

18 Is that correct, Mr. Warman?

19 MR. WARMAN: It does, although I
20 would note the date of the report is April 14th, 2005,
21 as opposed to the day I printed off the message, which
22 was the 9th of February, 2004.

23 MS KULASZKA: When did you give it to
24 them?

25 MR. WARMAN: I don't recall exactly.

1 It would have likely been -- well, self-evidently it
2 was subsequent to the date of the actual downloading of
3 the posting.

4 MS KULASZKA: Sir, you laid your
5 complaint in November 2003 and you printed this off on
6 February 9th, 2004, correct?

7 MR. WARMAN: That's correct.

8 MS KULASZKA: And you would probably
9 just give it to the investigator, correct?

10 MR. WARMAN: Eventually I would give
11 it to the investigator at some point. I would have
12 probably put it in an envelope and eventually provided
13 it to her. What date, I can't recall.

14 THE CHAIRPERSON: Remind me, please,
15 again, for my notes here, the date of the
16 investigator's report is April --

17 MR. WARMAN: 14, 2005.

18 THE CHAIRPERSON: Five?

19 MR. WARMAN: Five.

20 THE CHAIRPERSON: The printout at the
21 bottom right-hand corner here of tab 16 is --

22 MR. WARMAN: 9, February 2004.

23 THE CHAIRPERSON: So February is the
24 month in the middle.

25 MS KULASZKA: So you actually

1 provided it fairly shortly after the complaint was laid
2 even before Mr. Lemire even knew that a complaint had
3 been laid, correct?

4 MR. WARMAN: No. In fact, what I
5 indicated -- I believe you might have been talking with
6 your client -- was simply I don't recall the exact date
7 when I provided it to the Commission.

8 MS KULASZKA: Mr. Warman, why do you
9 say this poem is hate?

10 MR. WARMAN: Well, I believe I
11 already answered that in relation to a question on
12 direct examination from Mr. Vigna.

13 But if you want me to review that,
14 it's basically because it attributes a number of
15 characteristics to immigrants, specifically immigrants
16 from Pakistan or other non-white immigrants; that they
17 are economic parasites; that they engage in prolific or
18 unlimited "breeding" in order to attract welfare
19 payments; that they live in disheveled circumstances
20 universally; that they specifically engage in leeching
21 off Canadian, or white Canadian society specifically,
22 among other things.

23 MS KULASZKA: Well, that's the way
24 you take it. But I think other people take it as a
25 very humorous satire of Canadian policies towards

1 immigration.

2 MR. WARMAN: You and your client may
3 take it that way; I personally do not.

4 MS KULASZKA: Do you have the Klatt
5 materials in front of you? I think we gave them out
6 the other day on Friday.

7 THE CHAIRPERSON: The what?

8 MS KULASZKA: This is the binder that
9 will be used by Bernard Klatt, and I want to look at --
10 these are some documents that he'll be proving. If you
11 look at tab 22 --

12 THE CHAIRPERSON: If we are going to
13 be referring to it, in a binder you'll end up using, we
14 might as well give it a number at this point.

15 MS KULASZKA: Okay.

16 THE CHAIRPERSON: So this is a book
17 of documents that you intend to put principally to --

18 MS KULASZKA: To Bernard Klatt?

19 THE CHAIRPERSON: So, refer to the
20 binder as --

21 THE REGISTRAR: The binder entitled
22 Testimony of Bernard Klatt will be filed as respondent
23 Exhibit R-2.

24 EXHIBIT NO. R-2: Binder
25 entitled Testimony of Bernard

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Klatt

MS KULASZKA: If you could look at that tab 22. This was a search done on the words "ocean" with the phrase "Canadian dummy". It brought up --

THE CHAIRPERSON: Tab 20?

MS KULASZKA: 22. Brought up about 92 hits. And if you look down the hits you'll see what they are referring to is this Canadian Immigrant Poem. There's various websites that have this poem, many of them Canadian.

If you turn the page 3 you'll see another Google search where different words were used. "See employment folk in Canada". Brought up even more hits on Google web, of about 305.

I would submit you to, Mr. Warman, that this poem is not seen as hate literature, it's seen as a very funny poem and it appears on a wide variety of websites.

THE CHAIRPERSON: Is somebody waiting for a question? Are you waiting for a question?

MR. WARMAN: Indeed.

MS KULASZKA: I asked him if he would agree that it appears on a few hundred websites at

1 least, and a wide variety of websites, correct?

2 MR. WARMAN: No.

3 MS KULASZKA: Did you try yourself to
4 see if anybody else posted this poem?

5 MR. WARMAN: No, I did not. But what
6 you've pointed me to is four Canadian websites, as far
7 as I can tell, that I can identify by their ".ca"
8 status.

9 So the fact that it's present on four
10 Canadian -- other Canadian websites does not leave me
11 to agree to your proposition.

12 MS KULASZKA: Yes. If you look at
13 the top, it says results 1 to 10 of about 92 for
14 "ocean" and "Canadian dummy".

15 And if you turn to page 3, it's
16 results 51 to 60 of about 305. It would be pages and
17 pages if we included the whole thing. If you turn to
18 page 5 of that same tab you will see the poem
19 reproduced on a forum on the website
20 "Discovervancouver.com".

21 MR. VIGNA: Mr. Chair, I have a
22 question I won't be able to ask in re-examination on
23 this document 3 and 4.

24 On Google there is two places you can
25 click. There's "international" and there's "Canada".

1 And I'm not clear what function was pressed in order to
2 get this response. The first one says "page Canada",
3 but the other one doesn't.

4 MS KULASZKA: These are different
5 search terms. The search is done from -- pages from
6 Canada. The second search -- well, results 51 to 60,
7 we'll have to ask Mr. Klatt. It's probably also from
8 Canada.

9 THE CHAIRPERSON: We don't know that
10 for sure.

11 MS KULASZKA: We don't know that.

12 THE CHAIRPERSON: There's no
13 indication one way or the other. I see your point,
14 Mr. Vigna. So are we back at page 5?

15 MS KULASZKA: Back to page 5 and this
16 is where the poem appears on discovervancouver.com.
17 Are you familiar with that website?

18 MR. WARMAN: No, I don't know that
19 I've ever seen it.

20 MS KULASZKA: Turn to page 8. It
21 appears on a website called countrylife.com. Appears
22 to be about country living. I gather you are not
23 familiar with that website?

24 MR. WARMAN: I have never seen it
25 before in my life.

1 MS KULASZKA: At the end of the poem
2 it says on page 10:

3 "Send this to every American
4 taxpayer you know."

5 And there are a number of comments.

6 James comments:

7 "The poem addresses a lot of the
8 abusers of the system."

9 The top one says:

10 "I totally agree with the poem.
11 Here in California we have them
12 all. They can't even speak
13 English and they get welfare.
14 It's horrifying seeing everybody
15 coming over from other countries
16 taking your money and mine."

17 The last one, Paula, says:

18 "Oh, my God that's the most
19 offensive thing I've read in a
20 long time. You sure you want me
21 to forward this testament to
22 bigatry, stereotyping and
23 prejudice?"

24 And the reply is:

25 "I sure don't understand what it

1 is that you find so offensive.
2 What I find offensive is that
3 this poem hits a little too
4 close to my pocketbook. As
5 others have said here, we the
6 taxpayers are the ones paying
7 for this."

8 And he complains that this is hitting
9 his pocketbook.

10 So there's a real discussion about
11 this over on page 12.

12 Cindy says:

13 "Don't get me started on
14 welfare."

15 MR. WARMAN: Mr. Chair?

16 THE CHAIRPERSON: Yes?

17 MR. WARMAN: I'm sorry, but I've
18 never seen the document. I have no knowledge of it.
19 If she proposes to put it through a different witness
20 to enter it, that might perhaps be relevant.

21 THE CHAIRPERSON: Well, that was my
22 intention to point out. I think given the nature of
23 this document, coming from Google, it's somewhat
24 technical in terms of the search. I don't think we can
25 produce it through this witness, Ms Kulaszka.

1 MS KULASZKA: No, no. Bernard Klatt
2 will produce it.

3 THE CHAIRPERSON: But you are citing
4 off some passages here. I would rather you put a
5 question, if you are putting it to this witness.

6 MS KULASZKA: Mr. Warman, I just put
7 to you that section 13 wasn't meant to cover political
8 satire. It was meant only to cover only the most
9 extreme, hateful comments, correct?

10 MR. WARMAN: I believe that's a legal
11 question that the Supreme Court has been fairly clear
12 about.

13 MS KULASZKA: Why did you produce the
14 on-line petition at tab 26, tab B?

15 MR. WARMAN: For a number reasons,
16 the first being that it shows an inter-relationship
17 between Mr. Lemire, Mr. Fromm and Mr. Klatt and,
18 secondly, it and the subsequent materials I believe
19 will be relevant for the purposes of cross-examining
20 Mr. Klatt.

21 MS KULASZKA: This petition dealt
22 with freedom of speech, did it not, Bill C-36?

23 MR. WARMAN: Well, what it purported
24 to deal with and what it actually did deal with may be
25 the subject of differing opinions between you and I.

1 MS KULASZKA: Are you alleging this
2 petition is hate?

3 MR. WARMAN: No, Madam, and I think
4 you know that.

5 MS KULASZKA: If we could look at tab
6 24, this is the FreedomSite store. Do any of these
7 books, the text of these books to be clear, do any
8 texts of these books appear on the website?

9 MR. WARMAN: Not that I'm aware of.
10 Sorry, I should be a little bit more careful. There
11 are things that indicate that they are a collection of
12 columns by Doug Collins. So whether those -- the
13 specific article that has been included of his is
14 actually included in any of those collections, I can't
15 say.

16 MS KULASZKA: These are books for
17 sale, they are not actually on the website, are they?

18 MR. WARMAN: Again, my answer is is
19 that parts of them in relation to the Doug Collins may
20 or may not be, but I'm not aware of any of the other
21 texts being presented extant on the website.

22 MS KULASZKA: So you are referring to
23 the book, "Here we go again".

24 MR. WARMAN: And/or the next one
25 after that, "Immigration --"

1 THE CHAIRPERSON: What pages or how
2 far in?

3 MR. WARMAN: This is the sixth page
4 in from tab 24.

5 THE CHAIRPERSON: Sixth page in,
6 "Here We Go Again" and "Immigration".

7 MS KULASZKA: So you've never seen
8 those two books, you can't say one way or the other,
9 correct?

10 MR. WARMAN: That's correct.

11 MS KULASZKA: Are you alleging any of
12 these books are hate propaganda?

13 MR. WARMAN: I don't believe that I
14 actually have to. I believe that Canada Customs has
15 already made that determination in at least one case.

16 MS KULASZKA: You are referring to
17 the David Duke book "My Awakening"?

18 MR. WARMAN: Indeed.

19 MS KULASZKA: If you could look at
20 the respondent's binder, I would like you to look at
21 tab 18.

22 MR. WARMAN: Just before I forget, I
23 just want to return these.

24 THE CHAIRPERSON: I was taking notes,
25 what tab number?

1 MS KULASZKA: Tab 18 of the
2 respondent's binder.

3 THE CHAIRPERSON: R-1.

4 MS KULASZKA: Mr. Warman this will
5 also be proven by Bernard Klatt but it's a search of
6 chapters.indigo.ca, and as you can see, My Awakening is
7 for sale, one of the biggest bookstores in Canada.

8 MR. WARMAN: I don't actually believe
9 it is but --

10 MS KULASZKA: Can you turn the page.
11 My Awakening is for sale also at amazon.com. If turn
12 the page, for sale at buy.com. If turn the page it's
13 for sale at barnesandnobel.com, and if you turn the
14 page it's for sale at Abebooks.com.

15 THE CHAIRPERSON: Aren't these
16 American websites?

17 MS KULASZKA: First one is Canadian,
18 chapters.indigo.ca?

19 THE CHAIRPERSON: I'm not trying to
20 be difficult here. I think I know the distinction.
21 But there is an amazon.ca, is there not?

22 MS KULASZKA: Yes, there is an
23 amazon.ca. I don't know if that one was checked?

24 MR. WARMAN: I should note just for
25 clarity of my answer, that I have in the past spoken

1 with Chapters with regard to the presence on their
2 website of unlawful materials or materials that would
3 be unlawful to import. And that, if I recall
4 correctly, My Awakening was in fact one of those.

5 So that even though they displays it
6 on their website, what has happened in the past
7 sometimes is that it's very difficult for them, as they
8 have explained it me, to remove it from their actual
9 catalog. But when you just try and order it you can't.
10 It brings up an "unavailable" indication.

11 MS KULASZKA: But you'll have to
12 agree if this is proven by Mr. Klatt, it is advertised
13 for sale?

14 MR. WARMAN: No, I would disagree
15 with that.

16 MS KULASZKA: You're alleging he cut
17 and paste this page?

18 MR. WARMAN: No, that's not what I
19 said.

20 THE CHAIRPERSON: I understand. It
21 seems to me you are both accurate. It is available on
22 the Internet is his answer, but that if one were to
23 click to acquire it then one would get an unavailable
24 notice. Whether that is actually the case or not, it's
25 something to prove otherwise. But that's the evidence

1 of this witness, Ms Kulaszka.

2 MR. WARMAN: Just to be specific, I
3 don't know if that's the current case, but that is what
4 they have done in the past.

5 THE CHAIRPERSON: Can I say something
6 just to advance the discussion? I'm looking at the
7 sheet right now, and I looked at chapters.indigo.ca it
8 and says "unavailable" in the middle of the page, right
9 next to the photo of the author.

10 MR. WARMAN: There it is.

11 THE CHAIRPERSON: Now, I don't
12 pretend to know what that means. I heard the witness
13 speak of that term and I see it there on the paper.

14 MR. VIGNA: Mr. Chair, I would like
15 to ask for disclosure in relation to this document when
16 Mr. Klatt testifies.

17 When you go to Chapters you have to
18 click if you want to add to your cart or purchase, what
19 comes up when you try to buy these books. So I would
20 like further disclosure in relation -- because I think
21 what happens is there's the first page and then if you
22 want to actually buy it you've got to actually click
23 and you have to fill out all the information as well as
24 the address, credit card and all that.

25 I would like to know what comes on --

1 THE CHAIRPERSON: The normal process
2 would be -- you are advising the respondent that it
3 would be helpful to see that information. If they
4 don't do it, then you have your opportunity with your
5 rebuttal evidence to point that out to the Tribunal.
6 But it would be more helpful if Mr. Klatt could bring
7 that evidence in admittedly. But if they don't, be
8 prepared.

9 MS KULASZKA: I would also note that
10 across from "unavailable" it says, "Get it used or rare
11 from 41.80." It actually gives a price.

12 THE CHAIRPERSON: I see that. I only
13 bring it to your attention because the witness just
14 mentioned it and I brought it to your attention and I
15 see it on the paper.

16 MS KULASZKA: Mr. Warman, did you
17 ever try to order My Awakening from the FreedomSite?

18 MR. WARMAN: No, I did not.

19 MS KULASZKA: Is there something
20 hateful about this advertisement that appeared on the
21 web?

22 MR. WARMAN: On the FreedomSite's
23 web?

24 MS KULASZKA: Yes.

25 MR. WARMAN: I believe that it is

1 indicia of exactly the nature of the Freedom site.
2 Again, I would go back to all of -- a number of my
3 previous answers in that regard.

4 THE CHAIRPERSON: May I interrupt? I
5 would like to know where it appears on tab 24 just so I
6 can see it. How many pages?

7 MS KULASZKA: Four pages in.

8 THE CHAIRPERSON: Okay. Can you just
9 repeat your answer, Mr. Warman?

10 MR. WARMAN: It's a further indicia
11 that Mr. Lemire is attempting to sell works that, I
12 believe to his own knowledge, having said he attempted
13 to bring a number of these books back, and that they
14 were seized at the border; that these works are
15 prohibited from importation into Canada as hate
16 propaganda, and that it is a fairly clear indicia of
17 the nature of the Freedom site as to what material is
18 likely to be present there. In fact, it talks about
19 him being a Klan member. Excuse me, I should be more
20 specific, a Klan leader.

21 THE CHAIRPERSON: David Duke?

22 MR. WARMAN: Yes.

23 MS KULASZKA: Most articles that talk
24 about David Duke in the press always mention that,
25 don't they?

1 MR. WARMAN: A number of them do, but
2 I believe this is the promo for his actual book.

3 MS KULASZKA: Is it illegal to
4 possess this book in Canada?

5 MR. WARMAN: Not that I'm aware of.

6 MS KULASZKA: Is it illegal to sell
7 it in Canada?

8 MR. WARMAN: I believe it would be
9 because you would have to -- prior to that you would
10 have to import it from somewhere else, because I'm not
11 aware of any domestic producer of this work. And if
12 there were a domestic producer of this work, then I
13 believe that it's quite likely that they would be soon
14 subject to a criminal charge under section 319 of the
15 Criminal Code for the willful promotion of hatred.

16 MS KULASZKA: You believe that, but
17 it's actually two separate legislative schemes, isn't
18 it? There's the Customs Act and then there's the
19 Criminal Code?

20 MR. WARMAN: I believe I made that
21 distinction clear in my answer.

22 MS KULASZKA: Let's look through the
23 book catalogue. Ken Hilborn is talking about "Liberty
24 Under Attack. He's a doctor of philosophy, he's a
25 professor. Do you know who he is?

1 MR. WARMAN: I do not.

2 MS KULASZKA: You don't?

3 MR. WARMAN: I do not.

4 THE CHAIRPERSON: Mr. Warman, I
5 sometimes have difficulty hearing you with those
6 answers. Don't take it out at Ms Kulaszka. I was
7 about to interrupt you, too. Perhaps it's the room or
8 something. I sometimes don't hear you either.

9 MS KULASZKA: Does it sound familiar
10 if I say he's a professor at the University of Western
11 Ontario?

12 MR. WARMAN: No.

13 MS KULASZKA: The next book is "Race
14 Genetics in Society". This is another man with a Ph.D.
15 Have you ever heard of him?

16 MR. WARMAN: I have not.

17 MS KULASZKA: Next book is the
18 notorious Diane Francis. Have you heard of her?

19 MR. WARMAN: I have.

20 MS KULASZKA: Who is she?

21 MR. WARMAN: I believe she is a
22 columnist in the media.

23 MS KULASZKA: The next book is by
24 Daniel Stoffman. Have you heard of him?

25 MR. WARMAN: I believe I have heard

1 of the book, but whether I had heard of the specific
2 author, I can't say.

3 MS KULASZKA: That's a book that's
4 commonly available, is it not?

5 MR. WARMAN: I don't know. I've
6 never tried to obtain it.

7 MS KULASZKA: "A History of Pagan
8 Europe". Are you familiar with that book?

9 MR. WARMAN: I am not.

10 MS KULASZKA: "The Lost Beliefs of
11 Northern Europe". Are you aware of that book?

12 MR. WARMAN: I am not.

13 MS KULASZKA: "Betrayal and Deceit".
14 This is by Charles M. Campbell. He served 10 years in
15 the Immigration Appeal Board. Are you familiar with
16 that book.

17 MR. WARMAN: No.

18 MS KULASZKA: "Waging War from
19 Canada" by Mike Pearson. It's about Canada's poorest
20 borders regarding its securities. Have you read that
21 book?

22 MR. WARMAN: No.

23 MS KULASZKA: "Harry Stevens" by
24 Robert Jarvis. Have you read this book?

25 MR. WARMAN: No.

1 MS KULASZKA: "Truth and Immigration"
2 by Mike Taylor, former immigration officer. "Saw a
3 broken system from the inside". Have you read that
4 book?

5 MR. WARMAN: No.

6 MS KULASZKA: "Stonehenge Decoded".
7 Have you read that book?

8 MR. WARMAN: No.

9 MS KULASZKA: Have you read "The Camp
10 of the Saints"?

11 MR. WARMAN: No.

12 MS KULASZKA: Have you read "My
13 Awakening"?

14 MR. WARMAN: I have gone through most
15 of it, if not all of it.

16 MS KULASZKA: Mr. Warman, why is it
17 you get to read these books like My Awakening and The
18 International Jew and nobody else does?

19 MR. WARMAN: I'm not sure that that
20 is a rhetorical question or a real question.

21 MS KULASZKA: Well, you were reading
22 these books freely and yet you wanted to have them
23 banned, correct?

24 MR. WARMAN: No, I would submit that
25 that is not the case.

1 MS KULASZKA: Why did you read My
2 Awakening?

3 MR. WARMAN: Because I understood it
4 to be a work by a notorious member of the white
5 supremacist/Klan movements.

6 MS KULASZKA: So this was part of
7 your study, correct?

8 MR. WARMAN: My personal study, yes.

9 MS KULASZKA: And where did you get
10 the book?

11 MR. WARMAN: On-line.

12 MS KULASZKA: And who did you order
13 it from?

14 MR. WARMAN: I did not order it from
15 anyone.

16 MS KULASZKA: You got on-line?

17 MR. WARMAN: Yes.

18 MS KULASZKA: From what website?

19 MR. WARMAN: I'm sorry, I don't
20 recall. I believe it's one of the neo-Nazi websites.

21 MS KULASZKA: So you imported it into
22 Canada illegally?

23 MR. WARMAN: No.

24 MS KULASZKA: It wasn't illegal then?

25 MR. WARMAN: I did not import it.

1 MS KULASZKA: But you got it in the
2 mail?

3 MR. WARMAN: No.

4 MS KULASZKA: By courier?

5 MR. WARMAN: No.

6 MS KULASZKA: Somebody brought it to
7 your house?

8 MR. WARMAN: No.

9 THE CHAIRPERSON: This is beginning
10 to remind me of Front Page Challenge. Where is old
11 Gord Sinclair, Bette Davis, Pierre Burton, and Alan
12 Fotheringham.

13 MS KULASZKA: You bought it in the
14 States and you drove or the border with it; is that
15 right?

16 MR. WARMAN: No.

17 MR. VIGNA: Mr. Chair, if I correctly
18 understood the answer it was, I read it on-line.

19 THE CHAIRPERSON: I thought he said
20 you ordered it on-line, did you not?

21 MR. WARMAN: No. Mr. Vigna is
22 correct.

23 THE CHAIRPERSON: You read it
24 on-line?

25 MS KULASZKA: You ordered it on-line?

1 THE CHAIRPERSON: I didn't get that
2 sense of that from your answer either. Sorry. So you
3 read it on-line, visually on the computer?

4 MR. WARMAN: Yes.

5 THE CHAIRPERSON: There's your
6 answer.

7 MS KULASZKA: I thought he said
8 ordered it on-line?

9 THE CHAIRPERSON: So did I. Maybe I
10 was mislead by your question, so I don't know.

11 MS KULASZKA: So the entire book is
12 on-line for free?

13 MR. WARMAN: As I recall.

14 MS KULASZKA: The next book is "Race
15 in Ancient Egypt in the Old Testament". Have you read
16 that book?

17 MR. WARMAN: No.

18 MS KULASZKA: "The Racial Origins of
19 the Founders of America". Have you read that?

20 MR. WARMAN: No.

21 MS KULASZKA: "The Immigration
22 Invasion" by Wayne Lutton. He's another Ph.D. Have
23 you read that?

24 MR. WARMAN: If it's of any
25 assistance, I can state with a fair bit of certainty

1 that I have read none of the books other than My
2 Awakening.

3 THE CHAIRPERSON: That is of great
4 assistance, thank you.

5 MS KULASZKA: Would you also admit
6 that many of these books are freely available, for
7 example, "Alienation" by Peter Brimleleu. He's also a
8 columnist, I believe, at Forbes Magazine and National
9 Review; Patrick Buchanan, "The Death of the West".

10 These are books that are freely
11 available at any bookstore, correct?

12 MR. WARMAN: Not that I'm aware of.

13 MS KULASZKA: Pardon? They are not?
14 They are not available?

15 MR. WARMAN: Not that I'm aware of.

16 MS KULASZKA: You know who Patrick
17 Buchanan is, don't you?

18 MR. WARMAN: I do, roughly.

19 THE CHAIRPERSON: Maybe we can take
20 or afternoon break. Is now a good time?

21 MS KULASZKA: Yes, that's fine.

22 --- Recessed at 2:48 p.m.

23 --- Resumed at 3:12 p.m.

24 THE CHAIRPERSON: Before we begin, I
25 want to correct myself. Was Fred Davis and Betty

1 Kennedy, not Bette Davis. I got it half right on both.

2 MS KULASZKA: Mr. Warman, going back
3 to tab 24. I'm going to suggest that you can't say
4 anything about these books. You haven't read any of
5 them. You don't know what they are about. You don't
6 know what they indicate.

7 THE CHAIRPERSON: Just a second.

8 MS KULASZKA: Would you agree with
9 that?

10 MR. WARMAN: No, I would not.

11 MS KULASZKA: Okay. Continuing on
12 with that tab. The next portion of this tab seems to
13 be the FreedomSite Store Heritage Front videos, and it
14 goes onto the end, and audios.

15 Had you watched any of these videos
16 or heard any of these audios.

17 THE CHAIRPERSON: Let me catch up to
18 you, please.

19 MS KULASZKA: The pages aren't
20 numbered.

21 THE CHAIRPERSON: So we have videos.
22 Is there a separate page for audios.

23 MS KULASZKA: If you continue on,
24 there's an audio catalog a few pages on.

25 THE CHAIRPERSON: Part of this same

1 group?

2 MS KULASZKA: Yes, it's just part of
3 the store, it appears.

4 MR. WARMAN: I don't believe that
5 I've seen any of the Heritage Front videos that are
6 advertised on the next sort of four pages.

7 MS KULASZKA: Well, I believe be
8 referring to all the videotapes.

9 MR. WARMAN: Because the pages that I
10 have after that go into "Miscellaneous" into t-shirts
11 and cards.

12 MS KULASZKA: Right. Have you seen
13 any of those videos?

14 THE CHAIRPERSON: Any of those?

15 MS KULASZKA: The videos.

16 THE CHAIRPERSON: Let's be clear.
17 Heritage Front videos and goes on one, two pages.

18 MS KULASZKA: Then it goes --

19 THE CHAIRPERSON: Third page talks
20 about news clips, HF news clips.

21 MS KULASZKA: Then miscellaneous news
22 clips. Holocaust Revisionism, Ernst Zundel videos.

23 THE CHAIRPERSON: And finally the
24 page begins "AVOF" at the top, number 34. I don't know
25 if that's audio or video.

1 MS KULASZKA: Yes. It seems to be a
2 continuation from the --

3 THE CHAIRPERSON: Okay.

4 MS KULASZKA: Have you ever seen any
5 of those?

6 MR. WARMAN: No, that was my first
7 answer.

8 MS KULASZKA: It goes on
9 "Miscellaneous". These are just cards. You didn't
10 order any of those cards, correct?

11 MR. WARMAN: No, I did not.

12 MS KULASZKA: Have you listened to
13 any of the tapes listed in the audio catalog?

14 MR. WARMAN: Not that I'm aware of.

15 MS KULASZKA: If we could go to tab
16 10?

17 THE CHAIRPERSON: 10?

18 MS KULASZKA: Yes. This is the "AIDS
19 SECRETS" article by Kevin Albert Strom. Would you
20 agree that at the time this is written there was almost
21 of hysteria about AIDS, the period of the late
22 eighties, early nineties?

23 THE CHAIRPERSON: Why don't you be
24 clear. The date that appears there is --

25 MS KULASZKA: 1993.

1 MR. WARMAN: I'm sorry, I can't say I
2 know what the sort of -- or I remember what the
3 environment was back in 1993 with regard to HIV/AIDS.

4 MS KULASZKA: This article refers to
5 some medical articles. I've reproduced them in the
6 respondent's binder, R-1 at tab 14. These will be
7 produced by Jerry Neumann.

8 These articles don't go to the truth
9 of what was said, but they simply go to show that he
10 did base his opinion on articles -- the first one being
11 the "American Journal of" -- my goodness, I don't know
12 how to say that -- epidemiology

13 THE CHAIRPERSON: Epidemiology.
14 You'll be producing them with your own witness later
15 on.

16 MS KULASZKA: Yes.

17 MR. VIGNA: To my knowledge, the
18 witness associated with this is Neumann. I don't see
19 how it's linked.

20 THE CHAIRPERSON: My understanding of
21 the link is that there's an article referred to
22 somewhere in tab 10 of your HR-2, Mr. Vigna. That is
23 this article here. That's what I understood the
24 question to suggest. Is that incorrect?

25 MS KULASZKA: Yes. He gives the cite

1 to this article. He actually doesn't give the -- if I
2 can just find it.

3 THE CHAIRPERSON: Can you bring our
4 attention to that site? In tab 10 of HR-2? Where is
5 that?

6 MR. VIGNA: There's a reference.

7 THE CHAIRPERSON: I see a reference
8 to the same author, but a different article. I found
9 that at page 5 of 7.

10 MS KULASZKA: I'll let --

11 THE CHAIRPERSON: Look for it.

12 MR. VIGNA: If I understood that
13 Neumann was associated --

14 THE CHAIRPERSON: What she said right
15 before that, Mr. Vigna, was that there are articles
16 referenced in this tab 10 of your binder. I see one,
17 there's an article here. I saw it before. Two inches
18 down from the top, page 5 of 7 of your exhibit,
19 Mr. Vigna, called "Epidemiology and Evolution of
20 Heterosexually-Acquired AIDS", and so on, as a for
21 instance.

22 And the suggestion was by Ms Kulaszka
23 that the article there, or one of these other articles,
24 if there are any more, is at her tab 14. It doesn't
25 seem to be the same one.

1 MS KULASZKA: If you could look at
2 page 5 of the article?

3 THE CHAIRPERSON: Of?

4 MS KULASZKA: Of the AIDS SECRETS
5 article.

6 THE CHAIRPERSON: Tab 10.

7 MS KULASZKA: It's the second full
8 paragraph. Yes, tab 10. There's an "RM Selleck -
9 American Journal of Public Health." If you go in --

10 THE CHAIRPERSON: So it's the second
11 one.

12 MS KULASZKA: The ninth page, the
13 American Journal of Public Health, volume 78, number
14 12. He doesn't give the title in this. He just gives
15 the author and the cite, the citation.

16 The actual title is "Racial Ethnic
17 Differences and the Risk of AIDS in the United States".

18 THE CHAIRPERSON: I see that on the
19 next page.

20 MS KULASZKA: Yes. The page before
21 it is simply the title page before, American Journal of
22 Public Health. This is one of the articles referred to
23 in the article, and if you go through that article to
24 the end you'll see the Lanset?

25 THE CHAIRPERSON: When you say "the

1 article", you mean --

2 MS KULASZKA: I'm referring to the
3 American Journal of Public Health article by
4 "Selleck -- Racial-Ethnic Differences". It goes on for
5 several pages.

6 The next article is from the Lanset
7 of September 28th, 1985. And on first page it's
8 called, "Resistance of AIDS Virus at Room Temperature".

9 That also is referred to in the
10 article. I apologize, I should have had these marked.

11 It refers to the fact -- the virus
12 remains active at room temperature some seven days.

13 Mr. Warman, this isn't going to
14 whether there is true or false. But what it does show
15 is that in this time period, the first article by
16 Selleck, is December 1988; the next one is 1985.

17 And the very first one, although it's
18 not referred to, gives the flavor of the -- of what the
19 medical literature was at the time, its copyright 1994.

20 That is the very first article in
21 this series. Just to make it clear, it is not referred
22 to in AIDS SECRETS article. It's called "Demographic
23 Differences in Cumulative Instant Rates of
24 Transfusion-Associated Acquired Immunodeficiency
25 Syndrome". It's also by Selleck. This appears to have

1 been his area of study.

2 I'm going to put to you what Kevin
3 Strom's article really indicates is fear. He is
4 absolutely terrified of AIDS and you can see it in the
5 first paragraph. He talks about:

6 "...a killer that cuts down all
7 whom he touches. If he touches
8 you you will die. Your child
9 will die." "Slow horrible
10 death." "People become
11 demented." "They die in agony
12 and there's nothing that can be
13 done to save them. And their
14 killer's name is HIV."

15 Is that correct?

16 MR. WARMAN: No.

17 MS KULASZKA: Well, without getting
18 into anything else, he is terrified of AIDS, correct?

19 MR. WARMAN: You would have to ask
20 Mr. Strom that.

21 MS KULASZKA: He refers to the Lanset
22 article, stating that the virus can survive in dry
23 bodily fluids for as long as seven days. On page 4 of
24 the article in the first full paragraph.

25 THE CHAIRPERSON: I see. Okay. The

1 prestigious British medical journal.

2 MS KULASZKA: So the article
3 constitutes a warning to his audience to try and avoid
4 the highest risk factors. And in this case that
5 included blacks and homosexuals, correct?

6 MR. WARMAN: I don't believe that
7 that was the actual case, no. I mean, it includes
8 extreme warnings to avoid all contact with homosexuals
9 and with members of the black community. I certainly
10 have no difficulty in agreeing with that.

11 But Mr. Strom is not known for his
12 history of involvement with the movement to find a
13 solution to HIV/AIDS or a cure. He's known for being a
14 neo-Nazi leader, and I don't believe his purpose was to
15 talk about his concern with HIV/AIDS. It was to beat
16 the dead horse, that he has a history of doing, which
17 is hatred of homosexuals and members of the black
18 community.

19 MS KULASZKA: But none of that
20 history is before us. We're looking at this message,
21 and the message is: You cannot believe the government
22 and media's lies about AIDS. And he accuses the
23 government basically of criminal negligence. This is
24 on page 2, regarding AID-tainted blood in the blood
25 banks. Certainly he was not being paranoid about that,

1 was he?

2 MR. WARMAN: Sorry?

3 MS KULASZKA: On page 2 of the
4 article, second paragraph on the bottom:

5 "Thousands have died because
6 they are doctors, they trusted,
7 believed governments and the
8 media's lies about AIDS. A
9 startling example of this is the
10 criminal negligence regarding
11 AIDS-tainted blood in the blood
12 banks."

13 Correct.

14 MR. WARMAN: That's what it states.

15 MS KULASZKA: Certainly in Canada
16 there was a major scandal concerning that, wasn't
17 there?

18 MR. WARMAN: There was, yes.

19 MS KULASZKA: He's reading articles
20 in the medical journals that talk about the racial and
21 ethnic differences in the risk of AIDS. He's taken it
22 that the relative risks are higher for blacks and
23 homosexuals, correct?

24 MR. WARMAN: I haven't actually read
25 those medical articles, so I can't say with regard to

1 the first part of your proposition.

2 So with regard to the second part of
3 it, he is focusing heavily on the homosexual and
4 non-white population, specifically blacks.

5 MS KULASZKA: In the circumstances,
6 is this really hatred?

7 MR. WARMAN: I believe so, yes.

8 MS KULASZKA: Do you think policy can
9 reach a point where it really does endanger health?

10 THE CHAIRPERSON: Can you repeat your
11 question? I don't understand it.

12 MS KULASZKA: Especially in this
13 area, wasn't it true that the Red Cross and other
14 authorities responsible for the blood supply were so
15 frightened of the policy correctness they didn't want
16 to raise the issue of the fact that many homosexuals
17 were of much higher risk of transmitting AIDS?

18 MR. WARMAN: A, I'm not the Red
19 Cross; B, the Krever Inquiry, I believe, has a report
20 on the issue, if you want to read up on it, so I can't
21 really answer.

22 MS KULASZKA: Okay, I would say the
23 rest is a matter of argument.

24 You produced a lot postings from the
25 FreedomSite message board that came from the Jokes and

1 Trivia section, correct?

2 MR. WARMAN: There were a number of
3 them there, yes.

4 MS KULASZKA: Of what percentage of
5 the total Freedomsite would this section be?

6 MR. WARMAN: I don't know.

7 MS KULASZKA: I would put to you,
8 Mr. Warman, that Jokes and Trivia are exactly that,
9 they are jokes and trivia, they are everywhere on the
10 Internet and they have existed forever, they always
11 will exist. It's trivia, and the law should not
12 concern itself with it. Would you agree?

13 MR. WARMAN: No, in fact I would
14 refer you to the decision by Member Hadjis in Warman v
15 Kulbashian, Tricity Skins, Richardson Canadian Ethnic
16 Cleansing Team in affordablespace.dom for exactly the
17 opposite proposition.

18 MS KULASZKA: And were they
19 represented by counsel?

20 MR. WARMAN: I believe two of them
21 are now.

22 MS KULASZKA: Were they then?

23 MR. WARMAN: Not before the Tribunal,
24 no. Do I think that would have changed anything? No.

25 MS KULASZKA: I want to look at

1 Bernard Klatt's binder. This was just filed is as R-2,
2 tab 23.

3 These are Google web searches for
4 various types of jokes. On page 1 as seen at the top,
5 these are black jokes. You'll get a 133,000 hits.

6 On page 3, if you look for lawyer
7 jokes, you will get 1,350,000. Now, lawyer jokes are
8 not included under section 13. This is actually one of
9 the most popular types of jokes, and you probably had
10 many people tell you lawyer jokes, have you not,
11 Mr. Warman?

12 MR. WARMAN: I have heard lawyer
13 jokes in the past.

14 MS KULASZKA: They are very similar,
15 actually, to racial jokes, aren't they?

16 MR. WARMAN: I'm sorry, it's not
17 either within my knowledge or my understanding or my
18 belief.

19 MS KULASZKA: On page 5 of the
20 search, Google search for ethnic jokes, you'll get hits
21 of 212,000.

22 On page 6, if you do a Google web
23 search for blonde jokes you will get hits of 3,260,000.
24 Blonde jokes concern white women, correct?

25 MR. WARMAN: I would think that they

1 concern people with blonde hair.

2 MS KULASZKA: Most people with blonde
3 hair are white, aren't they?

4 MR. WARMAN: I've never actually done
5 a study of the matter.

6 THE CHAIRPERSON: I understand,
7 Mr. Warman. Technically you're right, but we all know
8 what is meant by that term.

9 MS KULASZKA: If you look down at
10 some of these you can see they have "jokes galore",
11 including "red neck jokes". And red necks are
12 generally are white people, aren't they? They have a
13 red neck in the sun. Isn't that where red neck comes
14 from?

15 MR. WARMAN: That's my understanding.

16 MS KULASZKA: On page 8, it's a
17 search for "white jokes". You get 32,700.

18 On page 10 if you look for "gay
19 jokes" you'll get hits of 2,51,000.

20 If you look for "French jokes" --

21 MR. WARMAN: Mr. Chair, I'm wondering
22 if there's some relevance of this to my actual
23 testimony as opposed to the proposed testimony of
24 Mr. Klatt?

25 MS KULASZKA: Yes, I want to ask -- I

1 wanted to ask some questions of Mr. Warman after
2 looking at these.

3 MR. WARMAN: But I've never actually
4 seen any of these documents. I'm just wondering if
5 there might be more --

6 THE CHAIRPERSON: She's putting it to
7 you in cross-examination that on the web one can find
8 innumerable sites that contain jokes similar to those
9 that you've alleged constitute hate messages in your
10 complaint.

11 Go ahead, Ms Kulaszka.

12 MS KULASZKA: On page 14, "Jewish
13 jokes". You'll get hits for 166,000.

14 On page 16, if you look for "nigger
15 jokes", you'll get hits of 52,600.

16 On page 18, if you look for "racist
17 jokes", 172,000.

18 On page 20, if you look for "Asian
19 jokes", 143,000 hits.

20 And that's the end of the jokes
21 section.

22 My point to you, Mr. Warman, is in
23 fact that these jokes are everywhere. Whether you like
24 them or not, people don't see this as hatred. They
25 think they are funny, correct?

1 MR. WARMAN: I would disagree.

2 MS KULASZKA: Well, are all these
3 hate sites that have all these jokes?

4 MR. WARMAN: Madam, A, that's a very
5 broad question; B, there's no indication what if any of
6 these sites are present within Canada and would be
7 subject to the Canadian Human Rights Act. So really
8 asking me whether X exists somewhere in the entirety of
9 the world is if, to my mind, little assistance.

10 MS KULASZKA: Are you aware that this
11 is one of the popular things that people send to each
12 other with e-mails, are these kind of jokes?

13 MR. WARMAN: My understanding is spam
14 is, in fact, one of the largest things that is sent
15 around through e-mail, but --

16 MS KULASZKA: But people actually
17 send around these types of jokes, correct, in e-mail?

18 MR. WARMAN: Again, I don't know.

19 THE CHAIRPERSON: Again, I don't
20 consider these documents produced, Ms Kulaszka.

21 MS KULASZKA: No.

22 THE CHAIRPERSON: You'll have to
23 produce them through your own witness.

24 MS KULASZKA: I'm going to come back
25 to lawyer jokes because it's something you and I would

1 understand.

2 They are very -- they can be very,
3 very nasty and yet people think they are very funny and
4 they will tell them to you. They think they're funny.
5 They don't see them as being nasty, correct.

6 MR. WARMAN: In the past I have heard
7 jokes about lawyers that are nasty, sure.

8 MS KULASZKA: In fact, one of the
9 jokes that you've included in your disclosure here in
10 the case is -- it's -- I think it's a jig -- it's a
11 racial term anyway. And they ask how many -- "What do
12 you call 100,000 jigs at the bottom of the sea?" And
13 the answer is, "A good start".

14 That's a very old lawyer joke, isn't
15 it? I've heard it 10 million times. Have you hear it
16 that way?

17 MR. WARMAN: Not that I recall, but I
18 wouldn't surprise me.

19 MS KULASZKA: I'm turning to page 14
20 of HR-2. I'm just wondering why this is produced? I
21 don't know if it has been actually.

22 MR. WARMAN: I'm sorry, page 14?

23 MS KULASZKA: Tab 14?

24 THE CHAIRPERSON: This has not been
25 produced, according to my notes. It's not been

1 produced.

2 MS KULASZKA: Okay.

3 THE CHAIRPERSON: It's there for now.
4 Unless it's one sheet or something like that, we will
5 be removing them at the end.

6 MS KULASZKA: If we can turn to tab
7 18. This is a Doug Collins' column?

8 THE CHAIRPERSON: Tab 18 of HR-2?

9 MS KULASZKA: Yes. What is it about
10 this column that you believe violates section 13?

11 MR. WARMAN: Well, A, I don't have to
12 promote that each and every thing explicitly violates
13 section 13, but taken in their totality.

14 But in this case it engages in --
15 purports that law is designed to protect human rights.
16 I guess more specifically, it promotes the idea that
17 Holocaust denial is somehow a legitimate interest. It
18 describes race and the Holocaust as being on the
19 "verboten" list; race being then immediately thereafter
20 linked to immigration.

21 MS KULASZKA: Where are you right
22 now?

23 MR. WARMAN: This is on the first
24 page. So he talks about sinister attacks taking place
25 on freedom of speech in the Western world, being

1 applauded in the media and lickspittle politicians.

2 Then states:

3 "There are two subjects that
4 figure large on the 'verboden'
5 list: Race and the Holocaust.
6 You are free to be anti-racist,
7 of course, and you are free --"
8 I presume there should be a 'to'
9 there "-- to back the official
10 version of Holocaust. But if I
11 believe that immigration can
12 destroy your country or the
13 Jewish deaths numbered anything
14 less than 6 million, take
15 cover."

16 It uses the term "gas chambers at
17 Birkenau" in quotation marks.

18 Just after referring to Jewish deaths
19 in the Holocaust and the subsequent mention of Jewish
20 community groups, it posts a cartoon of Canada, "My
21 Zionist-Dominated Land." It describes human rights
22 tribunals as "kangaroo courts"; it addressed of issue
23 of having hurt the feelings of Jews and immigrants;
24 that the media had engaged in increasing control of --
25 excuse me, that Jews are engaged in increasing control

1 of the media; states that Holocaust or laws that
2 prohibit the Holocaust, denial of the Holocaust are,
3 quote, "a return to the dark ages".

4 It describes the "over population of
5 foreigners of France". It describes Mr. Zundel as "a
6 most famous thought criminal despite the fact the
7 courts have found him to be a threat to Canada and
8 Germany's national security."

9 It complains about Jewish complaints
10 against Mr. Zundel.

11 MS KULASZKA: Is that it?

12 MR. WARMAN: That's all that I would
13 be concerned about in this to section 13. Other than
14 information in there that I think points to Mr. Lemire,
15 yes.

16 MS KULASZKA: This also goes to the
17 Ian Macdonald posting. And my question to you is,
18 since when has it become racist to investigate a
19 historical event?

20 MR. WARMAN: That is, of course, a
21 euphemism commonly used within the neo-Nazi movement.
22 So I'm not sure if you have a more specific question or
23 whether you are simply referring to the idea that
24 Holocaust denial is somehow a legitimate interest.

25 MS KULASZKA: Well, it's -- what

1 happened to the Jews is a historical event. Something
2 happened, correct?

3 MR. WARMAN: If you are referring
4 specifically to the World War II period by the Nazi
5 regime, it is an historical event.

6 MS KULASZKA: Absolutely. And I'm
7 questioning you, since when has it become against the
8 law to investigate the evidence for an historical
9 event?

10 MR. WARMAN: I don't believe that is
11 in fact the case. Perhaps more specifically, if you
12 can show me a law that states it is illegal to
13 investigate an historical event here in Canada, then
14 please do.

15 MS KULASZKA: Well, Ernst Zundel was
16 prosecuted for 20 years for publishing something
17 called, "Did 6 million Really Die?" It was a little
18 historical essay of about 20 pages.

19 MR. WARMAN: I believe you and I both
20 know that Mr. Zundel was involved in much more than a
21 simple production of a 20-page booklet over his history
22 here in Canada, and that that certainly, if it played
23 any part, played an extremely minor part in his
24 deportation from Canada back to his native homeland the
25 Germany and his current imprisonment and trial there.

1 MS KULASZKA: Well, this article is
2 talking about the investigation of what happened to the
3 Jews in Europe at that time. It's referring to someone
4 called Germar Rudolf. Do you know who he is?

5 MR. WARMAN: I understand him to be a
6 member of the Holocaust denial movement and I believe
7 that he has been imprisoned in Germany for his
8 involvement therein.

9 MS KULASZKA: Mr. Warman, you are
10 using this term Holocaust denial, which has become an
11 extremely loaded emotional term. Why should the
12 investigation of a historical event become so
13 emotional?

14 THE CHAIRPERSON: You can't answer
15 that question?

16 MR. WARMAN: No, I just don't know
17 there was one.

18 THE CHAIRPERSON: There was, with an
19 inflection at the end. There was a question. It is
20 kind of broad. I don't quite understand your question,
21 to be honest, Ms Kulaszka.

22 MS KULASZKA: You repeatedly used
23 this term "Holocaust denial", correct?

24 MR. WARMAN: I have used it more than
25 once, yes. But you could certainly include the term

1 "or gross minimization".

2 MS KULASZKA: Would you agree that's
3 a very loaded term?

4 MR. WARMAN: No, I would not.

5 MS KULASZKA: It implies someone who
6 is malicious, correct?

7 MR. WARMAN: If someone was actually
8 engaged in Holocaust denial I would certainly have no
9 hesitation in describing them as malicious.

10 MS KULASZKA: They are a liar,
11 correct?

12 MR. WARMAN: Or someone who is
13 deliberately misusing information.

14 MS KULASZKA: And what is the purpose
15 of the deliberate misusing of information?

16 MR. WARMAN: In general, pursuant to
17 the Holocaust denial, or the gross minimization
18 thereof?

19 MS KULASZKA: Right.

20 MR. WARMAN: My personal belief is
21 that it is designed to sort of rehabilitate the image
22 of the World War II era, Nazi regime, and/or its
23 leader, Adolf Hitler, in order to make it more
24 acceptable to bring about the return of similar ideas
25 or to make what transpired there somehow more

1 acceptable or to whitewash what transpired.

2 MS KULASZKA: But history always has
3 to be open to questioning, doesn't it?

4 MR. WARMAN: That depends on what you
5 mean. Again, I don't want to get bogged down in the
6 kind of rhetorical justification that is used for
7 individuals who wish to engage in Holocaust denial or
8 gross minimization.

9 MS KULASZKA: Well, Mr. Warman, for
10 you it's a very emotional issue, but --

11 MR. WARMAN: I'm not sure that it is.
12 In fact, I think I'm being fairly calm here in
13 answering your questions to the best of your ability.

14 THE CHAIRPERSON: He didn't agree
15 with your assertion earlier that he takes it
16 emotionally, Ms Kulaszka.

17 MS KULASZKA: Mr. Warman, if someone
18 like Germar Rudolf was right, then the Holocaust, as is
19 portrayed, is hate propaganda that's Germans.

20 MR. VIGNA: Mr. Chair, I don't think
21 that the witness is in a position to engage in this
22 kind of expert or historical discussion. These
23 questions that are being asked are basically rhetorical
24 and argumentative.

25 THE CHAIRPERSON: It borders on that,

1 admittedly. You may choose not to do there, Ms
2 Kulaszka. The fact is the complainant has asserted
3 that Holocaust denial is one example. I believe it's
4 one of the hallmarks that you referred to also,
5 Mr. Vigna, from a previous decision. But this
6 respondent is challenging that.

7 That's what I understand to be going
8 on with this question. Now, whether the best way to go
9 about it is to challenge the individual complainant or
10 simply lead argument on that point -- be mindful of
11 that, Ms Kulaszka.

12 This is not a forum for a debate
13 here. It's meant to be a hearing to get evidence that
14 you can use then you can argue when you argue the case
15 at the end.

16 MS KULASZKA: I would like him to
17 answer that question.

18 THE CHAIRPERSON: Which question?

19 MS KULASZKA: I asked him if in fact
20 the narrative given of what happened to the Jews during
21 World War II is not correct, then what is termed the,
22 capital H, Holocaust could very well to be seen hate
23 propaganda against Jews. Isn't that true, or against
24 Germans?

25 MR. WARMAN: Well, that would depend

1 on the nature of what was being proposed.

2 MS KULASZKA: I think the point of
3 the Collins column is that people have to be free to do
4 this research without being in danger of being jailed
5 or persecuted. Isn't that what he's saying?

6 MR. WARMAN: That's not my belief,
7 no.

8 MS KULASZKA: Well, look at -- he
9 says at the bottom of the second paragraph:

10 "If you believe that Jewish
11 deaths numbered anything less
12 than the 6 million, take cover.
13 A prime example is that of
14 Germar Rudolf, a young German
15 with a doctorate in chemistry
16 who tested the gas chambers at
17 Birkenau and concluded that
18 they could not have been used
19 for mass executions. He was
20 dismissed from his -- from the
21 Max-Planck Institute and
22 sentenced to 14 months in
23 prison."

24 Goes on next to the next page:

25 "Switzerland has become no

1 better than Germany. There are
2 censorship laws there sending
3 offenders to jail or forcing
4 them into exile." Talks about
5 Yuraen Graff, how a qualified
6 teacher who was sentenced to 15
7 months."

8 Isn't he saying that these laws are a
9 gross violation of freedom of speech?

10 MR. WARMAN: So he claims, but I
11 think if you take it in the context of Mr. Collins
12 having been found to have violated the human rights act
13 in the promotion of hatred or contempt against Jews
14 through his columns, already by a human rights
15 Tribunal, I think it becomes much more clear as to with
16 the actual and a true agenda is.

17 MS KULASZKA: Those columns aren't
18 before that Tribunal -- completely different?

19 MR. WARMAN: Madam, it is a matter of
20 judicial record.

21 MS KULASZKA: Well, then, you brought
22 the judicial record here if you are going to rely on
23 it.

24 Does truth mean anything to you in
25 history?

1 MR. WARMAN: Mr. Chair?

2 THE CHAIRPERSON: I don't even know
3 what that question means, Ms Kulaszka.

4 MS KULASZKA: The only way you can
5 get at the truth of something is if you are free to
6 investigate. And what Doug Collins' column talks about
7 are all these researchers who have been thrown in jail.

8 THE CHAIRPERSON: I think you are
9 entering into argument. I don't want us to waste time
10 on this. You know the position of Mr. Warman has so
11 you are not really getting anywhere with this.

12 The only place you are going to get
13 anywhere with is me at the end. You might. I didn't
14 say you will.

15 MS KULASZKA: I just feel you might
16 say to me, well, why didn't you challenge Mr. Warman?

17 THE CHAIRPERSON: Give it one or two
18 shots. But after that, don't -- anyways. Don't keep
19 continuing that way.

20 MS KULASZKA: He refers to human
21 rights tribunals as kangaroo courts. That's got
22 nothing to do with exposing anyone to hatred, does it?

23 MR. WARMAN: I believe it shows a
24 pattern of contempt for the laws that Canadian citizens
25 have laid down through Parliament in order to protect

1 human rights.

2 MS KULASZKA: Isn't that the role of
3 the press?

4 MR. WARMAN: I'm sorry?

5 MS KULASZKA: Isn't that the role of
6 the press, they are not supposed to be obedient to the
7 government or to simply praise them? Isn't that their
8 role, to question --

9 MR. WARMAN: It's not my belief that
10 holding open human rights' laws to contempt and the
11 laws that have been passed through Parliament is
12 necessarily automatically part of a free press, and
13 certainly not in this case.

14 MS KULASZKA: But it's not a
15 violation of section 13, correct?

16 MR. WARMAN: Madam, really, I've
17 answered the question.

18 MS KULASZKA: Then in the paragraph
19 you stated:

20 "As most of us know, Zundel has
21 faced a long drawn-out human
22 rights hearing involving Jewish
23 complaints about a website that
24 bears his name."

25 That's correct, isn't it?

1 One of the complainants was Sabina
2 Citron.

3 THE CHAIRPERSON: Sorry? Can you
4 repeat --

5 MS KULASZKA: That's true. He's just
6 stating a fact at that point.

7 MR. WARMAN: Can you point me to the
8 paragraph?

9 MS KULASZKA: It's the paragraph on
10 the right-hand side. It's the third full paragraph
11 down, starts "As most of us know".

12 MR. WARMAN: Sorry, on what page?
13 There we go.

14 MS KULASZKA: He's simply stating the
15 facts. The complainant against Mr. Zundel was Sabrina
16 Citron, correct, and the Canadian Holocaust Remembrance
17 Association.

18 MR. WARMAN: No, it's partially
19 correct. The fact of the matter is, he only names the
20 Jewish complainant, but in fact the Toronto's mayor's
21 committee on race relations was a co-complainant in the
22 complaint, as I understand it.

23 MS KULASZKA: And you know that the
24 Toronto mayor's committee it was Marv Kurz who
25 initiated that complaint. He was the representative of

1 B'Nai Brith?

2 MR. WARMAN: I would imagine it would
3 be the committee actually would deposit a complaint
4 under their name.

5 MS KULASZKA: Yes, and he was the one
6 who initiated that with the committee? Do you know
7 that?

8 MR. WARMAN: I don't. Now would I
9 agree with the fact that it's run -- it that was run
10 from the U.S., but I'm not sure that that's of any real
11 relevance.

12 MS KULASZKA: What is the problem
13 with the cartoon? Zionist is a political nationalist
14 movement, is it not?

15 MR. WARMAN: It is. But as I noted,
16 it is immediately between two references. First, to
17 the Jewish Holocaust in derisory terms, and the second,
18 naming specific Jewish community --

19 MS KULASZKA: Most of those
20 paragraphs are concerning censorship and the laws that
21 have been passed in various countries. That's what
22 that is really about.

23 THE CHAIRPERSON: That wasn't a
24 question. Please complete your question.

25 MS KULASZKA: Wouldn't you agree most

1 of those paragraphs on the preceding page, they concern
2 the laws that have been passed that do not allow you to
3 question the Holocaust, correct, and he gives various,
4 examples. That's what he's talking about in those
5 paragraphs, is he not?

6 MR. WARMAN: That's not my belief.

7 MS KULASZKA: Now, he refers to
8 groups, the Canadian Jewish Congress interests and
9 B'Nai Brith.

10 These groups explicitly represent the
11 interests of the Jews of Canada; isn't that true?

12 MR. WARMAN: Explicitly meaning are
13 they groups organized within the Jewish community?
14 Sure.

15 MS KULASZKA: No. The Canadian
16 Jewish Congress calls itself the Parliament of Canadian
17 Jewry.

18 MR. WARMAN: If you have something
19 you would like to show me that I haven't seen before I
20 would be happy to look at it. At this time, I've never
21 heard that term.

22 MS KULASZKA: You actually have to be
23 Jewish to join their organizations, don't you?

24 MR. WARMAN: I'm not aware of their
25 membership requirements.

1 MR. VIGNA: Mr. Chair, what is the
2 relevance of this line of questioning about the
3 membership of Jewish groups?

4 MS KULASZKA: Because these groups
5 organize on ethnic/religious lines to represent the
6 interests of that constituency, so it gets to be very
7 hard to talk about their lobbying efforts without
8 saying they represent the Jews.

9 That's who they represent, that's who
10 they represent, isn't it? In Canada.

11 THE CHAIRPERSON: And now we have a
12 question.

13 MS KULASZKA: It's very hard to talk
14 about what they want, what these groups want or don't
15 want. They represent themselves as representing the
16 Jews of Canada, and so why is it wrong for Doug Collins
17 to refer to the Jews?

18 MR. WARMAN: Because I don't think
19 that's actually what he's doing in the context as
20 you've described it.

21 MS KULASZKA: Does it mean anything
22 to you that Doug Collins was a war hero who went
23 through a lot in the war, helped to feed the Nazis?
24 Does this mean anything to you?

25 MR. WARMAN: Mr. Chair, it's a purely

1 and utterly rhetorical question. It has no relevance
2 to these proceedings whatsoever. What I may or may not
3 think about Mr. Collins, about whether he was a veteran
4 of World War II, whether he was a member of the Rotary
5 Club, whether he was a member of the Kiwanis, no matter
6 what he may have done throughout his life, makes no
7 difference as to whether he may or may not have, in
8 fact, was found to have promoted hatred or contempt of
9 the Jewish community.

10 THE CHAIRPERSON: Ms Kulaszka, what
11 is the relevance? It's not too obvious to me either.

12 MS KULASZKA: Mr. Warman keeps
13 talking about context. Everything is context. Isn't
14 the fact that Doug Collins was a war hero -- isn't
15 that part of a context as well?

16 THE CHAIRPERSON: How?

17 MS KULASZKA: By what he was and what
18 he did. He wasn't a Nazi.

19 THE CHAIRPERSON: Okay. He wasn't a
20 Nazi then.

21 MS KULASZKA: I can ask him. If he
22 says I don't care, that's fine. He can just say that.
23 I don't care who he was.

24 You don't care who he was or what he
25 did, correct?

1 THE CHAIRPERSON: I don't even know
2 if Mr. Warman said he was a Nazi today -- I don't know
3 if he said that in his evidence.

4 MR. WARMAN: No, I did not. But, for
5 the record, I still don't see any relevance as to who
6 Mr. Collins was or may not have been, or what he may
7 have been a part of or may not have been in relation to
8 the article.

9 THE CHAIRPERSON: Ms Kulaszka, on
10 that point, you know, you can have someone who in his
11 youth believes one thing and in his older age believes
12 another. I don't think that really demonstrates much.
13 I certainly may have held different views when I was
14 younger than I hold today.

15 MS KULASZKA: If we could go to tab
16 19.

17 THE CHAIRPERSON: Of HR-2?

18 MS KULASZKA: Yes, HR-2. I'm going
19 to suggest to you that a lot of the parts you
20 highlighted are actually being a little cheeky. This
21 is not hate, it's more -- it's humorous?

22 THE CHAIRPERSON: Do you agree? Is
23 that what you are asking him?

24 MS KULASZKA: Do you agree,
25 Mr. Warman?

1 MR. WARMAN: No, I do not.

2 MS KULASZKA: Can you turn to tab 20,
3 page 14. This is the Ian Macdonald e-mail. This is an
4 argument again about the Holocaust.

5 Are you saying basically that this
6 would expose anyone to hatred?

7 MR. WARMAN: I'm sorry, I don't
8 understand the question.

9 MS KULASZKA: It's a very
10 unemotional, very logical, little essay. There's very
11 little emotion in this. Why would you say it would
12 expose anyone to hatred?

13 MR. WARMAN: Because I don't believe
14 you need to necessarily use emotive terms to promote
15 hatred or contempt.

16 MS KULASZKA: Mr. Warman, have you
17 ever read any major revisionist work?

18 MR. WARMAN: Perhaps you could be
19 more specific.

20 MS KULASZKA: "The Hoax of the
21 Twentieth Century" by Dr. Arthur Butts.

22 MR. WARMAN: No, I have not.

23 MS KULASZKA: Have you read anything
24 about revisionism? Have you read Germar Rudolf's
25 books?

1 MR. WARMAN: First, I would disagree
2 with your characterization of them as "revisionist",
3 and I would describe them as Holocaust denial or gross
4 minimization. But no, have not.

5 MS KULASZKA: No, you haven't?

6 MR. WARMAN: Read that work.

7 MS KULASZKA: I would submit to you,
8 then, that the Ian Macdonald posting would be far above
9 your head. You don't even know what he's talking
10 about, correct?

11 MR. WARMAN: Mr. Chair, I'm going to
12 object to that. It's simply abusive.

13 THE CHAIRPERSON: The first part of
14 the question was a bit over-the-top.

15 Can you just be more specific in what
16 you are saying, Ms Kulaszka? You are saying he cannot
17 comprehend the material that's there because he hasn't
18 read what?

19 MS KULASZKA: He has absolutely no
20 grounding in the arguments that have been made by
21 people such a Germar Rudolf or Arthur Butts. He really
22 doesn't know what Ian Macdonald is talking about.

23 MR. WARMAN: I don't actually see
24 either of those individuals mentioned here.

25 THE CHAIRPERSON: Either Butts or --

1 who was the other person?

2 MS KULASZKA: Germar Rudolf.

3 THE CHAIRPERSON: Was that the
4 gentleman that was referenced? Germar Rudolf. Okay.

5 MS KULASZKA: What specifically is
6 hate in the Ian Macdonald essay?

7 MR. WARMAN: There's the article
8 taken as a whole. I believe that it engages in
9 Holocaust denial and/or gross minimization thereof,
10 which has, as you know, already been found to be an
11 indicia of hate by the Tribunal in the decision of
12 Member Jensen in the Kouba case, Kouba being K-O-U-B-A.

13 MS KULASZKA: In today's world, do
14 you really believe that having this little essay banned
15 is going to have any effect whatsoever?

16 MR. WARMAN: I'm not actually looking
17 to have the "little essay" banned.

18 MS KULASZKA: Well, you are looking
19 for a cease and desist order, correct?

20 MR. WARMAN: Against Mr. Lemire yes,
21 that's correct.

22 MS KULASZKA: Do you think it will
23 have any effect whatsoever having this little essay
24 banned concerning Holocaust research considering that
25 on the Internet you could read this material from many,

1 many countries, many, many sites?

2 MR. WARMAN: Again, I disagree with
3 your proposition.

4 MS KULASZKA: Okay. We'll go back to
5 the Klatt material. This is R-2, tab 23, page 26.

6 THE CHAIRPERSON: I missed the tab.

7 MS KULASZKA: Tab 23?

8 THE CHAIRPERSON: Of your -- oh,
9 Mr. Klatt. R-2.

10 MS KULASZKA: R-2. This is a search
11 for Holocaust revisionism on Google -- sorry, it's page
12 26 and 27. It shows number hits for Holocaust
13 revisionism, 262. And actually --

14 THE CHAIRPERSON: Thousand.

15 MS KULASZKA: 262,000, correct.

16 What I'm saying to you, Mr. Warman,
17 is that the Internet is a huge conversation and you're
18 trying to stop a tiny little portion, a post by Marc
19 Lemire of an essay by Ian Macdonald. But the truth is,
20 you have to acknowledge, it will have virtually no
21 effect in stopping what you are trying to stop. Isn't
22 that right?

23 MR. WARMAN: No.

24 MS KULASZKA: Why do you believe
25 that?

1 MR. WARMAN: Because, A, I don't
2 believe with your premise. I don't believe in your
3 premise. B, what you refer to me is a document that
4 lists half a dozen of the groups that are organized in
5 the Holocaust denial movement; one of which has already
6 been the subject of a decision by this Tribunal and a
7 decision of a Federal Court declaring its owner and
8 operator to be a threat, not just to Canadian security
9 but to the international commonwealth of nations.

10 You are essentially taking six
11 websites, give or take, from a movement that engages in
12 Holocaust denial or gross minimization, and then
13 attempting to say, look, there are other whackos out
14 there. Isn't it the case that those who engage in the
15 Holocaust denial are somehow legitimate because there
16 are five other groups that engage in this behavior?

17 MS KULASZKA: Do you believe that
18 there should be laws passed to outlaw denial of other
19 historical events?

20 MR. WARMAN: It would depend on what
21 the circumstances were, but if you are talking about
22 the denial or gross minimilization of genocide, I
23 understand that there are in fact already laws to that
24 effect in Europe, and I don't have any enormous
25 objection to them.

1 MS KULASZKA: So I guess your
2 attitude -- and I see you really believe this. You
3 really believe that if you have a little law that says
4 you can't say this, that will in fact stop that idea,
5 correct, if you put enough people in jail, have enough
6 cease and desist orders?

7 MR. WARMAN: Sir, if I may object,
8 it's purely and utterly rhetorical.

9 THE CHAIRPERSON: Well, at this point
10 we are approaching argument, Ms Kulaszka. We know his
11 position. I'm taking notes here but, you know, I'll be
12 making the same notes I think at the end as well.

13 MS KULASZKA: I would like to look at
14 the respondent's binder, tab 13.

15 THE CHAIRPERSON: I appreciate you
16 put it before the witness. I think you're accurate in
17 that. But once you've done it, you've accomplished the
18 task you've needed to establish in the hearing and you
19 can move to the next step.

20 MS KULASZKA: Yes, I'm just looking
21 at tab 13. These were a couple of articles, very
22 recent articles. Did you have a chance to read them,
23 Mr. Warman?

24 MR. WARMAN: No, I have not, nor have
25 I ever seen them before, I should note.

1 THE CHAIRPERSON: I guess these also
2 will not be produced at this time?

3 MS KULASZKA: No.

4 But if you just have a look at them,
5 Mr. Warman, you can see that the tide is turning here.
6 A lot of people are starting to not like these laws.
7 They are starting to speak out against them. You'll
8 see the first one is a blanket ban on Holocaust denial
9 to be a serious mistake. That's from The Guardian
10 newspaper in the UK, from January 18th, 2007.

11 If you flip over a couple of pages,
12 you'll see another recent article by Gilead Altsman
13 (ph), Brave New World War. He talks about the ugly,
14 political use of Holocaust politics. It cannot be
15 hidden any more.

16 The next article Brendan O'Neill,
17 "Brute Censorship Disables Democracy". He talks about
18 the German proposal for a European-wide ban on
19 Holocaust denial and how -- what negative force this
20 is. He's totally against it.

21 You didn't get a chance to read them,
22 but they will be produced and will be part of argument,
23 just to let you know.

24 MR. WARMAN: Thanks.

25 MS KULASZKA: If we go to the end of

1 that tab we'll see a Google news search. The search
2 was just for the words "Holocaust" and "Iran". It
3 brought up over 17,300 hits and it concerned the recent
4 Iranian conference on the Holocaust.

5 Just to give you notice Bernard
6 Klatt's book, tab 23. If you look at tab 23, page 22.

7 THE CHAIRPERSON: Tab 23? Oh, the
8 other -- R-2.

9 MS KULASZKA: Yes, R-2.

10 THE CHAIRPERSON: Tab 23.

11 MS KULASZKA: Page 22. A more recent
12 search done on "Holocaust" in "Iran" brought up over
13 five million hits, and this concerned, of course, the
14 Iranian conference on the Holocaust.

15 THE CHAIRPERSON: I'll let your
16 witness bring it in. I'm mindful how Google works, Ms
17 Kulaszka. The word "Holocaust" may be the page 1 and
18 the word "Iran" may be over at page 300 and it makes it
19 on this list.

20 MS KULASZKA: Yes, even just the
21 results that are produced there show them very
22 extensive?

23 THE CHAIRPERSON: I want you to know
24 when I see you referring time to time to the five
25 million hits on that, you know, you can have a large

1 text that has those two words in it that enters into --

2 MS KULASZKA: I just want to ask
3 Mr. Warman, how can you call what these authors say as
4 hate when you haven't even studied the material?

5 THE CHAIRPERSON: Which material now?

6 MS KULASZKA: This is the Holocaust
7 revisionist material.

8 MR. WARMAN: I believe that Holocaust
9 denial material speaks for itself and that its purposes
10 are well-known, as has been found by this Tribunal and
11 the courts up to the Supreme Court.

12 MS KULASZKA: Now, you've been
13 referring to a judgment by Mr. Justice Blais; is that
14 correct?

15 MR. WARMAN: I have, on occasion,
16 yes.

17 MS KULASZKA: And it concerns
18 Mr. Lemire.

19 MR. WARMAN: Mr. Lemire is named
20 therein.

21 MS KULASZKA: Do you know, was Marc
22 Lemire called as a witness at that hearing?

23 MR. WARMAN: I'm not aware whether he
24 was or wasn't.

25 MS KULASZKA: Was Bernard Klatt

1 called as a witness?

2 MR. WARMAN: Again, I'm not aware
3 whether he was or wasn't.

4 MS KULASZKA: Were you aware that
5 that hearing depended a great deal on secret evidence?

6 MR. WARMAN: I'm aware that the
7 Federal Court is entitled to take into consideration ex
8 parte evidence, evidence outside the presence of both
9 parties.

10 MS KULASZKA: Did I give you a
11 handout concerning Nelson Mandela?

12 MR. WARMAN: I'm not sure. When
13 would you have given it to me?

14 THE CHAIRPERSON: What are you
15 referring to, Ms Kulaszka?

16 MR. VIGNA: Recent disclosure -- this
17 morning, I believe.

18 MS KULASZKA: It's just a recent
19 disclosure. This is a printout, again it will be
20 proved by Bernard Klatt. It's from Britannica.com
21 regards people who have been given Nobel prizes. You
22 haven't seen this document, I know. But did you have a
23 chance to read it over the lunch break?

24 MR. WARMAN: No, I did not.

25 MS KULASZKA: My understanding is you

1 visited South Africa; is that correct?

2 MR. WARMAN: I have.

3 MS KULASZKA: Do you know anything
4 about the background of Mr. Mandela?

5 MR. WARMAN: Something of it.

6 MS KULASZKA: You know that he was
7 convicted of various offences such as abdicating acts
8 of sabotage against the South African regime, correct?

9 MR. WARMAN: I know that he was
10 imprisoned.

11 MS KULASZKA: He was tried for
12 sabotage, treason and violent conspiracy and was
13 imprisoned for decades, correct?

14 MR. WARMAN: Again, I'm aware he was
15 imprisoned for decades, but what the actual charges
16 were at the time I'm unaware.

17 MS KULASZKA: He then is released and
18 he eventually wins a Nobel prize for peace, correct?
19 And he was an elected president of South Africa.
20 That's quite well known, correct?

21 THE CHAIRPERSON: Yes. Yes, I know
22 that. You don't need to hear it from him.

23 MS KULASZKA: So -- well, Mr. Justice
24 Blais found Ernst Zundel to be a security threat. In
25 fact, Ernst Zundel -- there was virtually no evidence

1 he committed any kind of violent activity; is that
2 correct?

3 MR. WARMAN: Mr. Blais' decision
4 states what it states. It is part of the judicial
5 record of Canada. It can be taken for judicial notice.
6 It is a superior court to the tribunal.

7 I don't propose to get into a huge
8 argument with Ms Kulaszka about what the evidence said
9 or didn't say in that proceeding. Mr. Zundel was found
10 to be a threat. He was deported from the country. He
11 is now imprisoned and on trial in Germany. And I'm
12 just wondering if there is any relevance whatever other
13 than starting some rhetorical backup?

14 THE CHAIRPERSON: Ms Kulaszka, I
15 won't be re-trying Mr. Blais' case.

16 MS KULASZKA: Mr. Warman is trying
17 very hard to prejudice you against Mr. Lemire by
18 constantly referring back to that judgment. He's done
19 it at least three times.

20 THE CHAIRPERSON: Yes. I don't know
21 if he's trying to prejudice me, but he's referred to
22 it, yes.

23 MS KULASZKA: So I am trying to
24 cross-examine him on the fact that if he reads the
25 judgment, which he has, he knows that Mr. Justice Blais

1 held that Ernst Zundel had committed no violent
2 activities.

3 THE CHAIRPERSON: Look, whether you
4 put it to Mr. Warman or not, if it's in the decision
5 itself I'll be reading it. I saw that earlier, by the
6 way. There's nothing new there. I flipped through
7 this decision.

8 MS KULASZKA: And you yourself have
9 associated with violent groups, haven't you, such as
10 anti-racist action?

11 THE CHAIRPERSON: Can I back you up?
12 What do I do with this document here, Mandela's
13 document?

14 MS KULASZKA: I wonder if we can
15 insert it in the respondent's binder at tab 24?

16 THE CHAIRPERSON: Which one? Now
17 start specifying it.

18 MS KULASZKA: Would be R-1. I think
19 tab 24 is free.

20 THE CHAIRPERSON: Yes, it should be
21 free.

22 MS KULASZKA: It is, and will be
23 produced through Bernard Klatt.

24 THE CHAIRPERSON: Tab 24. It will be
25 produced.

1 MS KULASZKA: You yourself have been
2 associated with violent groups such as --

3 MR. VIGNA: Objection, Mr. Chair.

4 THE CHAIRPERSON: Yes.

5 MR. VIGNA: The question has no
6 relevance whatsoever. We're getting again into bad
7 character evidence. The personal involvement in
8 different organizations whatsoever is not relevant to
9 these proceedings.

10 If the Tribunal allows this kind of
11 line of questioning, you are allowing any individual
12 that takes any civil remedy to be exposed to a royal
13 inquisition on their personal life. And on that issue,
14 I would like to refer to the law of evidence by
15 Sopinka, which I have a copy here.

16 THE CHAIRPERSON: I may have my text
17 here with me. Second edition?

18 MR. VIGNA: Correct, Mr. Chair. At
19 page 442.

20 THE CHAIRPERSON: I'll see if it's
21 the same edition.

22 MR. VIGNA: I have a copy.

23 THE CHAIRPERSON: Why don't you hand
24 up a copy. 442. This version you have here doesn't
25 have paragraph numbers.

1 MR. VIGNA: The last paragraph --

2 THE CHAIRPERSON: I just want to make
3 sure you have the most recent version here. In any
4 event, I'll follow you and I might make a comparison.

5 MR. VIGNA: Where they talk about the
6 kind of admissible evidence in civil cases, then most
7 particularly the last sentence:

8 "A person must be free to
9 indulge in his or her
10 idiosyncrasies, oddities and
11 peculiar habits without fear of
12 having them exposed when seeking
13 civil remedy or redress."

14 THE CHAIRPERSON: Let me read the
15 rest.

16 So your position is that that last
17 question which relates to Mr. Warman's involvement with
18 a group which is characterized as violent by Ms
19 Kulaszka, is an attempt to attack the character of
20 Mr. Warman?

21 MR. VIGNA: Correct, Mr. Chair.
22 Whether it's violent or not, any belonging to any group
23 whatsoever is not something that is relevant to the
24 facts in issue.

25 THE CHAIRPERSON: Okay. So Ms

1 Kulaszka, how do you address that objection?

2 And by the way, take note, I'm
3 reading the excerpt you are giving, Mr. Vigna. It
4 says, "Law of Evidence of Canada" on the front. And
5 I've read from pages 440 and following.

6 It was heading that says, "Evidence
7 of Character to Prove Facts in Issue in Civil A,
8 sub(a)", which is civil cases.

9 The problem I have in that excerpt
10 is -- I'm looking at my copy here of Sopinka, which I
11 don't know if that's the most recent either, by the
12 way. I think it's 1999. But I have paragraph headings
13 here and this one doesn't. So I don't know who has the
14 more recent version. Subject to a more recent version
15 having been published, that's what you provided for me
16 to read.

17 Mr. Warman?

18 MR. WARMAN: If I may be of
19 assistance?

20 THE CHAIRPERSON: Yes.

21 MR. WARMAN: It's my understanding is
22 this is, in fact, the second edition.

23 THE CHAIRPERSON: Which is what I
24 have as well. It seems to me I have paragraph numbers.
25 I don't know why his doesn't. It's re-printed fairly

1 regularly. I think they update the jurisprudence.
2 Presumably the principles are the same.

3 Now, Ms Kulaszka, your response?

4 MS KULASZKA: Maybe I'll ask more
5 specific questions on this.

6 THE CHAIRPERSON: Okay. So you are
7 withdrawing that question?

8 MS KULASZKA: I'll withdraw that
9 question for now.

10 Mr. Warman, if you could turn to
11 respondent's binder R-1, tab 1, page 16. This was a
12 letter that was sent on July 30th, 2004 by myself and
13 it outlines that the details of the complaint against
14 him by you were posted on rable.ca. (Ph).

15 MR. WARMAN: That's incorrect.

16 THE CHAIRPERSON: I just want to be
17 clear on that. It was a question sent by Ms Kulaszka
18 to the Commission, right?

19 MS KULASZKA: It's a letter on page 7
20 of tab 1. Seven is at the bottom of the page.

21 THE CHAIRPERSON: I'm looking at the
22 top right corner.

23 MS KULASZKA: The numbering for this
24 is on the bottom of the page, it's page 7.

25 THE CHAIRPERSON: I'm looking at page

1 7, a letter dated July 30, 2004.

2 MS KULASZKA: Right.

3 THE CHAIRPERSON: Addressed to the
4 Commission?

5 MS KULASZKA: Correct. It was letter
6 of complaint to the Commission because the details of
7 the complaint against him by Mr. Warman were posted on
8 rable.ca. And a copy was enclosed.

9 The details of the case were
10 disclosed in a quote, "call to action against Holocaust
11 denier Ernst Zundel posted by ARA who urged all
12 anti-fascists to mobilize against demonstration".

13 Did you know anything about this,
14 Mr. Warman?

15 MR. WARMAN: This posting? Not until
16 it was brought to my attention.

17 MS KULASZKA: Did you give the
18 complaint to anybody?

19 MR. WARMAN: If I recall correctly, I
20 had circulated the complaint again under the same
21 circumstances within individuals who are active within
22 the human rights movement in Canada.

23 MS KULASZKA: So from the sounds of
24 it, you've got a regular mailing list, correct?

25 MR. WARMAN: No, that would be

1 incorrect.

2 MS KULASZKA: Who would you circulate
3 this complaint to?

4 MR. WARMAN: I don't recall who I did
5 at the time.

6 MS KULASZKA: Would ARA be included
7 on that list?

8 MR. WARMAN: No, I don't believe they
9 would've been.

10 MS KULASZKA: Any members who are
11 members of ARA?

12 MR. WARMAN: I have no way of knowing
13 that. I'm sorry.

14 MS KULASZKA: If you can turn to tab
15 6.

16 THE CHAIRPERSON: Do I consider this
17 produced?

18 MS KULASZKA: Yes, we can produce
19 that.

20 THE CHAIRPERSON: Again, we'll go on
21 a page basis, Ms Joyal.

22 So it was bottom of page 7, bottom of
23 page 8.

24 MS KULASZKA: I just suggested
25 perhaps -- this is a lot of correspondence and I think

1 Mr. Warman can recognize it from the file.

2 If he could just go through it and I
3 would like all of it entered into the record, except
4 the last few pages, I wasn't sure whether they were
5 going to produce this material or not. It's starting
6 at page 37 to the end. That could be removed because
7 it already is an exhibit.

8 THE CHAIRPERSON: I'll do that first
9 before we go any further. Page 37 at the bottom right
10 corner, to the end. Remove that.

11 MS KULASZKA: That's already an
12 exhibit.

13 THE CHAIRPERSON: Ms Kulaszka, will
14 you be referring to all the -- I just don't want to
15 dump the material that's never going to be looked at
16 again.

17 MS KULASZKA: On page 35 is the
18 disclosure by Mr. Warman of the letter he wrote to the
19 Hate Crimes Unit regarding --

20 THE CHAIRPERSON: That's been
21 produced already.

22 MS KULASZKA: -- the FreedomSite.

23 THE CHAIRPERSON: 35 and --

24 MS KULASZKA: 34 and 35. If it could
25 be produced just as part of tab A. I want to refer to

1 these letters -- tab 1, pages 1 to the end. If they
2 could be all produced.

3 THE CHAIRPERSON: That's what you are
4 proposing. Before we go through that exercise, you
5 intend to refer to all of this?

6 MS KULASZKA: Yes, in argument.

7 MR. VIGNA: Mr. Chair, the reserve I
8 have on that is that if there are statements that are
9 being made by Ms Kulaszka on behalf of her client, I
10 want not that this be part of the evidence, that
11 Mr. Lemire should testify under oath in order to --

12 THE CHAIRPERSON: They are not being
13 produced for proof of what's in there. They are just
14 being produced in the sense that they are in the
15 record.

16 MS KULASZKA: That's right, correct?

17 THE CHAIRPERSON: Be careful about
18 that. You have to be careful. We are -- there's
19 three, four binders here now. Quite a lot of material.
20 We are going to have to be very careful about that.

21 MR. VIGNA: I object to the content
22 as evidence.

23 THE CHAIRPERSON: So take a note to
24 bring that point up.

25 But there's no question for the

1 purposes of identifying these documents that -- it's
2 quite clear, this is correspondence. For all I know,
3 some of this material may even be in the Tribunal's
4 file. I may have seen some of this material myself. I
5 certainly know Ms Kulaszka's letterhead very well. I
6 can recognize it from a mile away.

7 MR. VIGNA: For example, Mr. Chair,
8 on tab 4, several statements.

9 THE CHAIRPERSON: Tab 4.

10 MR. VIGNA: Sorry, tab 1, page 4, the
11 bottom page.

12 THE CHAIRPERSON: Yes?

13 MR. VIGNA: That whole document makes
14 several assertions and none of them have been put to
15 the witness.

16 THE CHAIRPERSON: Of course, it's a
17 correspondence from Ms Kulaszka.

18 MR. VIGNA: To the extent it's
19 correspondence without proving the content --

20 THE CHAIRPERSON: I understand. I'll
21 put it -- if it gets in, I'll note this objection or
22 proviso. Are you able to organize most of the
23 material?

24 MR. WARMAN: Pages 13, 25 and 26
25 and --

1 THE CHAIRPERSON: I certainly would
2 not take that for proof of what is being said. It's a
3 newspaper article.

4 MR. WARMAN: I have no knowledge of
5 it.

6 THE CHAIRPERSON: Was it attached to
7 something? Ms Kulaszka?

8 MS KULASZKA: It was an attachment to
9 the letter.

10 THE CHAIRPERSON: It was an
11 attachment to the letter that begins at page 7?

12 MS KULASZKA: Two attachments, the
13 letter starts --

14 THE CHAIRPERSON: Page 7. The one we
15 saw earlier.

16 Mr. Warman?

17 MR. WARMAN: I've never seen it.

18 THE CHAIRPERSON: You don't remember
19 seeing the attachments?

20 MR. WARMAN: No.

21 THE CHAIRPERSON: Mr. Vigna, do you
22 have it? This was a letter addressed to the
23 Commission.

24 MS KULASZKA: In the letter I refer
25 to them. I quote from the ARA call to action which is

1 the first --

2 THE CHAIRPERSON: One article from
3 the Saturday Sun, June 12th, 1993. I see that. There
4 it is, June 12th, 1993, Saturday Sun. I'm satisfied
5 that was the attachment to that letter.

6 MR. VIGNA: I don't have any problem
7 in putting it in evidence, but in terms of the
8 contents --

9 THE CHAIRPERSON: I got it.

10 MR. WARMAN: Pages 25 and 26.

11 THE CHAIRPERSON: Right. I saw that
12 before. It looked similar to one of our exhibits.
13 What was that an attachment to?

14 MS KULASZKA: That's an attachment to
15 a letter dated June 3rd, 2005.

16 THE CHAIRPERSON: There it is. WHOIS
17 search results. JRBooksOnline. Enclosures to the
18 previous letter. June 3rd, 2005, right.

19 Again, correspondence between Ms
20 Kulaszka and the Commission.

21 Mr. Vigna, you probably received that
22 letter?

23 MR. VIGNA: I think it comes with the
24 letter that precedes it. Is that the case, Ms
25 Kulaszka?

1 MS KULASZKA: Yes.

2 THE CHAIRPERSON: It's just an
3 attachment. Did I not see something like this already?

4 MR. VIGNA: I think you did,
5 Mr. Chair, on the Commission's binder.

6 THE CHAIRPERSON: Let's not get all
7 caught up. Anything else, Mr. Warman?

8 MR. WARMAN: Not that I've seen.

9 THE CHAIRPERSON: We're not going
10 through everything at this moment in terms of -- I
11 don't know if we'll be addressing every document. If
12 there is something you see at some point later on.
13 There's correspondence with the Tribunal to Line Joyal,
14 who's right here. I think we can produce it.

15 MR. VIGNA: Maybe 29 talks about
16 mediation.

17 THE CHAIRPERSON: Well, that's
18 another issue. Yes, all right.

19 This is probably in our official
20 record, is it not? It's just a letter that indicates
21 that there was an initial agreement to do mediation by
22 Mr. Lemire proposing cities. I don't consider that a
23 privileged document. This type of material is readily
24 made available to the member. It's a letter that
25 follows it.

1 MR. WARMAN: Just to the extent,
2 similar interest to note that Mr. Vigna made. That to
3 the extent any of this material is proposed to be
4 entered simply as character evidence, again page 442,
5 the full paragraph in the middle, notes that -- and
6 I've already raised that previously -- in relation to a
7 number of questions that Ms Kulaszka has asked me.

8 "On cross-examination, subject
9 to the discretion of the trial
10 judge to disallow any question
11 which is vexatious or
12 oppressive, a witness can be
13 asked really anything as a test
14 of his or her credibility. This
15 broader rule is subject to the
16 qualification that if the
17 question is irrelevant to the
18 facts in issue but is asked
19 purely for the purpose of
20 testing credibility, is
21 cross-examiner is bound by the
22 answer. Evidence cannot be led
23 in reply to contradict the
24 witness."

25 THE CHAIRPERSON: Right. I see your

1 point.

2 MR. VIGNA: Page 18, Mr. Chair,
3 there's a letter but it's not the full letter itself.
4 There's a mention again about settlement.

5 THE CHAIRPERSON: Maybe we should
6 have gone one by one instead of trying to put them all
7 in at the same time.

8 What's missing, Mr. Vigna? Page 18,
9 it has a signature at the bottom.

10 MR. VIGNA: It's not that, but the
11 contents talks about settlement and all that.

12 THE CHAIRPERSON: I certainly don't
13 want that in front of me.

14 MR. WARMAN: I had proposed a
15 procedure. It wasn't an actual settlement.

16 THE CHAIRPERSON: Should I look at it
17 or not look at it? I have not looked at it.

18 MR. WARMAN: No, Mr. Chair.

19 MS KULASZKA: No, there's no offer of
20 settlement. It's simply a procedure where we could try
21 and settle it.

22 MR. WARMAN: I mean, if we are going
23 to open the doors then I'm going to put in all my stuff
24 and settlement as well.

25 THE CHAIRPERSON: I don't want stuff

1 about settlement. I don't want anything close to that,
2 Ms Kulaszka, unless there is some specific item you can
3 bring to my attention, or maybe you could delete any
4 section in there that relates to settlement.

5 I'm much more comfortable without
6 having settlement material in front of me. It's one
7 thing where I saw another letter where it was just an
8 agreement to meet. Details I would rather not have.
9 It was bad enough, I guess, that counsel and Mr. Warman
10 sort of referred to some settlement-related issues at
11 one point during testimony last week, but it didn't get
12 very far.

13 MR. VIGNA: I object to the relevance
14 of pages 9, 10, 11 and 12.

15 THE CHAIRPERSON: We just finished
16 with that. It was attached to 7 and 8. They were
17 attachments. I just told you that.

18 MR. VIGNA: 7 and 8?

19 THE CHAIRPERSON: Yes. 7 and 8 was
20 the letter to which she attached these documents.

21 MR. VIGNA: I'll argue on the
22 relevance but I will not -- what the proviso that
23 questions are to be asked regarding character evidence,
24 there shouldn't be --

25 THE CHAIRPERSON: You know, you are

1 anticipating questions on character which I haven't
2 heard yet and hasn't been argued as such. She withdrew
3 the question. We're losing time on this now.

4 MS KULASZKA: That letter -- sorry,
5 the one on page 18 where is signature is. What that
6 letter was, was simply a request that settlement
7 negotiations take place. There was nothing about an
8 offer or anything like that. I was requesting that
9 settlement negotiations take place. So there was no
10 offer, there was no nothing. I was trying to deal with
11 Hannya Rizk.

12 THE CHAIRPERSON: You know, I think
13 I've seen this letter.

14 MS KULASZKA: It was sent to the
15 Commission.

16 THE CHAIRPERSON: Didn't you include
17 it in one of your motions?

18 MR. WARMAN: Yes, in fact, Ms
19 Kulaszka has in the past.

20 THE CHAIRPERSON: I recognize this
21 stuff.

22 MR. VIGNA: One solution would be
23 that even if it's part of the evidence, you shouldn't
24 refer to anything in regards to settlement and it
25 should be --

1 THE CHAIRPERSON: Of course, I
2 wouldn't refer to anything regards to settlement. It
3 goes without saying.

4 MS KULASZKA: I don't believe any of
5 this correspondence refers to --

6 THE CHAIRPERSON: I glanced at it. I
7 perused it very quickly and I recognize the document.
8 It was included as an exhibit to one of the motions.
9 I've seen it before. It's not problematic. It was
10 more process rather than content. I heard more about
11 content of your discussions in Mr. Warman's evidence
12 last week than I see there.

13 So let's put it in. You can make an
14 objection later on. It's 4:48. We're approaching 5:00
15 o'clock. At some point soon --

16 MS KULASZKA: If we can look at tab
17 6, Mr. Warman. This is respondent's R-1.

18 THE CHAIRPERSON: Let me first take
19 note of what transpired.

20 MS KULASZKA: Do you have that,
21 Mr. Warman? It's a Wikipedia entry for Marc Lemire.

22 MR. WARMAN: Sorry?

23 MS KULASZKA: Tab 6.

24 MR. WARMAN: I'm just worried I
25 missed something. Are there any questions with regard

1 to tab 1?

2 THE CHAIRPERSON: What happened to
3 tab 1?

4 MS KULASZKA: Yes, it's for
5 reference.

6 THE CHAIRPERSON: There was a
7 question asked of you about page 16 or page 7.

8 MS KULASZKA: Yes, letter on page 7.

9 MR. WARMAN: And that's it.

10 THE CHAIRPERSON: That's it's, I
11 guess.

12 MR. WARMAN: Which tab?

13 THE CHAIRPERSON: Tab 6 of R-1.

14 MS KULASZKA: This is a Wikipedia
15 entry for "Marc Lemire". Have you ever attempted to
16 edit the Marc Lemire's Wikipedia entry?

17 MR. WARMAN: I don't recall off the
18 top of my head.

19 MS KULASZKA: This was included
20 because it includes a paragraph near the end about four
21 paragraphs up:

22 "Lemire has largely withdrawn
23 from political activity due to
24 the demands of having two young
25 children."

1 This was entered in the Wikipedia
2 shortly after Mr. Lemire revealed he had two young
3 children and, therefore, required a venue that was --
4 for this hearing that was not downtown Toronto.

5 MR. WARMAN: I will quite happily
6 state that I had nothing whatsoever to do with entering
7 this information.

8 THE CHAIRPERSON: Again, something
9 that -- Mr. Warman, you don't recognize this Wikipedia
10 document. Have you ever seen it?

11 MR. WARMAN: No, I don't. I may have
12 seen the profile but I certainly --

13 THE CHAIRPERSON: Do you recognize
14 the document for purposes of production?

15 MR. WARMAN: These three pages? The
16 first page I've seen, although not in this form because
17 I certainly don't recognize that text. And the next
18 pages I don't recognize.

19 THE CHAIRPERSON: Maybe you'll bring
20 your witness, Ms Kulaszka?

21 MS KULASZKA: Yes.

22 Do you go on Wikipedia to edit
23 material or enter material?

24 MR. WARMAN: From time to time.

25 MS KULASZKA: What name do you use?

1 MR. WARMAN: A, I'm going to object
2 to the relevance, so perhaps we can start with that.

3 THE CHAIRPERSON: What is the
4 relevance, Ms Kulaszka, or withdraw your question?
5 He's objected.

6 MS KULASZKA: Mr. Lemire has had
7 difficulty with the Wikipedia entry. People have been
8 entering defamatory material. It was revealed he had
9 two children and it was -- this entry was changed
10 within two weeks of the time he revealed that he had
11 two children and the motion regarding venue. And my
12 client wants to ask whether he had anything to do with
13 this.

14 THE CHAIRPERSON: It's not relevant
15 to the issues of the case. It raises other questions
16 but --

17 MS KULASZKA: Well, it raises
18 harassment, yes.

19 THE CHAIRPERSON: It seems to me the
20 right forum is somewhere else for that. But I don't
21 think this is the forum for that.

22 MS KULASZKA: Okay, Mr. Warman, going
23 onto page 6. Do you recognize this website? It's
24 called "Citizens Against Hate". It actually starts at
25 page 4, tab number -- tab 6.

1 THE CHAIRPERSON: I missed the tab
2 number, I apologize.

3 MS KULASZKA: Tab 6, starting at page
4 4 on the bottom. It's the "CHA's Racist Identification
5 Project". Are you familiar with that website?

6 MR. WARMAN: I've seen it before.
7 But, again, Mr. Chair?

8 THE CHAIRPERSON: Yes?

9 MR. WARMAN: I don't know that there
10 is actually anything in there with regard to
11 Mr. Lemire. I stand to be corrected, but again there
12 is no relevance, arguable or otherwise, in relation to
13 these proceedings.

14 THE CHAIRPERSON: Ms Kulaszka? It's
15 also very poorly photocopied.

16 MS KULASZKA: Yes, it's a very dark
17 website. To your knowledge, is there anything about
18 Marc Lemire on that website?

19 MR. WARMAN: I have no idea.

20 THE CHAIRPERSON: Have you ever seen
21 it before?

22 MR. WARMAN: I've seen the website
23 before, but I have no idea whether there is anything
24 about Mr. Lemire.

25 MS KULASZKA: Have you made any posts

1 on that website?

2 MR. WARMAN: Not actually sure that
3 the initial objection has been responded to in any way.

4 THE CHAIRPERSON: No, it has not.
5 Well, she went to a new question. So you are making
6 another objection on the same grounds.

7 MR. WARMAN: Exactly.

8 THE CHAIRPERSON: Ms Kulaszka, do you
9 wish to --

10 MS KULASZKA: No, I'll move on.

11 THE CHAIRPERSON: So, again, this is
12 not produced. It's referred to, but not produced.

13 MS KULASZKA: Now, if you can turn to
14 page 7 or tab 7. This is an article that appeared in
15 the -- on October 6th, 2005. It was a CP. It was with
16 respect to Tomasz Winnicki. The headline was, "Court
17 bans white supremacist in London using Internet to
18 spread hate."

19 Did you see this article?

20 MR. WARMAN: It's possible that I
21 did. I don't recall it specifically, but it's entirely
22 possible I did.

23 MS KULASZKA: The fourth paragraph
24 from the bottom.

25 THE CHAIRPERSON: Of which page?

1 MS KULASZKA: Of page 1. There's an
2 alleged quote from you. It states:

3 "It really shows the seriousness
4 of the matter. It is the first
5 time a Federal Court injunction
6 has been issued on hate crime on
7 the Internet."

8 Did you give that quote?

9 MR. WARMAN: What is the -- is there
10 any mention of Mr. Lemire? I don't see him personally,
11 unless -- I stand to be corrected. Just curious as to
12 what the relevance of it is. In my submission, there
13 is none.

14 MS KULASZKA: The relevance is the
15 fact that Mr. Warman referred to a section 13 matter as
16 a hate crime on the Internet. I was going to ask him
17 if he sees a section 13 complaint as criminal.

18 THE CHAIRPERSON: Simple question.
19 Whether --

20 MR. WARMAN: I don't believe that
21 quote is correct.

22 MS KULASZKA: So you never said that?

23 MR. WARMAN: No. I'm well aware of
24 the difference between the Criminal Code and the
25 Canadian Human Rights Act.

1 MS KULASZKA: Well, this might be a
2 good time to break.

3 THE CHAIRPERSON: Okay. How are we
4 doing on your schedule?

5 MS KULASZKA: I'll just finish, I
6 hope, in the morning with Mr. Warman. I was wondering
7 if Bernard Klatt could be the first witness up?

8 THE CHAIRPERSON: First of all, the
9 Commission has to close its case. Are you calling
10 another witness?

11 MR. VIGNA: No, I'm not calling
12 another witness but there will be just a brief
13 re-examination.

14 THE CHAIRPERSON: Right. After
15 re-examination that will be the last witness on the
16 facts, on the merits of the complaint.

17 MR. VIGNA: Correct, Mr. Chair.

18 MS KULASZKA: Then Bernard Klatt will
19 be up.

20 THE CHAIRPERSON: That's fine.

21 MR. VIGNA: Are we expecting
22 Mr. Klatt tomorrow?

23 MS KULASZKA: Tomorrow.

24 THE CHAIRPERSON: So we're on track
25 then?

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MS KULASZKA: Yes.

--- Adjourned at 5:05 p.m.

I hereby certify the foregoing to be
the Canadian Human Rights Tribunal
hearing taken before me to the Best
of my skill and ability on the 5th
day of February, 2007.

Sandra Brereton
Certified Shorthand Reporter
Registered Professional Reporter