

**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:

T1073/5405

VOLUME:

7

LOCATION/ENDROIT:

TORONTO, ONTARIO

DATE:

2007/02/06

PAGES:

1229 - 1411

StenoTran

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

HEARING HELD AT THE DAYS INN, 1677 WILSON AVENUE, TORONTO,
ONTARIO, ON TUESDAY, FEBRUARY 6, 2007 AT 10:00 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

TABLE OF CONTENTS / TABLES DES MATIÈRES

	PAGE
PREVIOUSLY AFFIRMED: RICHARD WARMAN	1236
Cross-examination by Ms Kulaszka (cont'd)	1236
Re-direct examination by Mr. Vigna	1351
Cross-examination by Mr. Fothergill	1369
Re-cross-examination by Ms Kulaszka	1372

1 Toronto, Ontario

2 --- Upon resuming on Tuesday, February 6, 2007

3 at 10:00 a.m.

4 THE CHAIRPERSON: Ms Kulaszka, you've
5 handed up to me I guess the replacement sheet for
6 tab 23?

7 MS KULASZKA: Yes, that's the Craig
8 Harrison postings.

9 THE CHAIRPERSON: I'll just quickly
10 look through it. It appears to me to reflect my
11 annotation.

12 Mr. Warman, you were standing up?

13 MR. WARMAN: I can wait for a moment.

14 THE CHAIRPERSON: What I'm going to
15 do is, I'm going to keep my sheet in my -- the original
16 one because I have some notes that were on it. I have
17 some notes that were on it. I'll put the other one in.
18 I would like you to remove the one that was in there
19 and remove the one in the official record.

20 MS KULASZKA: So this would be tab
21 23.

22 THE CHAIRPERSON: Tab 23 of R-1.
23 Okay.

24 Now, Mr. Warman, you were standing
25 first. Did you want to say something?

1 MR. WARMAN: Yes, there is a motion
2 that is being submitted to quash the subpoena related
3 to Rogers Communication.

4 THE CHAIRPERSON: Okay.

5 MR. WARMAN: A copy has been provided
6 to Ms Kulaszka.

7 MR. VIGNA: It's a joint motion. The
8 Commission is supporting it also.

9 THE CHAIRPERSON: Ms Kulaszka, when
10 did you propose to bring that witness to testify?

11 MS KULASZKA: We've been e-mailing
12 back and forth to Rogers, and apparently they are going
13 to provide an affidavit from one of their technical
14 people today.

15 THE CHAIRPERSON: And you were going
16 to use the affidavit in lieu of his testimony?

17 MS KULASZKA: Yes. They were very
18 against sending somebody up. They generally do this by
19 affidavit and I felt, given the information we wanted,
20 it could be submitted by affidavit so that's what I
21 will be doing.

22 THE CHAIRPERSON: Mr. Vigna, I
23 haven't read your motion yet, but with this new
24 information does it alter the situation at all? It's
25 the evidence you object to as opposed to the subpoena.

1 If this motion pertains to a subpoena, it's sort of a
2 distinct type of procedure we're talking about here.

3 What in effect -- what is being
4 suggested by Ms Kulaszka, she was going to file an
5 affidavit which we're authorized to receive in evidence
6 according to section 50, I believe. But you would
7 still be opposed to the entry of the evidence. It's an
8 objection to that evidence.

9 MR. VIGNA: Yes, definitely. The
10 objection is to the evidence as to its relevance and we
11 have a case law that we submitted to you regarding the
12 admissibility of that type of evidence.

13 Also, I would like to mention the
14 motion is related to Rogers, but it also has certain
15 relevance to a portion of the testimony of Bernard
16 Klatt.

17 THE CHAIRPERSON: Who is scheduled to
18 testify later today.

19 MS KULASZKA: Correct.

20 THE CHAIRPERSON: I'll look another
21 this at the first break.

22 MR. VIGNA: I left it on the desk.
23 Look under your binders maybe. I left it on on your
24 desk. You weren't here this morning when I left it on
25 your desk.

1 MS KULASZKA: I didn't notice
2 anything on my desk.

3 THE CHAIRPERSON: Go help.

4 MS KULASZKA: There it is.

5 THE CHAIRPERSON: I'll give you the
6 chance to look at it too before we address it. Why
7 don't we proceed with the evidence of Mr. Warman and
8 finish it, if possible.

9 The reason I asked for the time
10 frame -- you say Mr. Klatt's evidence it's touched upon
11 in this motion. That may change things. But if the
12 time frame really was that of the evidence of Rogers,
13 which would come in the form of an affidavit, we're not
14 that pressed, we can proceed with the case and I'll
15 deal with it either during the break or preferably over
16 night, if it was possible to look at the material
17 presented, perhaps bring it for open discussion later
18 on.

19 So let me look at it. I would rather
20 not do it now. I would rather do it during a break.
21 And I'll get back to you on how we'll deal with it.
22 And that will afford the opportunity of to the
23 respondent to look at your motion as well.

24 MR. VIGNA: I have another issue.
25 We've received some disclosure regarding Chapters

1 purchasing of books. And I note that we received it
2 this morning, but just at a preliminary look, I see
3 it's regarding used books. So I'm asking the
4 respondent additional disclosure regarding books that
5 are not used but with the same title and same author in
6 terms of their availability.

7 THE CHAIRPERSON: I don't quite
8 understand.

9 MR. VIGNA: The sheets we got in
10 front of us, shows that you can purchase used books
11 from Chapters called, "My Awakening a Path to Racial
12 Understanding".

13 What I would like to have is the same
14 thing but not the used book, a new book, brand new
15 book, and the possibility or availability to buy a
16 brand new book.

17 THE CHAIRPERSON: Two things: Don't
18 we already have that in evidence? Isn't that the
19 document that Mr. Klatt was going to be referring to?

20 MR. VIGNA: We still don't have I
21 think the function where you can actually go to the
22 purchase.

23 THE CHAIRPERSON: And the second
24 thing is, you are asking her to create -- this is a
25 document she intends to use but --

1 MR. VIGNA: It's related to this
2 document.

3 THE CHAIRPERSON: I know that, but
4 that's part of your cross-examination or
5 re-examination. That's your duty to bring me the
6 evidence that contradicts the evidence that she's
7 introducing. I'm pre-supposing here. I'm gathering
8 the respondent has opted to create these documents from
9 Chapters and may not have those other documents in her
10 possession.

11 MR. VIGNA: If she has them I would
12 like to get them.

13 THE CHAIRPERSON: If you have them
14 already in your position, Ms Kulaszka, what is being
15 stated by Mr. Vigna is they should be disclosed. If
16 she doesn't then it's your duty to do your research and
17 get it yourself.

18 MR. VIGNA: I will.

19 MS KULASZKA: These are the only
20 documents in the possession of the respondent. And
21 Bernard Klatt will be going through what he did to get
22 these documents and obviously the Commission and
23 Mr. Warman are free to do their own research on this
24 and produce their own documents they want in reply.

25 THE CHAIRPERSON: In the interim

1 where would you --

2 MS KULASZKA: This would go in tab 18
3 of R-1. And the first page is Chapters Indigo and
4 probably it would be inserted right after the first
5 page.

6 THE CHAIRPERSON: None of these pages
7 have been produced yet.

8 MS KULASZKA: None.

9 THE CHAIRPERSON: So they will have
10 to be produced through the --

11 MS KULASZKA: They have been
12 referenced but it will be Bernard Klatt who will be
13 putting --

14 THE CHAIRPERSON: Sorry, right after
15 the first page? Because I have two pages that have
16 similar looking images of David Duke. But you want to
17 put it between those two sheets. The one is from
18 amazon.com.

19 MS KULASZKA: The first one should be
20 Chapters, the second page should be amazon.com, so this
21 would go in between those two sheets.

22 MR. FROMM: Could I be provided with
23 a copy of the motion?

24 THE CHAIRPERSON: Do you have another
25 one?

1 MR. WARMAN: No, I do not.

2 THE CHAIRPERSON: The parties who are
3 here, let's exchange them. I understand you may not
4 want to provide documents or prepare -- it's quite
5 obvious some of the parties are not present.
6 Mr. Christie is not present. Some of the participants
7 from the three groups are not present either.

8 But -- from the people that are here,
9 it's only fair that you have enough copies, always be
10 prepared for everyone to be familiar with what is going
11 on.

12 MR. VIGNA: No problem.

13 PREVIOUSLY AFFIRMED: RICHARD WARMAN

14 CROSS-EXAMINATION BY MS KULASZKA (Cont'd)

15 MS KULASZKA: Mr. Warman, if we could
16 go back to the Craig Harrison post now that we have a
17 corrected and updated listing.

18 THE CHAIRPERSON: What tab is that?

19 MS KULASZKA: It's tab 23.

20 THE CHAIRPERSON: Okay.

21 MS KULASZKA: I actually want to go
22 back to the actual postings, sorry. That will be in
23 HR-2.

24 THE CHAIRPERSON: Yes. I want to
25 look at first tab 12 at page 4, of HR-2.

1 MS KULASZKA: Do you see the Craig
2 Harrison posting at the bottom. Just above that is a
3 message. And would you regard that message as racist?

4 MR. WARMAN: The message immediately
5 above it?

6 MS KULASZKA: Yes. It starts:

7 "It's all marxist." "Hate
8 crimes laws are marxist."

9 MR. WARMAN: It would depend. I
10 would have to go through the previous postings to see
11 what it was exactly they were replying to in reply.

12 MS KULASZKA: He states:

13 "When these people die and stand
14 before God they will be judged
15 not as African-Americans or gays
16 or lesbians or Hispanics or
17 Jews, but as the individuals
18 they are, responsible for their
19 own actions, and on that day no
20 allowances will be made for
21 background or upbringing or
22 racism."

23 Correct?

24 MR. WARMAN: That's part of what he
25 states.

1 MS KULASZKA: Tab 12, page 12.
2 Before we get there I would like to look at tab 12 page
3 6 as we go along. This is a thread, but you've only
4 reproduced Craig Harrison's post. So there's no
5 context for this post. We can't see what other people
6 are saying in reply to him or why he's posting this.
7 Is there a reason you didn't reproduce the thread?

8 MR. WARMAN: Because I didn't feel it
9 was relevant to the complaint.

10 MS KULASZKA: Turning to page 7, the
11 topic was:

12 "Should Canada's government and
13 churches be determined legally,
14 financially responsible for
15 abuses alleged by Indians in
16 resident schools?"

17 Craig Harrison gives his reply and
18 you'll see in topic 2 of 2, that was the last posting
19 in that thread; is that correct?

20 MR. WARMAN: It would appear to be.

21 MS KULASZKA: If you turn to page 8.
22 Again, you haven't reproduced the thread. You've only
23 reproduced Craig Harrison's post and under topic it
24 states 6 of 6. It's also the last posting, correct?

25 MR. WARMAN: That's what it appears

1 to indicate.

2 MS KULASZKA: The same with page 9.
3 His posting is 2 of 2, it's the last posting, correct?

4 THE CHAIRPERSON: So that's the
5 entire thread?

6 MS KULASZKA: That's the entire
7 thread and his is the last posting. Mr. Warman, is
8 that correct?

9 MR. WARMAN: That's what it appears
10 to indicate.

11 MS KULASZKA: Turn to page 10. This
12 is another Craig Harrison post, it's a thread, it's 4
13 of 4. There were three previous messages and you
14 didn't produce the first three messages, correct?

15 MR. WARMAN: That's correct.

16 MS KULASZKA: Page 11 is the same
17 thing. This is a thread of 2. His is the second one
18 and you didn't produce the first one; is that right?

19 MR. WARMAN: That appears to be
20 correct.

21 THE CHAIRPERSON: Let me just
22 follow-up, please. Slow down. Go ahead.

23 MS KULASZKA: Turning to page 12.
24 This is a thread of seven messages. Craig Harrison's
25 post is number 6, and the seventh message in reply to

1 him is the person reproduces what he states and then he
2 adds the comment, "These types of comments can get you
3 in legal trouble, just warning you."

4 So that is someone who disapproves of
5 what Craig Harrison is saying and is warning him not to
6 make such comments, correct?

7 MR. WARMAN: In fact, I noted that in
8 my examination, direct.

9 MS KULASZKA: And, again, you did not
10 produce the first five posts, correct?

11 Turning to past 13. This is another
12 Craig Harrison posting. Topic notes it is 2 of 2. And
13 you did not produce the first posting, correct.

14 MR. WARMAN: No, I did not.

15 MS KULASZKA: We turn to page 14,
16 Craig Harrison's post is 4 of 7. The next post number
17 5, the person disagrees. What Craig Harrison said was
18 we have to kill the French foreigners from Quebec.

19 And the reply is:

20 "Don't be ignorant. All of your
21 ancestors immigrated here in the
22 first place. They stole the
23 land from the First Nations
24 people so who the hell do you
25 all think you are to say that

1 they should not let anyone else
2 into this country. Your
3 organization is full is shit."

4 Is that correct?

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

6 MS KULASZKA: The next message, it's
7 a continuation of the discussion. They disagree.

8 The next message goes on. They talk
9 about the distinction made between colonist and
10 immigrant, correct?

11 MR. WARMAN: The subsequent two posts
12 appear to be responses to the previous posts, including
13 further discriminatory material.

14 MS KULASZKA: Why didn't you include
15 the threads to give context?

16 MR. WARMAN: Because if material is
17 self-evidently discriminatory, including calls for
18 genocide, I didn't feel it was relevant to the
19 complaint.

20 MS KULASZKA: You've repeatedly given
21 testimony that context is required. So why didn't you
22 give the context for these postings?

23 MR. WARMAN: You have my answer,
24 Madam.

25 MS KULASZKA: Turning to tab 21.

1 This is a posting by Marc Lemire. Most of the postings
2 seems to be the reproduction of an article from The
3 Toronto Star; is that correct?

4 MR. WARMAN: Approximately
5 three-quarters of it, or two-thirds of it is.

6 MS KULASZKA: Why did you reproduce
7 this? What are you alleging is hate here?

8 MR. WARMAN: Because the material
9 makes it quite clear that what is being put forward is
10 that immigration can kill you and specifically, it was
11 in response to an illness of a Congolese woman. It
12 decries the fact that Heritage Front individuals have
13 been described as white supremacist. It solicits
14 people to get involved with the Heritage Front through
15 the FreedomSite website. It lists the fact it's a
16 posting by Mr. Lemire.

17 MS KULASZKA: Mr. Lemire's posting
18 refers to a flyer called "Immigration Can Kill You".
19 You didn't produce that flyer or that posting, did you,
20 in these materials?

21 MR. WARMAN: Not that specific flyer,
22 no. There are cards that have the same message.

23 MS KULASZKA: Why didn't you produce
24 it? This is an article about the flyer. You produced
25 an article about it, but not the flyer.

1 MR. WARMAN: Because Mr. Lemire
2 didn't disclose it to me and I don't have a copy of it.

3 MS KULASZKA: It's on the website. I
4 think if you look at tab 23 --

5 THE CHAIRPERSON: Of same binder? Of
6 the same binder, Ms Kulaszka?

7 MS KULASZKA: It's the same binder.
8 It's the listing of search results for Marc@lemire.com,
9 posting 204. "See, we told you immigration can" and
10 then it's obviously going to say kill and dot dot dot.
11 Did you look at that posting?

12 MR. WARMAN: I don't recall if I did.
13 I'm assuming it's different than the one you just
14 showed me.

15 MS KULASZKA: So you've never
16 actually read what the flyer was about, correct?

17 MR. WARMAN: I haven't read the
18 actual flyer.

19 MS KULASZKA: The flyer appears to be
20 about the health effects of immigration. Is that
21 racist?

22 MR. WARMAN: I believe in the context
23 that it is, and it was quite clearly meant to be. In
24 fact, it is made more abundantly clear by the nature of
25 the discussion of immigration through the Heritage

1 Front website.

2 MS KULASZKA: But you haven't read
3 the flyer.

4 MR. WARMAN: I've answered that
5 question already, madam.

6 MS KULASZKA: I would like to go back
7 to the respondent's binder, R-1. Tab 2. When this
8 hearing began you made an allegation to the Tribunal
9 that Mr. Lemire had attended some sort of protest.
10 Where was this protest? Out in Victoria? Outside the
11 offices of the Canadian Human Rights Commission in
12 Ottawa? Where are you alleging he was there?

13 MR. WARMAN: I don't believe I
14 actually made that allegation.

15 MS KULASZKA: Yes, you did. Do you
16 believe that he appeared at some protest against you?

17 MR. WARMAN: Madam, I've just given
18 you my answer that I don't believe I made that
19 allegation. If you have a specific portion of the
20 transcript that you wish to refer me to, I would be
21 more than happy to look at it.

22 MS KULASZKA: Unfortunately, I don't
23 have the transcript yet.

24 THE CHAIRPERSON: Ms Kulaszka, I must
25 say, I don't recall --- I just did a search for the

1 word "Victoria" in my notes and it didn't come up. I
2 don't remember where it was said. Was the word
3 Victoria brought up?

4 MS KULASZKA: It wasn't part of his
5 testimony. He was making allegations about his
6 security here.

7 MR. FROMM: Mr. Chair, it was in the
8 context of concerns about his security. He said
9 people, members of this audience had led a neo-Nazi
10 demonstration outside the Canadian Human Rights
11 Commission in Ottawa in which Mr. Lemire participated.

12 THE CHAIRPERSON: I didn't take that
13 as evidence this case. That wasn't that discussion we
14 had when the leaflets were distributed in the room.

15 MS KULASZKA: Nevertheless, he made
16 that statement to you and I would like to explore that
17 with him.

18 THE CHAIRPERSON: It's not in
19 evidence. Go on.

20 MR. WARMAN: I didn't make the
21 statement. I referred to Mr. Fromm. Mr. Fromm was the
22 one who led the demonstration outside the Canadian
23 Human Rights Commission, along with other members.

24 THE CHAIRPERSON: Where?

25 MR. WARMAN: In Ottawa.

1 MR. VIGNA: Mr. Chair, if I remember
2 correctly, yesterday tab 2. Was there a ruling on the
3 admissibility?

4 THE CHAIRPERSON: Yes, I said it's
5 produced. I've got a tick mark on it. I removed other
6 sections and then I ruled it was admissible.

7 MR. VIGNA: It was with the caveat
8 the content wouldn't --

9 THE CHAIRPERSON: No, that was
10 something else.

11 MS KULASZKA: Mr. Warman, in the fall
12 of 2003 did Paul Fromm and his organization, the
13 Canadian Association for Free Expression, begin
14 protesting your activities and laying complaints under
15 section 13 of the Canadian Human Rights act.

16 MR. WARMAN: I don't recall the exact
17 date on which Mr. Fromm commenced such activities.

18 MS KULASZKA: If you look at page 1
19 of tab 2, this is an FS Announce that's dated
20 Wednesday, September 17th, 2003. You would have
21 received this yourself, would you had not, as you were
22 a subscriber to this service?

23 MR. WARMAN: I don't recall if I was
24 a subscriber at this time but I have seen this
25 document.

1 MS KULASZKA: Would you have seen it
2 on the FreedomSite website?

3 MR. WARMAN: I'm sorry, I don't
4 recall exactly where I saw it, but I have seen it. In
5 fact, it forms part of the libel proceedings against
6 Mr. Fromm.

7 THE CHAIRPERSON: I don't want to get
8 caught up on collateral issues, Ms Kulaszka. I want
9 you to understand that statement made by Mr. Warman was
10 not considered by me as something in evidence. It's
11 not an issue here. He made that assertion in the
12 context of how I was going to manage a situation that
13 arose during a lunch break. I don't want you to sort
14 of spend a lot of time on that issue. It's not an
15 issue in my mind. That's over.

16 MS KULASZKA: Actually, this is
17 another issue. This is the issue of the fact that in
18 the fall of 2003, in September/October/November Paul
19 Fromm, through his organization CAFE, all of which is
20 published on the FreedomSite, it's through the
21 FreedomSite Announce list, press releases, transcripts
22 of press conferences, there were two protests against
23 Mr. Warman's activities, and the fact he was a
24 Commissioned lawyer yet was laying all these
25 complaints.

1 It culminated with a formal complaint
2 against Mr. Warman with the chief Commissioner of the
3 Canadian Human Rights Commission. And the letter is
4 here.

5 The day that that letter was faxed to
6 the Commission is the first day that Mr. Warman sits
7 down and begins printing off materials for the
8 complaint against the FreedomSite. That's what I want
9 to explore with him.

10 THE CHAIRPERSON: Don't get bogged
11 down on those details about what happened at these
12 protests and so on. That's not going to help me at
13 all.

14 Just give me the point. Just
15 establish that nexus in time and which will then enable
16 you to make your argument ultimately. Don't get me
17 bogged down in this material. I don't need it for that
18 purpose.

19 MS KULASZKA: What I'll do is go
20 through each document. He can recognize it and --

21 THE CHAIRPERSON: Recognize what,
22 these announcements? Ms Kulaszka, we're going to get
23 bogged down in the same way. Mr. Warman will say he
24 may have seen it or may not have seen it. He said he
25 was on the mailing list.

1 MS KULASZKA: I think he's admitting
2 seeing the -- they are part of his libel case. He's
3 admitted that.

4 THE CHAIRPERSON: There you go.
5 Let's move on.

6 MS KULASZKA: Turn to page 4 of tab
7 2.

8 Did CAFE, which I'll call the
9 Canadian Association for Free Expression, that's the
10 short form for it, did CAFE hold a protest outside a
11 meeting place where you were speaking on October 24th,
12 2003?

13 MR. WARMAN: Mr. Fromm, Mr. Klatt and
14 a number of other individuals turned up in front of a
15 synagog where I was speaking.

16 MS KULASZKA: They were protesting
17 your actions in laying section 13 complaints in favor
18 of freedom of speech, correct?

19 MR. WARMAN: No, that's not my
20 personal belief.

21 MS KULASZKA: What kind of signs were
22 they carrying?

23 MR. WARMAN: I believe they were made
24 of wood and may have included cardboard and/or some
25 sort of paper.

1 THE CHAIRPERSON: Look, I'm getting
2 tired of this. Ms Kulaszka, I don't care about the
3 signs. Your point is that the protest took place and
4 thereafter, in reaction, Mr. Warman filed his
5 complaint. Just get to that.

6 And Mr. Warman, yes, they were made
7 of wood. We know what the signs were made of. It's
8 obvious.

9 MS KULASZKA: I won't be too long.

10 THE CHAIRPERSON: I said something to
11 you before and you went straight to page 4. Just put
12 the date in front of me.

13 MS KULASZKA: I'll get the dates. If
14 you could turn to page 9, Mr. Warman.

15 Was there a picket in front of the
16 Ottawa offices of the Canadian Human Rights Commission
17 where you worked at the time concerning censorship on
18 the Internet and your actions in laying complaints
19 under section 13 on that date, October 29th, 2003?

20 MR. WARMAN: I don't recall the exact
21 date, but Mr. Fromm as I mentioned in the past,
22 appeared with a number of individuals out in front of
23 the Canadian Human Rights Commission in Ottawa.

24 MS KULASZKA: Can you turn to page
25 14? You subsequently served Mr. Fromm with notice

1 under the Libel and Slander Act, correct?

2 MR. WARMAN: Not personally, but my
3 solicitors did.

4 MS KULASZKA: And the date of that
5 was October 22nd, 2003?

6 MR. WARMAN: I don't recall what the
7 exact date was, I'm sorry.

8 MS KULASZKA: Did Mr. Fromm, with
9 Melissa Guille and Jason Ouendyke, have a press
10 conference in the Parliamentary press gallery
11 concerning the actions of the Canadian Human Rights
12 Commission and yourself using section 13 of the
13 Canadian Human Rights Act on the same day, October
14 29th, 2003?

15 MR. WARMAN: That's what I
16 understand.

17 THE CHAIRPERSON: Who were the
18 individuals involved there, Ms. Guille?

19 MS KULASZKA: It was Paul Fromm,
20 Melissa Guille, Jason Ouendyke.

21 THE CHAIRPERSON: I don't want an
22 exhaustive list. The names you just mentioned in your
23 question.

24 MS KULASZKA: Yes, those were the
25 three mentioned, Paul Fromm, Melissa Guille and Jason

1 Ouendyke.

2 Did you subsequently lay a complaint
3 against Melissa Guille under section 13 of the Canadian
4 Human Rights Commission Act?

5 MR. WARMAN: What the exact date was,
6 I don't recall. But I have filed a complaint against
7 Miss Guille and her organization.

8 MS KULASZKA: Did you file a rights
9 complaint against Jason Ouendyke.

10 MR. WARMAN: I have filed a human
11 rights complaint against Mr. Ouendyke and his
12 organization as well.

13 THE CHAIRPERSON: Would you please
14 spell Ouendyke for me? O-W-E-N-D-I-C-K?

15 MS KULASZKA: It's O-U-E-N-D-Y-K-E.
16 That's how it appears here.

17 THE CHAIRPERSON: That is the proper
18 spelling? Okay.

19 MS KULASZKA: We can turn to page 22.
20 Did Paul Fromm of the Canadian Association for Free
21 Expression Inc. send a letter to the chief commissioner
22 of the Commission dated November 11th, 2003 laying a
23 formal complaint against your conduct?

24 THE CHAIRPERSON: Is that 22 or 32?

25 MS KULASZKA: Page 22 on the bottom.

1 MR. WARMAN: Again, I don't have my
2 copy in front of me. But it's my understanding that he
3 sent a fax repeatedly to the attention of the Chief
4 Commissioner of the Canadian Human Rights Commission,
5 which also forms part of the subject matter of the
6 libel suit.

7 MS KULASZKA: Were there any
8 consequences of you as a result of this letter?

9 MR. WARMAN: Mr. Chair, this goes
10 into the subject matter of litigation, the libel
11 litigation, specifically with what my testimony will be
12 at the libel hearing.

13 THE CHAIRPERSON: Why does that
14 prevent you from answering the question?

15 MR. WARMAN: Because I believe
16 Mr. Vigna made the objection previously that what he's
17 attempting here is attempting to have "two kicks at the
18 cat", as it were. You cannot have a pre-examination
19 and then an examination, a subsequent cross-examination
20 pursuant -- it's an attempt to meld two different
21 proceedings and to attempt to use this proceeding to
22 the advantage of a party in another proceeding, which,
23 in any event, are unrelated to the issues that are
24 before you.

25 MS KULASZKA: This is not an attempt

1 to meld two proceedings. Marc Lemire has nothing to do
2 with the libel case, but it has everything to do with
3 his own because on November 11th, the same day the
4 letter goes to the Commission -- this is the first date
5 he uses in his complaint, he starts printing off matter
6 from the FreedomSite to lay his complaint, which is
7 used in the complaint. And that's what I wanted to
8 explore. I have no interest in his libel case against
9 Mr. Fromm.

10 THE CHAIRPERSON: You've established
11 the letter was sent on this day.

12 MS KULASZKA: And I asked did he
13 suffer any consequences as a result of the letter.

14 THE CHAIRPERSON: And this is going
15 to your broader argument?

16 MS KULASZKA: That he was abusing
17 section 13.

18 THE CHAIRPERSON: And in its effect
19 it has lead to abuses.

20 Mr. Warman, it's just an answer to
21 one specific question. Are you going any further with
22 this line of questioning, Ms Kulaszka?

23 MS KULASZKA: I'm going to ask about
24 what he did that day with the FreedomSite. He goes in
25 the FreedomSite and he starts printing off things from

1 the FreedomSite which he uses in the complaint.

2 THE CHAIRPERSON: Okay.

3 MR. VIGNA: Mr. Chair, to the extent
4 it's only what he did that day. But we get into other
5 matters regarding his employment situation, and we're
6 off track.

7 THE CHAIRPERSON: That would be off
8 track. But the thesis that's being proposed here is
9 one that I accept as legitimate one for the argument
10 that will ultimately put forth. So, did you suffer any
11 consequences professionally that day as a consequence
12 of that letter, Mr. Warman?

13 MR. WARMAN: It's my position the
14 letter is defamatory and that ipso facto I suffered
15 damages as a result of faxing, repeated faxing of this
16 letter to the chief commissioner.

17 THE CHAIRPERSON: It did not put you
18 in the good light with your employer to be receiving
19 this letter.

20 MR. WARMAN: In fact, it explicitly
21 defamed me, and that is the reason it is included in
22 the defamation action against Mr. Fromm.

23 MS KULASZKA: You would agree that
24 November 11th is the first day you mention in your
25 complaint where you visited the FreedomSite and you

1 started printing off material that you include in it,
2 correct?

3 MR. WARMAN: There are three dates
4 given, the first one being the 11th November, 15th
5 November, 23rd of November 2003.

6 THE CHAIRPERSON: Repeat those.

7 MR. WARMAN: 11th.

8 THE CHAIRPERSON: So you are looking
9 now at the complaint form?

10 MR. WARMAN: Yes, I am. Page 2.

11 THE CHAIRPERSON: Let me just follow
12 you. Yes. Okay. So the dates are listed there in the
13 middle of the page.

14 MS KULASZKA: Were you told about
15 this formal complaint on November 11th?

16 THE CHAIRPERSON: Which formal
17 complaint?

18 MS KULASZKA: By Paul Fromm. Paul
19 Fromm faxes a letter to the Commission on November
20 11th, as Mr. Warman says repeatedly. Did you learn of
21 this letter on November 11th?

22 MR. WARMAN: I don't recall. I would
23 have to check what date.

24 MS KULASZKA: How did you know it was
25 sent repeatedly?

1 MR. WARMAN: Because I have seen the
2 two different times of the cover page, or the first
3 page of the letter.

4 MS KULASZKA: And who gave you the
5 letter?

6 MR. WARMAN: It would have been
7 provided to me by someone within the Commission.

8 MS KULASZKA: Well, who?

9 MR. VIGNA: Mr. Chair, objection.
10 Once again, we are really going off track here. Even
11 if there is some kind of relationship being made here,
12 it's Mr. Fromm, it's not Mr. Lemire. What's the point?

13 THE CHAIRPERSON: Conscious of the
14 other litigation, Ms Kulaszka, and in my view the lack
15 of any relevance of who at the Commission gave that
16 document, I don't think we need to go there.

17 MS KULASZKA: Well, I'm suggesting to
18 you, Mr. Warman, that it's very clear that that letter
19 was faxed to the Commission on November 11th, 2003.
20 You learn of it that day and you decide that you're
21 going to shut down the Freedom site. Isn't that
22 correct?

23 MR. WARMAN: No. Again, I disagree
24 with your proposition.

25 MS KULASZKA: When did you go on the

1 site on November 11th to start printing off material?

2 MR. WARMAN: I don't know off the top
3 of my head, I'm sorry.

4 MS KULASZKA: You state in your
5 complaint on 11, 15 and 23 November, 2003, "I visited
6 the Freedomsite website message board" and you started
7 printing off examples of messages, correct? That's on
8 page 2 of the complaint, HR-1.

9 THE CHAIRPERSON: You've already
10 established the dates there, Ms Kulaszka, 11th, 15th
11 and 23rd.

12 MR. WARMAN: It states that I visited
13 the Freedomsite website message board on those dates.

14 MS KULASZKA: And this is part of
15 your disclosure, correct?

16 MR. WARMAN: I believe it's actually
17 the complaint.

18 MS KULASZKA: But you had been on the
19 web board for months already. Already in December 2002
20 you were looking at Craig Harrison's posts; isn't that
21 right?

22 MR. WARMAN: I believe that the
23 testimony that I've given previously is that I was
24 aware of Mr. Harrison, and the e-mail from Mr. Lauder
25 makes it clear that that date was in December of 2002.

1 MS KULASZKA: Are you denying that
2 that's what you did; you had decided to shut down the
3 FreedomSite and this was the way to do it?

4 MR. WARMAN: Yes, I deny that.

5 MS KULASZKA: We could turn to tab 3.
6 This is the Ann Cools posting and this is the reason
7 you are going to bring the subpoena to try and quash
8 the motion to try and quash the Rogers subpoena,
9 correct?

10 THE CHAIRPERSON: I haven't read that
11 motion yet.

12 MS KULASZKA: Pardon?

13 THE CHAIRPERSON: I haven't read that
14 motion yet. Are you going to refer to the motion?

15 MS KULASZKA: No, I haven't read it
16 either.

17 THE CHAIRPERSON: Mr. Warman?

18 MR. WARMAN: I'm sorry, I don't
19 understand the question.

20 MS KULASZKA: The allegation has been
21 made clearly by the respondent that you were the person
22 who made this posting, the topic was "Cools don't
23 belong in our Senate." It was posted Friday December
24 5th, 2003, correct?

25 MR. WARMAN: Yes, that's correct.

1 MS KULASZKA: It was the subject of a
2 motion to have you added as a respondent, if you
3 recall. And you denied posting that post, correct?

4 MR. WARMAN: I have.

5 MS KULASZKA: And you will agree at
6 the beginning of this hearing the respondent requested
7 the subpoena of Rogers Cable to enable him to get
8 evidence to prove that in fact you are the poster; is
9 that correct?

10 MR. WARMAN: I believe that's part of
11 the record.

12 MS KULASZKA: You subsequently made a
13 statement with Mr. Vigna. I think it was a couple of
14 days into the hearing, where you stated you no longer
15 were relying on the entire FreedomSite message board in
16 this case; you were only relying on the messages which
17 had been produced in evidence. Is that correct?

18 MR. WARMAN: I don't recall exactly
19 what was said, but the point has been made that we are
20 relying on the evidence that we have tendered. I
21 certainly -- that's my position.

22 MS KULASZKA: And certainly the
23 previous position which you had made last year when the
24 respondent applied for particulars, further particulars
25 of which messages were being relied upon, you had

1 relied that the entire FreedomSite message board would
2 be relied upon; is that correct?

3 MR. WARMAN: Yes, but I believe that
4 that's always subject to the proviso that what is
5 entered at a hearing is the evidence that is
6 subsequently before the Tribunal and will be considered
7 in making a decision.

8 MS KULASZKA: Why should evidence not
9 be put forward to prove that you actually made this
10 posting? As you'll agree, it would be a gross abuse of
11 this whole process if you did make that posting; isn't
12 that true?

13 MR. WARMAN: Madam, you have the
14 motion. The Tribunal has the motion. The motion is
15 before it.

16 MS KULASZKA: You would agree that in
17 September of 2003 you used Rogers Cable as your ISP.

18 MR. WARMAN: I object to the question
19 on the basis that it's been asked and answered.

20 MS KULASZKA: Did you use Windows '98
21 in that time period?

22 MR. WARMAN: Again.

23 MS KULASZKA: Again what?

24 MR. WARMAN: I object on the exact
25 same basis.

1 THE CHAIRPERSON: Object to what?

2 MR. WARMAN: I object to the question
3 on the basis that it has been asked and answered.

4 MS KULASZKA: I don't think I've ever
5 asked you whether you used Windows '98 in September of
6 2003.

7 THE CHAIRPERSON: I have heard
8 evidence that he used Windows '98 at some point. I
9 have it down here. Do you want me to get it?

10 MS KULASZKA: I think he said
11 windows. I'm not sure he said Windows '98. If you
12 could check that would be good.

13 THE CHAIRPERSON: He was using a
14 laptop at the time. He was using Windows '98 September
15 2003.

16 MS KULASZKA: Okay, thank you.

17 THE CHAIRPERSON: That was on
18 February 2nd.

19 MS KULASZKA: Do you use anonymous
20 type e-mails such as Yahoo and Hotmail using fake
21 names?

22 MR. WARMAN: I don't believe they are
23 anonymous. I have used Yahoo and Hotmail in the past,
24 among others.

25 MS KULASZKA: Had you used the e-mail

1 marydufford@yahoo.com?

2 MR. WARMAN: Just wondering if she
3 can establish some relevance to the question, please.

4 THE CHAIRPERSON: What is the
5 relevance, Ms Kulaszka?

6 MS KULASZKA: This is part of a
7 disclosure from the complainant. It's at tab 26 -- oh,
8 it's been deleted. I see he's deleted it. It was a
9 Yahoo mail and the e-mail was marydufford@yahoo.com.
10 It was part of his disclosure but is not before this
11 Tribunal.

12 THE CHAIRPERSON: Well, not by the
13 Commission or the complainant.

14 MS KULASZKA: That's right. So.

15 Mr. Warman, do you use -- have you
16 used the e-mail marydufford@yahoo.com that can be seen
17 at tab 26?

18 THE CHAIRPERSON: Just because it was
19 in the tab doesn't --

20 MS KULASZKA: I'm just directing him
21 to it so he can just see it.

22 THE CHAIRPERSON: Sorry? Can you
23 repeat?

24 MS KULASZKA: I was just referred to
25 the tab so he could find it more easily. It has been

1 deleted.

2 THE CHAIRPERSON: Tab 26?

3 MS KULASZKA: Tab 26 of HR-2.

4 THE CHAIRPERSON: I have multiple
5 letters in tab 26. Which one is it?

6 MS KULASZKA: HR-2, the Commissions
7 binder.

8 THE CHAIRPERSON: Yeah. Oh, it's the
9 first one, it has an A.

10 MS KULASZKA: It's got an A, yeah.

11 Mr. Warman, have you used that
12 e-mail?

13 THE CHAIRPERSON: He's objecting as
14 to the relevance, although it was in his book. Can you
15 explain what the relevance is to your question, because
16 they have not produced it, Ms Kulaszka, so I'll need to
17 know.

18 MS KULASZKA: Proves he uses
19 anonymous e-mails.

20 THE CHAIRPERSON: But I already have
21 his evidence on that. You just said that.

22 MS KULASZKA: He has said they are
23 not anonymous. It's a fake, ma'am. Mary Dufford is
24 not his name.

25 THE CHAIRPERSON: I have lots --

1 somehow seems to me I've heard lots of evidence that
2 very few people use their names. Mr. Lemire does but
3 everybody else doesn't. I think Mr. Warman says he
4 does too. I use Yahoo e-mail accounts without my real
5 name. It's normal practice, isn't it? Okay.

6 Mr. Warman, just say that you've done
7 e-mails without using your name.

8 MR. WARMAN: That's what I said.

9 MS KULASZKA: Did you use that
10 e-mail?

11 THE CHAIRPERSON: Which one?

12 MS KULASZKA: Mary Dufford.

13 THE CHAIRPERSON: Before he objects,
14 why is that important, Ms Kulaszka? Why is that
15 important? I'm tired of these little matches which
16 serve no purpose. Nobody is making any points when
17 they say things like that.

18 What is the point of Mary Dufford?
19 If the point is just to demonstrate that he uses
20 non- -- he uses name that's don't begin with Richard
21 Warman at --

22 MS KULASZKA: It goes to the fact he
23 is making these postings, and I see no harm with him
24 answering that.

25 THE CHAIRPERSON: I know, but you're

1 suggesting is that "90sAREoverrobmsimpson@hotmail" is
2 Mr. Warman. That's what you are getting at?

3 MS KULASZKA: Correct.

4 THE CHAIRPERSON: He just said he
5 does. So it's possible by your thesis that he's
6 90sAREoverrobmsimpson. Okay. It's possible. Could be
7 me. Could be anybody at this point. Because he's
8 denied that it's him.

9 MS KULASZKA: Okay, we'll go on.
10 Were you born in Germany?

11 MR. VIGNA: Mr. Chair, objection.
12 This is very confidential information.

13 THE CHAIRPERSON: I don't know about
14 confidentiality. Why is that relevant, Ms Kulaszka?

15 MS KULASZKA: He's given interviews
16 and published newspaper accounts where he states he was
17 born in Germany. What it goes to is Ann Cools where he
18 talks about his anglo-Germanic people. It's just one
19 more tiny thing -- who wrote this. Since he's given
20 interviews saying -- I don't know it's a big deal.
21 Born in Germany. He could just say yes.

22 THE CHAIRPERSON: Ms Kulaszka, look,
23 I'm going to be very real here, okay. You're thesis is
24 that he put this on here for the purpose of what we
25 discussed earlier. It's quite clear in his evidence

1 that he does not share these views, but if you put it
2 on here, as you are suggesting he would have done it
3 for some ulterior motive, you'll suggest. And I can
4 understand where you are going. Don't try to convince
5 me because he was born in Germany he believes in what
6 is being said here.

7 MS KULASZKA: No, it doesn't go to
8 what his belief is. It's just one more little piece of
9 evidence that goes toward identifying --

10 THE CHAIRPERSON: I'm not going to
11 allow it, Ms Kulaszka. I know what's going on. I see
12 other people nodding. Ms Kulaszka, I know where you
13 are going with this. You can make your argument. You
14 have the evidence. Just move on.

15 MS KULASZKA: Mr. Warman, what is
16 your current Stormfront pseudonym?

17 MR. WARMAN: I'm just wondering if Ms
18 Kulaszka could establish some relevance to the
19 proceedings before us?

20 MS KULASZKA: Yes, I would like to
21 make the submission what has been going on in the
22 hearing and the evidence has been put forward.

23 What is happening is that Mr. Warman
24 is going on these message boards. He is an active
25 participant. He is posting messages that are, to use

1 his words, problematic, that could very well be a
2 violation of section 13 the way it is being interpreted
3 up to this point.

4 He is a prolific poster. You can see
5 by the numbers under the name Axetogrind and pogue
6 mahone. And those are only the two names we know. He
7 uses other names. He's given that testimony in other
8 proceedings.

9 The Commission knows he's doing it.
10 He's already given testimony in this hearing that in
11 his investigations he's finding the identities of
12 people primarily through their own postings, such as
13 Craig Harrison. He's a good example. He says he was
14 convicted. He's had two years from Georgetown. He
15 actually gives his name and address on another website.
16 That is how he's really finding the identities of these
17 people. So where is he making all these postings?

18 So far everyone is been really
19 forgiving of Mr. Warman. But what is he doing? He's
20 not getting their identities through the postings he's
21 making. What is he doing? He's either acting as an
22 agent provocateur trying to incite some young person
23 who is 16 or 17 into making comments he can use, or, I
24 don't know why. We're not getting explanation.

25 And what's worse is the Commission is

1 going along with this. The Commission has been well
2 aware for over a year what Mr. Warman has been doing
3 and they are condoning what he's doing. They are
4 calling him as a witness in hearings and then when a
5 complaint is laid against Mr. Warman it's thrown out,
6 just like that, as vexatious. They are protecting him.

7 We are being way too forgiving to
8 Mr. Warman on what is going on here. If they are using
9 Mr. Warman or working with him, we can't get to the
10 bottom of exactly what the relationship is.

11 But for sure the Commission is
12 condoning what he is doing because they know what he is
13 doing, yet they have the mandate to prevent
14 discrimination. They are using someone who is doing
15 this every day practically on Stormfront, VNN and
16 probably other websites. We don't know. We don't even
17 know all the names he is using. So what is going on?
18 It's an utter, complete abuse of the whole system.

19 THE CHAIRPERSON: You are even saying
20 some of the material Mr. Warman is posting, if I
21 understand you correctly, is in and of itself in breach
22 of section 13?

23 MS KULASZKA: If you look at some of
24 these postings, some in particular -- I mean obviously
25 they are homophobic. There is one whole series through

1 here where people are saying this Commander Schoep is a
2 menace, he's an idiot, running around in Nazi uniforms,
3 and Mr. Warman participates in that whole series of
4 postings and he says no, we have to support this man,
5 we should all support him in what he does.

6 You don't need to do that to
7 investigate allegedly what is going on on these message
8 boards. What is going on? What is going on with him?

9 THE CHAIRPERSON: I also see the next
10 part of your argument is that if intent doesn't form a
11 component of a section 13 message then the fact the
12 message is there means it's caught by section 13, by
13 its nature, whether or not the intent was one thing or
14 another.

15 MS KULASZKA: I'm going to be making
16 certain arguments about intent. I think it was clear
17 from what I said yesterday about the Craig Harrison
18 postings. But up to this point the way it has been
19 interpreted and the findings that have been made in
20 Tribunal proceedings certainly, absolutely he's being
21 caught. Why shouldn't we ask what other names he's
22 using on these forums.

23 THE CHAIRPERSON: Mr. Warman, why
24 shouldn't we?

25 MR. WARMAN: Because it forms no

1 basis of the matter that is before you.

2 THE CHAIRPERSON: What is the matter
3 that is before you?

4 MR. WARMAN: The matter is whether
5 Mr. Lemire is acting alone or in concert, communicated
6 or caused to be communicated material that's in
7 violation of section 13 sub (1) of the Canadian Human
8 Rights Act.

9 THE CHAIRPERSON: He has raised a
10 constitutional defence.

11 MR. WARMAN: He has valid to
12 proceedings that are before you. You cannot use a sort
13 of -- constitution is not a universal snake oil that
14 cures all ails. It is not something you can just throw
15 out every time you want to go on a fishing expedition
16 to justify in some way.

17 THE CHAIRPERSON: Mr. Warman, I'm not
18 convinced this is a fishing expedition. They are not
19 trying to find out information and lay another
20 complaint against you. What they are trying to do here
21 is establish -- we heard the thesis that's being
22 presented.

23 So now I put it to you what is the --
24 I see some relevance there. What is the prejudice that
25 you would suffer if it is disclosed the name that you

1 use? Put a time frame it on, Ms Kulaszka? What time?

2 MS KULASZKA: I asked for his
3 current.

4 THE CHAIRPERSON: Current. Is there
5 a current name you are using on Stormfront?

6 MR. WARMAN: Which again I'll object.
7 No relevance to the issue. There is nothing she can
8 show. Go fishing for evidence, they may or may not.

9 THE CHAIRPERSON: That's your
10 interpretation. I don't think that I take that
11 interpretation from what she's saying. The suggestion
12 is if you are posted -- I'm not going to repeat verbal
13 argument.

14 It's perfectly legitimate for them to
15 try to elicit that information from you in
16 cross-examination. I fail to see how -- what is the
17 prejudice? Is there a public interest here? Is there
18 something else? Otherwise -- I don't see why you can't
19 answer that question.

20 MR. WARMAN: I do not have a current
21 Stormfront address that I am posting under.

22 MS KULASZKA: What was the last one
23 you used?

24 MR. WARMAN: The last one that I
25 recall would have been pogue mahone.

1 MS KULASZKA: How about VNN?

2 MR. WARMAN: Axetogrind.

3 MS KULASZKA: So your evidence is
4 that you no longer post on these website forums?

5 MR. WARMAN: My evidence is that you
6 asked me what my current identities were on them and
7 I've given you those answers.

8 THE CHAIRPERSON: It seems to me, Ms
9 Kulaszka, without having to go over this over and over,
10 just with this information alone you have the material
11 you need to present your argument, do you not?

12 MS KULASZKA: Yes, I have his
13 evidence now.

14 Did you use the e-mail
15 lucyaubrac@yahoo.ca? I believe you stated you did.

16 MR. WARMAN: Yes, I did. And in fact
17 that was my testimony.

18 MS KULASZKA: The life duration of
19 the Lucy account was two hours. Do you know what did
20 you in those two hours?

21 MR. WARMAN: No, I have no
22 recollection off the top of my head. I should indicate
23 that I don't believe that that is necessarily correct.
24 That may have been the duration of the first to the
25 last log-in, but that the account probably would have

1 existed after that.

2 MS KULASZKA: Was this account only
3 open to perform the series of searches as shown in HR-2
4 at tab 22 and 23?

5 MR. WARMAN: Again, I've indicated
6 that I don't recall exactly what it was used to do
7 during a two-hour period back in 2003.

8 MS KULASZKA: If you could turn to
9 tab 7 at R-1. First page.

10 THE CHAIRPERSON: Tab 7 of R-1?

11 MS KULASZKA: Correct. It's the
12 respondent's binder, tab 7.

13 I think I just went over this briefly
14 when we ended yesterday. This was the article about
15 Tomasz Winnicki. You stated at five paragraphs up:

16 "It's a groundbreaking decision,
17 said Warman, who sparked a probe
18 in 2003 when he complained to a
19 Human Rights Commission about
20 Winnicki. 'It really shows the
21 seriousness of the matter. It's
22 the first time a Federal Court
23 injunction has been issued on
24 hate crime on the Internet'".

25 THE CHAIRPERSON: I have an objection

1 from Mr. Warman but I haven't heard a question yet.

2 MR. WARMAN: I have a question for
3 clarification.

4 I would like to know whether she
5 intends to proceed through the rest of the contents of
6 tab 7 right now or whether she is only going to
7 referring to this article?

8 THE CHAIRPERSON: So far nothing has
9 been produced by the way. Am I right?

10 MS KULASZKA: I'm just going to go
11 through the articles in here. This is just a series of
12 articles about Mr. Warman.

13 THE CHAIRPERSON: Why are you
14 bringing forth these articles?

15 MS KULASZKA: In the first case, he
16 talked about section 13 as a hate crime. He said
17 yesterday he did not say that. I just want to ask him
18 again about that.

19 THE CHAIRPERSON: Why?

20 MS KULASZKA: Because section 13 is
21 not a crime.

22 THE CHAIRPERSON: And he answered
23 that. We had that whole debate. Let's move on. We
24 had that.

25 MS KULASZKA: Does Mr. Warman have an

1 objection?

2 MR. WARMAN: If Ms Kulaszka intends
3 to go through all the documents here, I wish to make an
4 objection to the Tribunal.

5 THE CHAIRPERSON: Well, she says she
6 will, yes.

7 MR. WARMAN: So what I'm asking is
8 that the hearing of these documents be held by the
9 Tribunal in a closed session, and I'm submitting that
10 on the basis of 52 sub (1), sub (C) and (D). And I
11 would ask that all argument on this also be submitted
12 in a voir dire.

13 MS KULASZKA: 52. Could you just
14 give me those?

15 MR. WARMAN: Sub (1), sub (C) and
16 (D).

17 MS KULASZKA: These are just a series
18 of articles that have appeared on the canada.com,
19 CanWest News Service, Sun Media --

20 MR. WARMAN: Mr. Chair, I reiterate
21 that I would ask that all evidence pursuant to this be
22 submitted in a voir dire so that specifically the
23 information that is in question is not divulged by
24 either myself or Ms Kulaszka during the hearing,
25 please.

1 THE CHAIRPERSON: Okay. I hear you.

2 MR. WARMAN: I will make --

3 THE CHAIRPERSON: -- debate the
4 issue.

5 MR. WARMAN: In a voir dire, and I
6 will make explicit why that is the case.

7 THE CHAIRPERSON: Ms Kulaszka, we can
8 run this thing to the ground.

9 MS KULASZKA: Let's have a voir dire.

10 THE CHAIRPERSON: No, hold on a
11 second. I'm getting the objection.

12 Is this very necessary to your case,
13 honestly? Think about that.

14 MS KULASZKA: Yes, he's made some
15 statements I would like to cross-examine him on. He
16 makes comments about the section 13 process and how
17 he's using it and I would like to cross-examine him on
18 those.

19 THE CHAIRPERSON: How he's using the
20 process.

21 MS KULASZKA: Yes. He's quoted in
22 these articles and he also wrote the last one.

23 THE CHAIRPERSON: Let me take a look
24 at them before anything happens.

25 MS KULASZKA: Starting on page 15 to

1 end. This is an article written by Richard Warman.

2 MR. VIGNA: Mr. Chair, I don't know
3 if I can propose a break. I would like to ask -- I
4 know he's in cross-examination -- this issue about the
5 voir dire, I don't know where we're going.

6 THE CHAIRPERSON: It's been an hour.
7 You think a break -- if you think there is some benefit
8 in conducting a break now --

9 MR. VIGNA: I would like to be able
10 to speak only to the issue of why there is a voir dire
11 that is being asked.

12 THE CHAIRPERSON: So counsel -- sort
13 of party to counsel to counsel, amongst yourselves.

14 MR. VIGNA: With Mr. Warman, but only
15 on the issue of the voir dire.

16 MS KULASZKA: I don't have any
17 objection to Mr. Vigna doing that.

18 THE CHAIRPERSON: All right, we'll
19 take a quick break.

20 --- Recessed at 11:20 a.m.

21 --- Resumed at 11:30 a.m.

22 MR. VIGNA: Mr. Chair, Mr. Warman has
23 informed me of the situation. It's quite simple, but
24 I'm going to make a kind of an exceptional request.
25 Perhaps the Tribunal can give us some direction on the

1 issue.

2 We would be asking -- the issue to be
3 addressed is quite sensitive and it will be preferable
4 to have it ex parte without the presence of the public
5 and the parties. Perhaps the presence only of the
6 lawyers and Mr. Warman could be an option. But I don't
7 think it's something that should be discussed in open
8 court.

9 THE CHAIRPERSON: What is? The
10 evidence or the discussion about whether to hold the
11 evidence under section 52?

12 MR. VIGNA: It's just a small point
13 that needs to be addressed.

14 MR. WARMAN: The voir dire is
15 necessary in order to discuss the issue.

16 THE CHAIRPERSON: Okay. Ms Kulaszka?

17 MS KULASZKA: I would ask my
18 client -- he is a party to these proceedings and he
19 should be allowed to stay here.

20 MR. WARMAN: Mr. Lemire is not
21 subject to the rules of professional conduct that
22 barristers are. He is represented by counsel at these
23 proceedings. Ms Kulaszka is that counsel. She is his
24 representative in these proceedings and the material --
25 the subject matter -- I trust Ms Kulaszka because she

1 is bound by the rules of professional conduct. And
2 there is nothing that permits Mr. Lemire, as a party,
3 to participate in voir dices, either in this tribunal
4 or in any other court, unless he is representing
5 himself.

6 THE CHAIRPERSON: Can you cite me an
7 authority for that, why can't a party participate in a
8 voir dire?

9 MR. WARMAN: Because the issue is
10 intended to be -- because the whole point of holding
11 the voir dire is to discuss it in the absence of
12 persons whose knowledge of that material would be
13 harmful or is unnecessary.

14 The whole reason for requesting the
15 voir dire is in order to avoid the disclosure, the
16 unnecessary disclosure of certain information.

17 And, again, I really am concerned
18 that by all of this discussion without moving into a
19 voir dire, it is becoming increasingly problematic in
20 that it touches further and further upon the reasons
21 for requesting a voir dire in the first place.

22 MR. VIGNA: Mr. Chair, that's why I
23 asked for an ex parte, perhaps the distinction of voir
24 dire --

25 THE CHAIRPERSON: Oh, just a meeting?

1 MR. VIGNA: Perhaps a meeting
2 between --

3 THE CHAIRPERSON: Ms Kulaszka, just
4 as an initial discussion. I'll see where it's going.
5 Would you object just that you and Mr. Vigna -- can it
6 just be you and Mr. Vigna?

7 MR. VIGNA: No problem.

8 THE CHAIRPERSON: Without Mr. Warman,
9 without Mr. Lemire. The three of us sit down and see
10 what that is about?

11 MS KULASZKA: So just Mr. Vigna and I
12 and you?

13 THE CHAIRPERSON: Yes. Not even you,
14 Mr. Warman. Yes, you are a member of the bar but just
15 because of that you are still a party. Can you express
16 your views to Mr. Vigna and he can express them in our
17 meeting so that we have some sense -- I'm sorry.
18 You're asking me something very extreme. You are
19 asking me to shut down the process to make it
20 completely secretive without the presence of the
21 respondent against whom the complaint has been laid?

22 MR. WARMAN: Sir, it has nothing to
23 do with the hearing itself. It has to do with
24 specifically what is contained in the Act. It is a
25 simple procedure. Voir dires are held in every

1 courtroom, in every tribunal across this land. There
2 is nothing unusual about what I am requesting, to
3 discuss certain matters I do not believe should be
4 discussed in open court and that you --

5 THE CHAIRPERSON: When I've conducted
6 these in the past, sir, we've never excluded the
7 respondent from the hearing. You are asking me to
8 exclude the respondent from this process.

9 I'm proposing an alternative, that I
10 just speak to counsel and find out what the source of
11 the request is.

12 So Mr. Vigna, Ms Kulaszka?

13 MS KULASZKA: I'm agreeable to just
14 the three of us speaking.

15 THE CHAIRPERSON: Let's go outside.
16 --- Recessed at 11:24 a.m.

17 --- Resumed at 11:37 a.m.

18 THE CHAIRPERSON: Counsel, do you
19 have something to say?

20 MR. VIGNA: As discussed, Mr. Chair,
21 the proposed course of going ahead with tab 7 seems
22 agreeable with the complainant also. I've explained to
23 him the suggested course of action.

24 THE CHAIRPERSON: Ms Kulaszka, do you
25 have a request to make with respect to tab 7?

1 MS KULASZKA: Yes, I would like to
2 produce tab 7, pages 1 to 12.

3 THE CHAIRPERSON: 1 to 12.

4 And Mr. Vigna?

5 MR. VIGNA: I will not have
6 objections now but I will argue on the relevance.

7 THE CHAIRPERSON: But in terms of the
8 production you have no objection?

9 MR. VIGNA: For the sole purpose of
10 production, no.

11 THE CHAIRPERSON: Pages 1 through 12.
12 Mr. Warman, you are in agreement?

13 MR. WARMAN: I am.

14 THE CHAIRPERSON: I consider these
15 documents produced. I guess at the break anything that
16 has not been produced we can just remove from the
17 binders.

18 MS KULASZKA: Correct.

19 THE CHAIRPERSON: Okay.

20 MS KULASZKA: Mr. Warman, if you can
21 just go to page 3. This was an article that appeared
22 at canada.com, the Canwest News Agency. Are you
23 familiar with this material?

24 MR. WARMAN: I've seen it and read
25 it.

1 MS KULASZKA: They have got a quote
2 from you in a paragraph about five paragraphs up that
3 states:

4 "Warman went to the hearings and
5 watched Taylor in action. 'One
6 of the things he wanted to do to
7 neo-Nazis was make it so
8 expensive and so painful for
9 them that they would never want
10 to come back in a professional
11 context'."

12 Did you make that statement?

13 MR. WARMAN: If I did, it's an
14 incorrect quote. But I don't remember making that
15 exact statement. In fact, what I actually either
16 stated or meant to convey is that one of the things he
17 wanted to do with the neo-Nazis was to make it so
18 painful for them at the hearing that they would never
19 come back, or never want to come back.

20 MS KULASZKA: So expensive and
21 painful?

22 MR. WARMAN: No, that's not what I
23 said.

24 MS KULASZKA: What was meant by
25 "painful"?

1 MR. WARMAN: What did I take
2 Mr. Taylor to mean by that?

3 MS KULASZKA: What did you mean by
4 it.

5 MR. WARMAN: I'm simply citing
6 Mr. Taylor.

7 MS KULASZKA: And this is Eddie
8 Taylor who was a counsel at the Commission for years?

9 MR. WARMAN: I believe it is, yes.

10 MS KULASZKA: On the next page you
11 are quoted as saying about four paragraphs down:

12 "By knocking them off the
13 Internet permanently you've put
14 a major restriction on their
15 ability to communicate and
16 organize."

17 Did you say that?

18 MR. WARMAN: I don't recall saying
19 that specifically but it's quite possible I did, in
20 relation to the entire context of the article and whom
21 was being discussed.

22 THE CHAIRPERSON: Can you show me the
23 site again. I missed it.

24 MS KULASZKA: It's on page 4 of tab 7
25 and a little it's about four paragraphs down. It

1 starts off "by knocking them off the Internet
2 permanently".

3 So would you agree that that shows
4 part of the effect of section 13 isn't just to stop
5 messages which might violate section 13. It also
6 affects the right of people to communicate and organize
7 over the Internet, correct?

8 MR. WARMAN: No. Within the article
9 it's quite clear the context I was discussing was
10 section 13 of the Act which, of course -- can I --
11 makes a discriminatory practice to communicate hate
12 messages.

13 MS KULASZKA: Turning to page 6.
14 This is another article entitled, "The Men They Loved
15 to Cyber Hate". At the top of page 6 it states --

16 THE CHAIRPERSON: Back up. This is
17 an article --

18 MS KULASZKA: One page back, page 5.

19 THE CHAIRPERSON: Toronto Sun?

20 MS KULASZKA: It says Sun Media. An
21 article by Randy Richmond.

22 THE CHAIRPERSON: It says "Ottawa
23 Sun" at the very top.

24 MS KULASZKA: Yes, Ottawa Sun.

25 THE CHAIRPERSON: And perhaps the day

1 might be helpful. The previous article was --

2 MS KULASZKA: This is August 2nd,
3 2005.

4 THE CHAIRPERSON: The previous one
5 appears July 16th. Go ahead.

6 MS KULASZKA: Top page 6 the article
7 states:

8 "If they lose the white
9 supremacists have to pay tens of
10 thousands of dollars in fines
11 and compensation."

12 Then there is a quote:

13 "Richard is bugging the pants
14 off these people. That don't
15 have money."

16 Says:

17 "Noted hate fighter Matt Lauder
18 of Guelph. They are running
19 scared."

20 Do you know if Matt Lauder said that?

21 MR. WARMAN: I have no idea.

22 MS KULASZKA: Do they represent his
23 views?

24 MR. WARMAN: You'd have to ask him.

25 MS KULASZKA: Is this the Matt Lauder

1 whose articles appear on the FreedomSite?

2 MR. WARMAN: I can only presume it
3 is.

4 MS KULASZKA: If you turn to page 9.
5 This is an article that appeared in the Western Jewish
6 Bulletin, October 31st, 2003.

7 THE CHAIRPERSON: Just a second
8 please. Page 9? Yes.

9 MS KULASZKA: It's entitled,
10 "Combatting Hate on the Internet". Were you
11 interviewed for this article?

12 MR. WARMAN: As I recall, yes.

13 MS KULASZKA: You're familiar with
14 it?

15 MR. WARMAN: I've seen it before,
16 yes.

17 MS KULASZKA: It describes on page 10
18 and 11 your views about ISPs, is that correct, bottom
19 of page 10:

20 "Before it reaches that point,
21 however, it may be possible to
22 shut down hate mongers via
23 corporate pressures, explaining
24 that Internet service providers,
25 ISPs, have responsibility to the

1 content, their subscribers post
2 and appeal to the ISP could be
3 all it takes to shut the site
4 down. If that doesn't work,
5 there is a next level. The
6 company that provides the
7 gateway from the local ISP to
8 the Internet itself. These tend
9 to be larger corporations, like
10 Telus in British Columbia, that
11 have a better understanding of
12 their legal and moral
13 responsibilities regarding hate
14 laws than do the mom-and-pop
15 ISPs."

16 And we turn to the next page, the
17 third paragraph. It gives an example:

18 "When Warman first complained to
19 the Alba-based ISP, the host of
20 the Canadian-based hate site,
21 the ISP forwarded Warman's
22 complaint directly to the hate
23 monger."

24 What is this about? Was this a
25 complaint or just a website you had seen?

1 MR. WARMAN: Oh, well it was both.

2 MS KULASZKA: What website was it?

3 MR. WARMAN: It was in relation to a
4 website run by Fred Kyburz, and that last name is
5 K-Y-B-U-R-Z.

6 MS KULASZKA: And what was the
7 response of the ISP?

8 MR. WARMAN: I believe it's listed
9 there. The ISP initially forwarded the concern that --
10 e-mail concern I had expressed to Mr. Kyburz.

11 MS KULASZKA: When you spoke --
12 apparently this describes a meeting that was held --
13 was this meeting organized by the group Canadian
14 Anti-Racism Education and Research Society?

15 MR. WARMAN: Yes, as I recall this
16 article is in relation to that.

17 MS KULASZKA: Is that group headed by
18 Allan Dutton?

19 MR. WARMAN: I don't know what the
20 corporate structure is in terms of their board of
21 directors.

22 THE CHAIRPERSON: I don't see that
23 reference. Is this in here?

24 MS KULASZKA: Is this the same --

25 THE CHAIRPERSON: What did you refer

1 to?

2 MS KULASZKA: That's on page 9. On
3 page 9, it's on the first page, the third paragraph
4 down.

5 It just -- at the end, the last two
6 lines. It was a meeting organized by the local group,
7 CAERS. Is CAERS the same group that runs the
8 recomnetwork.org website?

9 MR. WARMAN: As I understand it.

10 MS KULASZKA: If you turn to page 15.

11 THE CHAIRPERSON: This hasn't been
12 produced before.

13 MS KULASZKA: Yes, I would like to
14 produce this. This is an article by Richard Warman
15 that appeared in --

16 MR. VIGNA: There's no objection to
17 the production. There will be arguments to the
18 relevance on the pleadings.

19 THE CHAIRPERSON: Yes, ultimately.
20 Yes.

21 MS KULASZKA: Did you write this
22 article? It appeared on the audit of B'Nai Brith,
23 2005, on their website?

24 MR. WARMAN: I wrote the article,
25 although it underwent some editing.

1 MS KULASZKA: Extensive editing?

2 MR. WARMAN: Not to my view.

3 THE CHAIRPERSON: This article is
4 written at B'Nai Brith, okay. It was on their website
5 it was written? Is that where it was written?

6 MR. WARMAN: It was included in
7 what's called their Annual Audit of Anti-Semitic
8 Incidents for 2005.

9 MS KULASZKA: Is Mr. Lemire
10 mentioned in this article?

11 MR. WARMAN: Yes, he is.

12 THE CHAIRPERSON: What page?

13 MR. WARMAN: Page 23.

14 MS KULASZKA: So there's a paragraph
15 about this case, correct?

16 MR. WARMAN: There is a paragraph
17 containing a simple description of this case, yes.

18 MS KULASZKA: Why was this not
19 disclosed to the respondent?

20 MR. WARMAN: Because I didn't
21 consider it to be arguably relevant to the issues
22 before the Tribunal.

23 MS KULASZKA: It did mention
24 Mr. Lemire, did it not?

25 MR. WARMAN: I've already stated

1 that.

2 MS KULASZKA: On page 17 of that
3 article you again mention formal complaints made to
4 Bell Sympatico which resulted in the rapid shut down of
5 the B.C. neo-Nazi skin head groups, "Free MSN" website.
6 What website was that?

7 THE CHAIRPERSON: You are ahead of
8 me.

9 MS KULASZKA: Page 17, the first full
10 paragraph starting in "November of 2005".

11 THE CHAIRPERSON: Okay, I see it.
12 I'm sorry, I was typing my notes.

13 MR. WARMAN: I don't actually recall
14 what the name was, the exact URL. But it was a small,
15 sort of, website that was being hosted through Bell
16 Sympatico/MSN.

17 MS KULASZKA: So you made a formal
18 complaint to Bell Sympatico?

19 MR. WARMAN: Well, depending on how
20 formal you want to call an e-mail letter expressing
21 concern.

22 MS KULASZKA: It states here you made
23 a formal complaint.

24 MR. WARMAN: Yes.

25 MS KULASZKA: Did you get any e-mail

1 back from them or was the website simply removed?

2 MR. WARMAN: I have no recollection
3 of having received any response, but the website was
4 subsequently removed.

5 MS KULASZKA: What did you state in
6 your complaint to Bell Sympatico?

7 MR. WARMAN: I don't recall the exact
8 wording but it would have been to the nature of that it
9 appeared to violate their terms of service.

10 MS KULASZKA: Did you mention section
11 13 of the Canadian Human Rights Act?

12 MR. WARMAN: I have no recollection
13 of whether I did or not.

14 MS KULASZKA: What were the terms of
15 service you were referring to?

16 MR. WARMAN: Virtually every company
17 or -- virtually every ISP that I've encountered, or
18 hosting company, has in terms of service includes
19 things against inciting hatred, promotion of violence,
20 defamation, those things in general.

21 MS KULASZKA: Have you ever
22 threatened an ISP with going to the media unless they
23 remove a website?

24 MR. WARMAN: I'm not sure.

25 MS KULASZKA: Did you do so in the

1 Winnicki case?

2 MR. WARMAN: Not that I recall, but I
3 certainly did ultimately go to the media when I felt
4 they were being -- when I felt they were simply
5 ignoring the concerns I had expressed repeatedly over a
6 month-long period that involved what I considered to be
7 threats of violence to the Jewish community.

8 MS KULASZKA: In fact, did not a
9 group, including you, put out some sort of press
10 release? I believe it was you and Matt Lauder, maybe
11 the Simon Wiesenthal Center, denouncing the fact that
12 the police were not laying charges?

13 MR. WARMAN: Not to the way that I
14 recall it. There was a joint letter of concern that
15 was signed by a number of different groups from the
16 blacks, Asian, Jewish, Islamic or Arab communities
17 expressing concern with the ongoing nature of
18 Mr. Winnicki's postings.

19 MS KULASZKA: What day would that be,
20 do you remember?

21 MR. WARMAN: I'm sorry, I don't.

22 THE CHAIRPERSON: This letter of
23 concern was sent to --

24 MR. WARMAN: No, it was an open
25 letter.

1 MS KULASZKA: So it was published in
2 the press as an open letter?

3 MR. WARMAN: It was released to the
4 press and the press subsequently -- some made note of
5 it. In fact, there may have been more than one. There
6 may have been two of them.

7 THE CHAIRPERSON: Two letters, two
8 open letters.

9 MR. WARMAN: Two letters, yes.

10 MS KULASZKA: Now, in the case of
11 Mr. Tremaine, did you write to the University of
12 Saskatchewan and basically threaten them with going to
13 the media unless action was taken against them?

14 MR. WARMAN: I'm wondering if she
15 could establish some relevance to this proceeding,
16 please.

17 THE CHAIRPERSON: Same as the
18 previous one, I would think, previous question I guess.

19 But go ahead, Ms Kulaszka. Can you
20 discuss the relevance again?

21 MS KULASZKA: I'm trying to establish
22 is that what Mr. Warman does is threaten ISPs or
23 employers of people that he thinks are running websites
24 that violate section 13 and he's using various methods,
25 basically almost intimidation to get these websites

1 down prior to the section 13 if they are unsuccessful.

2 THE CHAIRPERSON: So it's in the use
3 of section 13 and its effect. So I'll allow the
4 question.

5 You indicated earlier, Mr. Warman,
6 that you had not gone -- threatened to go to the media.
7 Does that apply to the Tremaine case as well?

8 MR. WARMAN: Well, I don't recall
9 exactly what the previous question was. But -- perhaps
10 I can get this question again.

11 MS KULASZKA: Have you used threats
12 to go to the media against employers of a complainant
13 as a means of intimidating the complainant?

14 MR. WARMAN: No, I don't believe that
15 I have.

16 MS KULASZKA: Perhaps we can --

17 MR. WARMAN: Sorry, your question was
18 a little --

19 THE CHAIRPERSON: The respondent.

20 MR. WARMAN: Yeah, I don't believe I
21 have.

22 MS KULASZKA: Or the respondent,
23 sorry.

24 We'll go through this first --
25 otherwise we'll be all over the place. If you could

1 turn to page 18 of tab 7. The third full paragraph
2 down starts:

3 "At permanent cease and desist
4 order."

5 Last sentence:

6 "In rendering the initial cease
7 and desist order last April the
8 Tribunal urged Google to
9 cooperate in enforcing this
10 order."

11 Next paragraph concerns a letter sent
12 by the Commission counsel to the Google CEO and Google
13 removed the material.

14 Do you know of any other instances
15 where Google has been approached to have material
16 removed?

17 MR. WARMAN: Not that I'm aware.

18 MS KULASZKA: Have you made
19 complaints to Google regarding any kind of material?

20 MR. WARMAN: Yes, I have.

21 MS KULASZKA: In what cases?

22 MR. WARMAN: Cases where I felt there
23 was material that put at risk my personal safety.

24 MS KULASZKA: What websites would
25 those be concerning?

1 THE CHAIRPERSON: What's the
2 relevance?

3 MR. WARMAN: Not just what's the
4 relevance, but also if we're going to discuss this,
5 then, again I will be going back to --

6 THE CHAIRPERSON: Ms Kulaszka, I have
7 his answer that he's contacted other websites. I don't
8 see why I need to know which ones they are.

9 MS KULASZKA: Was it strictly about
10 your personal safety or was it also simply that you
11 found it offensive material.

12 MR. WARMAN: If I found material that
13 I thought violated their terms of service, I may have
14 reported that to them as well.

15 MS KULASZKA: How many times did you
16 think you've done that? I'm not talking about personal
17 security, I'm just talking about strictly websites that
18 might violate section 13.

19 MR. WARMAN: In relation to Google?

20 MS KULASZKA: Correct.

21 MR. WARMAN: I don't know that -- I
22 don't know that I've ever reported a website, per se,
23 to Google. They have forums, though, which contain
24 postings.

25 MS KULASZKA: And you've complained

1 about those?

2 MR. WARMAN: I have in the past, yes.

3 THE CHAIRPERSON: Can you explain
4 what forums are? What kind of forums there are that
5 are on Google?

6 MR. WARMAN: They have -- similar to
7 a lot of the large Internet companies, they have little
8 forums where you can discuss topics of interest to any
9 particular subject.

10 THE CHAIRPERSON: So it must be very
11 broad then. Being on Google it must be a whole range.
12 It's not like going to a website dedicated, let's say,
13 to a television program and looking at a discussion
14 about that television program?

15 MR. WARMAN: No, although that could
16 be a subset.

17 THE CHAIRPERSON: I understand. So
18 within one of those subsets you found material that you
19 felt was -- was your answer that was in breach of
20 section 13 or just in violation of the terms of
21 service.

22 MR. WARMAN: No, in violation of the
23 terms of service.

24 MS KULASZKA: If you turn to page 24.
25 Second paragraph starts:

1 "Also in 2005 the Canadian Human
2 Rights Commission was successful
3 in identifying a John Doe who
4 had been named in a federal
5 human rights complaint against
6 World Church of the Creator."
7 Did you lay that complaint?

8 MR. WARMAN: Yes, I did.

9 MS KULASZKA: So you did not in fact
10 know who was running the website?

11 MR. WARMAN: No, that's inaccurate.

12 MS KULASZKA: What didn't you know?

13 MR. WARMAN: It was my belief that
14 there were more than two individuals involved in the
15 operation of the group's website, or websites, and
16 therefore one of the parties listed was listed as a
17 John or Jane Doe.

18 MS KULASZKA: What actions did the
19 Commission take to find out who this John Doe was?

20 MR. WARMAN: To my understanding,
21 they took the necessary steps through the provisions of
22 the Act to identify who was the holder of a P.O. box
23 in Toronto, I believe.

24 THE CHAIRPERSON: Who took those
25 steps?

1 MS KULASZKA: The Canadian Human
2 Rights Commission. So they used a series of search
3 warrants; is that correct?

4 MR. WARMAN: I'm not aware they used
5 a series. My understanding is that they used one.

6 MS KULASZKA: What happened with that
7 complaint? Is that still before the Commission?

8 MR. WARMAN: No. That complaint was
9 settled by means of mediation with the Tribunal.

10 THE CHAIRPERSON: It was referred to
11 the Tribunal and settled thereafter.

12 MR. WARMAN: Yes, excuse me.

13 MS KULASZKA: Turn to page 26, first
14 paragraph, the last sentence. Starts:

15 "One such attempted pro-Zundel
16 protest ended in disaster
17 however, when it was broken up
18 by an aggressive counter protest
19 assembled by Montreal's
20 Anti-Racist Action and other
21 young human rights activists."

22 Do you agree with this kind of action
23 where a protest is broken up by aggressive counter
24 action?

25 THE CHAIRPERSON: Sorry, I couldn't

1 find it.

2 MS KULASZKA: First paragraph, the
3 last sentence.

4 MR. VIGNA: Which page?

5 MS KULASZKA: Page 26.

6 MR. WARMAN: If she could establish
7 some relevance to the proceedings.

8 THE CHAIRPERSON: Okay.

9 MR. WARMAN: And more specifically,
10 as to the relevance whether Mr. Lemire has violated
11 section 13 of the act.

12 THE CHAIRPERSON: Or his defence. I
13 just want to be clear what the question was about. The
14 question was about --

15 MS KULASZKA: Well, Mr. Warman wrote
16 this. He said that there was an attempted pro-Zundel
17 protest; that it was broken up by an aggressive counter
18 protest assembled by the ARA.

19 THE CHAIRPERSON: So his opinion is
20 whether he endorses counter protests?

21 MS KULASZKA: Yes. Do you believe
22 people like Zundel are so dangerous, in fact, that this
23 kind of action is justified?

24 THE CHAIRPERSON: So he maintains his
25 objection before he stands up. Can you discuss the

1 relevance, Ms Kulaszka?

2 MS KULASZKA: I guess the relevance
3 comes from the recent murder of a Turkish journalist.
4 He was of Armenian descent and he continually was
5 breaking the laws in Turkey where you cannot state that
6 the Armenians were subject to a genocide by Turkey.
7 There is a law in Turkey. And Amnesty International
8 stated that these laws have the effect of promoting
9 violence against people such as this journalist because
10 people believe his opinions are so dangerous, so
11 illegal that in fact violence is justified.

12 THE CHAIRPERSON: Why did
13 Mr. Warman's personal opinion on that have any
14 relevance? Are you going to bring the expert evidence
15 to support what occurred?

16 MS KULASZKA: I wanted to try and
17 explore this area. In fact, Mr. Warman's position is
18 that these people are very dangerous, their opinions
19 are dangerous. And my thesis is that these laws
20 themselves create danger for people who are alleged to
21 break them.

22 THE CHAIRPERSON: He's answered on
23 that point. How will that assist me? That's an
24 argument you can make. Given what you heard, do you
25 have any objection to answering that question,

1 Mr. Warman?

2 MR. WARMAN: Well, it depends if that
3 is going to set off requests. If it is not then I'll
4 be happy to answer. If it's going to set off a lot
5 questions --

6 THE CHAIRPERSON: Specific questions.

7 MR. WARMAN: Without knowing that
8 then I'm going to maintain the objection.

9 MS KULASZKA: Mr. Warman has given a
10 speech to this very group, found at tab 9.

11 MR. WARMAN: It doesn't address the
12 original objection.

13 THE CHAIRPERSON: Well, I see
14 relevance in your thesis.

15 MR. VIGNA: I don't see relevance in
16 getting that answer from Mr. Warman, per se, whether he
17 endorses it or not.

18 MS KULASZKA: You've termed
19 anti-racist action and other young human rights
20 activists. Do you consider anti-racist action to be
21 young human rights activists?

22 MR. WARMAN: There's an objection on
23 the exact same basis. This is simply a second question
24 based on the exact same sentence that attempts to
25 elicit the exact same information than what has just

1 previously been objected to and not answered.

2 THE CHAIRPERSON: You know what?
3 Mr. Warman, what I need know for the purposes of this
4 argument that will be raised by the respondent is, to
5 your personal knowledge and -- is that where it's going
6 to go?

7 MS KULASZKA: Are you aware of
8 whether anti-racist action has adopted the position
9 that violence is justified in order to prevent the
10 dissemination of material that is in breach of section
11 13?

12 MR. WARMAN: Not in those specific
13 terms. I'm aware that they take the position that
14 neo-Nazi organizing should be resisted and that that
15 resistance can take many forms and that it has in the
16 past included confrontations, physical confrontations.

17 MS KULASZKA: Have you ever denounced
18 such tactics?

19 THE CHAIRPERSON: Yes.

20 MR. WARMAN: This is the exact line
21 of questioning which I have already indicated from the
22 very first instance is objected to.

23 THE CHAIRPERSON: Now we are getting
24 into the bad character information. It doesn't
25 contribute to your argument on the Charter challenge.

1 MS KULASZKA: We'll go onto page 28.
2 The last paragraph of your article states:
3 "Lastly the dialogue between the
4 law enforcement agencies --
5 needs to continue."

6 Do you know what this dialogue is?
7 What are you referring to in that paragraph?

8 MR. WARMAN: I'm referring to the
9 conference that I understand was held in December 2005
10 which is listed in the immediately preceding paragraph
11 and sentences.

12 MS KULASZKA: Did you attend that
13 conference?

14 MR. WARMAN: No, I did not.

15 MS KULASZKA: Maybe we could take
16 lunch at this time. That would be a good time to
17 break.

18 THE CHAIRPERSON: If you -- how long
19 of a lunch do you want? You've indicated to me when we
20 were outside during the last meeting you may be a
21 little bit behind time. What are we going to do to
22 catch up?

23 MS KULASZKA: Well, there is the
24 other matter of the motion.

25 THE CHAIRPERSON: I'll look at that

1 during the break.

2 MS KULASZKA: Is it the position of
3 the Commission that this motion should be heard before
4 Mr. Klatt's evidence or could we start Mr. Klatt's
5 evidence and hear the motion later?

6 MR. WARMAN: As it's my motion.

7 THE CHAIRPERSON: This is your
8 motion.

9 MR. WARMAN: There are certain -- if
10 the respondent is willing to exclude certain portions
11 of the report of Mr. Klatt, then I'm quite happy -- I
12 have no objection to proceeding having the motion
13 considered at a later point. There are actually only,
14 to the best of my knowledge, two or three paragraphs in
15 the report that are in question.

16 THE CHAIRPERSON: Could we proceed in
17 the same manner as we had earlier and see if that would
18 be acceptable? Not immediately. You can do it after
19 lunch or five or 10 minutes, before the hearing starts.

20 MS KULASZKA: I would need some time
21 to look at the motion. I've never looked at it.

22 THE CHAIRPERSON: We'll start up
23 again at 1:30 -- no, 1:45, and I would like you to
24 meet -- to see if we can resolve that point. So we can
25 proceed with Mr. Klatt's evidence without any

1 unnecessary delay.

2 You should meet at 1:30. I'm come
3 back at 1:45. Discuss with Mr. Vigna and Mr. Warman
4 what they're proposing in terms of addressing the issue
5 raised in this motion.

6 MS KULASZKA: That's fine.

7 --- Recessed at 12:14 p.m.

8 --- Resumed at 1:45 p.m.

9 THE CHAIRPERSON: Ms Kulaszka?

10 MS KULASZKA: Mr. Warman, just before
11 the lunch break we were looking at tab 7. The "Hate On
12 the Internet". It starts at page 15. Now, did you do
13 a lot of research for this article?

14 MR. WARMAN: Sorry, can you just give
15 me a sec, please.

16 THE CHAIRPERSON: What page?

17 MS KULASZKA: Tab 7 of R-1. It's
18 the -- starts at page 15.

19 THE CHAIRPERSON: Which page are you
20 asking about?

21 MS KULASZKA: I'm asking about the
22 article -- this is the article, "Hate On The Internet".

23 THE CHAIRPERSON: The whole article?

24 MS KULASZKA: The whole article, yes?

25 MR. WARMAN: Yes.

1 MS KULASZKA: Tab 7 of R-1, page 15.
2 This was an article you wrote, "Hate on the Internet"
3 for the B'Nai Brith for the 2005 audit, correct.

4 MR. WARMAN: That's correct, the
5 "Audit of Andy --"

6 MS KULASZKA: Did you do a lot of
7 research for this article?

8 MR. WARMAN: A lot of it was based on
9 complaints that I had filed. So the other research
10 that I conducted would just have been based on trying
11 to review and see what else had transpired during 2005
12 in relation to appropriate -- on Internet in Canada.

13 MS KULASZKA: For the most part the
14 article is about section 13 complaints?

15 MR. WARMAN: I believe it is,
16 although there is also mention of Criminal Code section
17 319 as far as I recall.

18 MS KULASZKA: With respect to the
19 complaints under section 13, did you lay all those
20 complaints which are referred to in the article?

21 MR. WARMAN: I believe there may
22 be -- in fact I'm aware there is one in there I didn't.

23 MS KULASZKA: What page?

24 MR. WARMAN: There is page 16, the
25 fourth paragraph down talks about a complaint that was

1 laid by someone called KRAR.

2 MS KULASZKA: Fall of 2005.

3 MR. WARMAN: Yes. There's also a
4 complaint further down at the bottom of that page, the
5 last paragraph in November of 2003 talks about a
6 complaint filed by the Canadian Jewish Congress.

7 MS KULASZKA: To your knowledge, are
8 there any other complaints under section 13 that are
9 not laid by you since about 2001?

10 MR. WARMAN: In fact I've just listed
11 two of them.

12 MS KULASZKA: Yes. Are there any
13 more to your knowledge?

14 MR. WARMAN: I believe there are.

15 MS KULASZKA: Do you know the names
16 of them?

17 MR. WARMAN: No, I don't but it is
18 within my belief and I have reason to believe there are
19 other complaints.

20 MS KULASZKA: What's the basis of
21 your belief?

22 MR. WARMAN: Because I'm lead to
23 believe there are least two other complaints dealing
24 with homophobic content on the Internet that were not
25 filed by me.

1 THE CHAIRPERSON: I want to be clear
2 we're talking about complaints that have been filed
3 with the Commission, at whatever stage they may be at
4 this time.

5 MR. WARMAN: Yes.

6 THE CHAIRPERSON: The one that has
7 already -- hearing has even started with that one.

8 MR. WARMAN: But, again, that
9 question is largely more within the knowledge of the
10 Commission than me personally.

11 MR. VIGNA: I know of another one,
12 Mr. Chair. One is with synonym, Beaches way versus
13 some individual. Beaches voice.

14 THE CHAIRPERSON: Another one that's
15 been referred to the Tribunal, I believe.

16 MR. VIGNA: One or two beaches one.

17 THE CHAIRPERSON: That are before the
18 Tribunal and question related more broadly to the
19 Commission. Whether the Commission is processing other
20 complaints. You are not on the stand here so....

21 MS KULASZKA: Mr. Warman, I want to
22 go back to HR--3 tab A. These pages aren't numbered.
23 I'm just counting them. I counted six pages in tab A,
24 document entitled the Canadian Human Rights Commission.

25 MR. WARMAN: I do, at the top.

1 MS KULASZKA: And at the bottom there
2 is a box that says "Canadian Human Rights Commission
3 letter November 8, 2006".

4 You look in that box it states:

5 "The titles in themselves of the
6 literature announced in the
7 website, it is roughly submitted
8 indicate prima facie the
9 literature found can be
10 considered to be a violation of
11 section 13."

12 Is that also your position?

13 MR. WARMAN: I believe my position
14 has been enumerated during this hearing and in the body
15 of my complaint.

16 MS KULASZKA: If you could just
17 answer the question it makes things so much simpler.

18 MR. WARMAN: I just did answer your
19 question. But if you need additional information, my
20 position is that I'm seeking a cease and desist order
21 under section 13, paragraph 113 -- cease and desist
22 order under sub (1) of the Canadian Human Rights Act
23 similar to that found at paragraph 113 sub (1) of the
24 Kyburz decision on the basis all of the evidence that I
25 have submitted or that has been tendered at this

1 hearing.

2 MS KULASZKA: Okay. We'll go back to
3 page 1. This contains the entire website to your
4 knowledge; is that true?

5 MR. WARMAN: It depends on how
6 broadly FreedomSite -- postings that I believe are also
7 present on the FreedomSite, no.

8 MR. VIGNA: Just to be clear, it
9 doesn't contain the links. Most of the website. Some
10 might not be there but most of it is there. The links
11 are not there, that's for sure.

12 THE CHAIRPERSON: You mean what
13 follows when you click on the links. The content that
14 lies underneath or at the other end of the links is not
15 there?

16 MR. VIGNA: There might be one small
17 portion might not be there, but fundamentally it's the
18 entire website.

19 THE CHAIRPERSON: Let's be clear.
20 I'll just say for the record I know what we're talking
21 about. Towards the end of tab C there's a whole number
22 of links, anything that's underlined I presume is the
23 link, as is often the case on web pages, right.

24 So if one were to click -- I'm
25 looking at something here about free speech monitor,

1 Doug Christie protests -- if I were to click on that I
2 would get the whole article presumably.

3 MR. VIGNA: But we don't have it.

4 THE CHAIRPERSON: You don't have it,
5 I know.

6 MS KULASZKA: Okay. So basically if
7 you can click on a link but the underlined document is
8 not included in this binder, then you are not relying
9 upon it, correct, because it's not before the Tribunal?

10 MR. WARMAN: I'm not personally, no.

11 I should perhaps be more explicit.

12 In the context an explicit hate message, any material I
13 already indicated as headings, so on, again will go to
14 the question of the nature of the website as a whole.

15 The first page is, "Welcome to
16 Canada's Freedom Resource Centre. Would you agree the
17 primary word there is "freedom" --

18 MR. WARMAN: Well it's 1 word among
19 six.

20 MS KULASZKA: Correct. And it's
21 called the Freedom site. So the discussion about our
22 freedoms in Canada is a primary concern of the website,
23 would you say.

24 MR. WARMAN: That may be what
25 Mr. Lemire believes it to be. That's not my personal

1 belief.

2 MS KULASZKA: There are a lot of
3 articles about freedom of speech, attacks on freedom of
4 speech, laws against freedom of speech; is that
5 correct?

6 MR. WARMAN: That is not my personal
7 belief.

8 MS KULASZKA: You've called this a
9 white supremacists site, I believe, and a neo-Nazi
10 site. Do you see any swastikas on this site?

11 MR. WARMAN: I do not recall having
12 seen any within this binder.

13 MS KULASZKA: Are there any articles
14 which promote national socialism?

15 MR. WARMAN: I believe that there is
16 material that is consistent with the beliefs that are
17 expressed within the World War II era, national
18 socialist regime also within the milieu of white
19 supremacism.

20 MS KULASZKA: Would you agree
21 national socialism is a movement that died in Germany
22 in 1945?

23 MR. WARMAN: And that there are
24 subsequent efforts to revive it or maintain its beliefs
25 under the heading neo-Naziism, that I would agree with.

1 MS KULASZKA: Many of the people
2 you've laid a complaint against are quite young, aren't
3 they?

4 MR. WARMAN: There appears to be a
5 variety, as far as I can tell.

6 MS KULASZKA: What would their age
7 range be?

8 MR. WARMAN: I would guesstimate
9 between 18 and 65 or 70, although for some of them it's
10 hard to tell.

11 MS KULASZKA: The bulk of them are
12 probably in their twenties, correct?

13 MR. WARMAN: Some of them I have no
14 knowledge as to their age, so I can't really say.

15 MS KULASZKA: Would they appear to be
16 in their twenties? You've seen them in the hearings.

17 MR. WARMAN: A number of them.

18 MS KULASZKA: Mr. Warman, these are
19 people born well after the war. The only thing they
20 know about Naziism is what they see in Hollywood films.

21 MR. WARMAN: That sounds like a
22 rhetorical question and you would have to ask them, of
23 course.

24 MS KULASZKA: Most of these people
25 are concerned about current issues, namely attacks on

1 free speech and immigration, correct?

2 MR. WARMAN: Madam, again, it sounds
3 like rhetorical question and you would have to ask them
4 what their beliefs are.

5 MS KULASZKA: Let's look on the
6 Freedom site. Those are probably the two themes of the
7 Freedom site, freedom of speech and immigration.

8 Without using labels that you use,
9 those are the two topics that are -- that concern the
10 Freedom site, correct?

11 MR. WARMAN: That is not my belief.

12 MS KULASZKA: The first two speeches
13 deal primarily with this hearing. There are various
14 links to documents about the hearing itself. Let's go
15 onto the next page, the Canadian Human Rights
16 Commission. I think that's page 6. That's about this
17 case.

18 The next page, the next page. The
19 page I am now, newest files on the Freedom site. I
20 don't think you highlighted any of these articles,
21 correct, to the end of this tab, except near the end?
22 The Wolfgang Droege memorial DVD, correct? You
23 highlighted that title?

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

25 MS KULASZKA: And have you seen that

1 DVD? Have you watched the video?

2 MR. WARMAN: No, I have not.

3 MS KULASZKA: If you turn the page
4 you highlighted the words "Read entire obituary by Paul
5 Fromm". Did you read that?

6 MR. WARMAN: No, I did not.

7 MS KULASZKA: Turn to tab B. These
8 are links on the Freedom site, none of these links have
9 been produced, correct? They're simply outlining the
10 fact that these links exist?

11 MR. WARMAN: Yes, as I recall.
12 Certainly in terms of the first page no material
13 that -- well, some Heritage Front stuff has been
14 produced but not -- Heritage Front that was present on
15 the Freedom site website or its message board.

16 MS KULASZKA: On the next page you
17 highlighted "Columnists include people like Doug
18 Collins". I think that's been dealt with.

19 You highlighted the word "exposed",
20 and underneath it says "investigative" and --
21 censorship organizations in Canada.

22 Among the organizations -- Congress,
23 the B'Nai Brith, Simon Wiesenthal, and the Canadian
24 Security Internet service, major section on Canada's
25 Anti-Racist Action recently added."

1 Did you look at that section and read
2 the articles therein?

3 MR. WARMAN: I may have, but if I did
4 I certainly don't recall. It would have been some time
5 ago.

6 MS KULASZKA: And they are not
7 included in the case, correct?

8 MR. WARMAN: No, they are not.

9 MS KULASZKA: The Freedom Store under
10 tab C, I believe we've gone through almost all of this
11 previously. I think it was included actually in the
12 previous binder. Maybe we could turn to the end of the
13 store section. We went through the book catalog,
14 Heritage Front videos. Audio catalog, that's been gone
15 through.

16 Let's turn to that part of tab C
17 which is entitled "History of the Freedom site". I
18 think you highlighted the timeline.

19 THE CHAIRPERSON: Can you point it
20 out to me?

21 MS KULASZKA: It's not numbered so
22 it's very hard to -- I'll count the pages up.

23 THE CHAIRPERSON: What's the top
24 right corner say?

25 MS KULASZKA: It's just a big

1 headline, "History of the Freedomsite" and underneath
2 it says "timeline" and it's got several columns going
3 from 1996 to 1999. It's in tab C, almost in the
4 middle. It's about 26 pages in. It's the Freedomsite
5 store.

6 And if you look at the top, just
7 follow along those URL, store, store, audio,
8 miscellaneous, then it turns to "free speech dead".
9 That the where it starts.

10 Now, in this section the only portion
11 you highlighted was the timeline. You didn't highlight
12 any of the articles that seem to be posted there and I
13 gather you are not relying upon them and they are not
14 produced, correct?

15 MR. WARMAN: I believe so.

16 MS KULASZKA: Turning to the next
17 section is the Freedomsite mailing list and I think we
18 dealt with that. Just to go back to the history of the
19 Freedomsite. What are you relying upon when you
20 highlighted the timeline?

21 MR. WARMAN: The material within the
22 timeline itself in terms of the nature of the
23 Freedomsite, and also the relationship with Mr. Klatt,
24 and Mr. Fromm.

25 MS KULASZKA: Right below the

1 timeline:

2 "As of December 17th, 2006 the
3 Freedomsite has four thousand --
4 2,031 web pages, 2,005 graphics,
5 143 audio, video files."

6 Is that what it says there.

7 MR. WARMAN: That is what it states.

8 MS KULASZKA: Were you looking at the
9 Freedomsite in the year 2000 thereabouts.

10 MR. WARMAN: I've said again and
11 again, I can't remember when I actually started looking
12 at the website.

13 MS KULASZKA: When you did look at
14 the website did it seem to be a very, very large
15 website?

16 MR. WARMAN: It's an extensive
17 website. How large it was, I wasn't really paying much
18 attention.

19 MS KULASZKA: Proceeding on.
20 Freedomsite mailing list, which is about four pages on,
21 we've dealt with that. I think I've asked you about
22 Matthew Lauder. You've not included any of that in
23 this hearing. I proceeded through then -- I have asked
24 but that. Okay.

25 Proceed on to "Exposed".

1 THE CHAIRPERSON: Was that the top
2 right corner?

3 MS KULASZKA: The top it would say
4 "Exposed".

5 THE CHAIRPERSON: I see it.

6 MS KULASZKA: On this page you
7 highlighted "B'Nai Brith", "Simon Wiesenthal" and the
8 "Canadian Jewish Congress", correct?

9 MR. WARMAN: Yes.

10 MS KULASZKA: What is your submission
11 with respect to that?

12 MR. WARMAN: Well, my submission will
13 be at the end that I will make in closing arguments, so
14 I'm not sure whether this actually goes to that or what
15 my arguments are. But I believe that displays the
16 nature of the FreedomSite in attacking these groups,
17 and that the sentence below describes them as:

18 "Parasites who hang over the
19 government's pursestrings and
20 makes careers off the about
21 backs of honest Canadians who
22 are sick of the status quo."

23 MS KULASZKA: But you would agree
24 those three organizations you did highlight are very
25 prominent in free speech cases and they are always

1 intervening to uphold hate laws, correct?

2 MR. WARMAN: Well, we can quibble
3 about whether they are free speech or human rights
4 cases, but if you are willing to take either of those,
5 then yes. And not that they are all intervening but
6 they have intervened in the past in a number of cases.

7 MS KULASZKA: Correct. On the side
8 of upholding the law, correct?

9 MR. WARMAN: To the best of my
10 knowledge, that has been their positions.

11 MS KULASZKA: Did you click on any of
12 those links to read about B'Nai Brith Canada or the
13 Canadian Jewish Congress or Simon Wiesenthal?

14 MR. WARMAN: As I said, it's possible
15 I did, but if I did do so I don't recall what the
16 contents were.

17 MS KULASZKA: With Simon Wiesenthal
18 you did not highlight the whole thing, it concerns
19 their charitable status. Do you know what that is?

20 MR. WARMAN: Again, I don't recall
21 the contents of the articles.

22 MS KULASZKA: And you would agree
23 that Edmonton Police Service, Canadian Review
24 Committee, anti-racist activity, Canadian Security
25 Intelligence Service, are not Jewish organizations, are

1 they?

2 MR. WARMAN: Not to the best of my
3 knowledge.

4 MS KULASZKA: Proceeding on, the next
5 file is text library. Have you read any of these links
6 on this page and the next?

7 MR. WARMAN: It's possible, but not
8 that I recall.

9 MS KULASZKA: Do you know the
10 complete Canadian Human Rights Act from to 1989 is --

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

12 MS KULASZKA: I mention that before
13 of course this was included in a letter from the
14 Commission and stated that all of the titles would be
15 relied upon as prima facie evidence showing that they
16 violated -- that is not your position, I gather?

17 MR. WARMAN: I've already answered
18 that question a number of times, most recently about
19 five or 10 minutes ago.

20 THE CHAIRPERSON: Ms Kulaszka, I'm
21 mindful of the position he adopted in the past, dealt
22 with it in the first week. This is the position they
23 have now.

24 MS KULASZKA: Okay. I'll just
25 proceed.

1 The next section is picture library.
2 This goes on for 1, 2, 3, 4 pages. Did you look at any
3 of those photographs?

4 MR. WARMAN: I think it's likely over
5 the course of looking at the website I did, but if I
6 did I don't recall them, although I've seen -- I know
7 I've seen some of them. Whether it was on this website
8 or others, such as some of the David Duke photos.

9 MS KULASZKA: The first thing you
10 highlighted was the letters list, "Exposed" is a
11 fictional account. Did you look at that?

12 MR. WARMAN: Not that I recall.

13 MS KULASZKA: So you don't know what
14 it is?

15 MR. WARMAN: No, that's what I've
16 just told you, and I'm not relying on it. Other than
17 the title itself.

18 MS KULASZKA: We'll proceed onto the
19 next section, FreedomSite Search. You highlighted
20 that. Was there any reason?

21 MR. WARMAN: I don't recall
22 highlighting it but, if I did I would refer to the
23 section that says "Canada's most controversial
24 website".

25 THE CHAIRPERSON: I have not circled

1 anything on this page, Ms Kulaszka.

2 MS KULASZKA: Yes. Apparently we
3 were highlighting as he went along and he highlighted
4 the word "search".

5 THE CHAIRPERSON: Was this not the
6 search engine that was used to do the searches that
7 were in the other exhibit, HR-2? Is this it? Is this
8 the search engine that is used?

9 MR. WARMAN: I don't recall whether
10 it was that or whether there was a search engine built
11 into the forum.

12 MS KULASZKA: Search engine built
13 into the message board, correct.

14 MR. WARMAN: I've just indicated that
15 I don't recall exactly. But if I did mention search on
16 this page it was probably just describing the page
17 itself.

18 MS KULASZKA: The next section is
19 Site Map Full, Table of Contents. If you look at 1, 2,
20 3, 4, 5 pages in, near the bottom you highlighted the
21 title "Immigration Can Kill You: The Health Effects of
22 Canada's Mass Immigration Policy.

23 I think we've discussed that so it
24 was on the website, but you didn't produce it, correct?

25 THE CHAIRPERSON: Please point out

1 where --

2 MS KULASZKA: 1, 2, 3.

3 MR. WARMAN: At the bottom left it
4 states 5 of 22.

5 THE CHAIRPERSON: So where is the
6 article, The Health Effects? I see it.

7 MS KULASZKA: The bottom bullet.

8 THE CHAIRPERSON: Repeat your
9 question.

10 MS KULASZKA: I think we had
11 discussed this posting. It was referred to by Marc
12 Lemire in a posting which we have included about the
13 Immigration Can Kill You, the Health Effects of
14 Canada's Mass Immigration. You pointed out to the
15 Tribunal -- so in fact it was on the website, correct?

16 MR. WARMAN: That's what it appears
17 to indicate.

18 MS KULASZKA: But you have not
19 produced it, correct?

20 MR. WARMAN: Again, that's correct.

21 MS KULASZKA: How many of these
22 postings in this very extensive section would you have
23 looked at?

24 THE CHAIRPERSON: Meaning the
25 content, right?

1 MS KULASZKA: The content. Did you
2 click on each one of these and have a look at them,
3 stick to ones you highlighted for the Tribunal?

4 MR. WARMAN: I didn't take notes of
5 which ones I highlighted.

6 THE CHAIRPERSON: To be fair, did you
7 look at most or a few?

8 MR. WARMAN: No, very much would have
9 been a few, if any.

10 MS KULASZKA: If we can go onto the
11 next section. This may in fact be the last section, by
12 the looks of it. We'll go onto tab D.

13 You highlighted Marc Lemire's
14 constitutional challenge, Internet Censorship. Did you
15 indicate why that was highlighted?

16 MR. WARMAN: That's the title on the
17 page, I would guess.

18 MS KULASZKA: So you are not relying
19 on this? You are just pointing things out?

20 MR. WARMAN: Well, that would depend
21 on our closing arguments.

22 MS KULASZKA: Well, he's discussing
23 his constitutional challenge in this case, correct?

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

25 MS KULASZKA: Further on you

1 highlighted the lawyers involved, myself, Doug
2 Christie, Bernard Klatt as a witness and Paul Fromm as
3 an agent, correct, with two witnesses, Dr. Persinger,
4 Professor Donald Downs, correct?

5 MR. WARMAN: That's correct.

6 MS KULASZKA: Finally, I think near
7 the end of that section we come to the description of
8 Miss Karen Mock. Are you alleging she is anti-Semitic?

9 MR. WARMAN: Before we get there, I
10 did note as well the section on Bernard Klatt and
11 Mr. Fromm. I personally am not --

12 THE CHAIRPERSON: Sorry?

13 MR. WARMAN: I personally am not.

14 THE CHAIRPERSON: Are not what?

15 MR. WARMAN: Alleging that.

16 THE CHAIRPERSON: Okay, the
17 caricature --

18 THE REPORTER: I'm having some
19 mechanical difficulties. Could I have a few minutes?

20 THE CHAIRPERSON: Of course.

21 --- Off-record discussion

22 MS KULASZKA: Would you agree that
23 Dr. Mock wasn't targeted with the CV -- actually, all
24 the CVs were up, correct, for the expert witnesses?
25 Did you check that? Did you know that?

1 MR. WARMAN: No, I did not check
2 that.

3 MS KULASZKA: And actually Dr. Tsesis'
4 CV is still there. It's a link to a web page. I
5 believe it is the university where the CV is located.
6 Did you know that?

7 MR. WARMAN: No, I do not.

8 MS KULASZKA: Turn to tab E. I gather
9 you are just pointing out headlines here?

10 MR. WARMAN: As I recall.

11 MS KULASZKA: I think that takes us
12 to the end of the binder.

13 Go back to R-1. That's tab 9. This
14 is the matter we started with just before lunch. This
15 is a speech you gave to anti-racist action on July, 5,
16 2005, correct?

17 THE CHAIRPERSON: Yes.

18 MR. WARMAN: In the same vein as
19 previously, I wonder if she can establish some
20 relevance arguable to this case?

21 MS KULASZKA: This speech -- I
22 believe it's been used in other Tribunal hearings. But
23 what it's valuable for and what it indicates is the
24 uses to which this law is being put. In other words,
25 it's being used for political purposes.

1 He's explicitly stated that his
2 tactic is maximum disruption and he talks about how he
3 laid complaints. It's fun. Keeps people off balances,
4 forces them to respond.

5 And the terms of section 13, it means
6 someone who has a complaint laid against them, the
7 spirit of the law is to be remedial.

8 But in the case of Mr. Warman it is
9 not remedial. It goes to the effects of the law and
10 how the law can be used.

11 There is no means in the law to force
12 a complainant into settlement, into conciliation, into
13 mediation, and if someone is determined to use the law
14 in this way, then it is devastating to the respondent.

15 MR. WARMAN: First of all, that goes
16 to the whole question of mediation, conciliation, et
17 cetera, which has repeatedly been the subject of
18 discussion and indications that that is something that
19 you are not interested in hearing about.

20 Secondly, this goes explicitly to the
21 question of either section 41 objections under the Act,
22 complaints, which the respondents didn't make in this
23 case.

24 And, thirdly, it goes to the question
25 of the jurisdiction of the Commission and whether its

1 decision to refer a matter to this Tribunal is
2 appropriate or not, which again is the exclusive
3 jurisdiction of the Federal Court to review.

4 Fourth, it constitutes simply bad
5 character evidence that she is attempting to introduce
6 that has no bearing to matters that are before this
7 Tribunal.

8 And there's a fifth, but I seem to
9 have run dry. So perhaps I'll leave it at that.

10 MS KULASZKA: It doesn't go to the
11 bad character of Mr. Warman. Some people would applaud
12 what he says here, and they would say this proves he is
13 a great human rights activist and he is doing a good
14 job, and there are lots of articles that say he is a
15 hero. So he's wrong about that.

16 This speech was given in 2005. The
17 complaint in this case was laid in 2003. And I believe
18 it had already been referred to a tribunal by the time
19 the speech is given.

20 THE CHAIRPERSON: Ms Kulaszka, first
21 of all, I'm somewhat familiar with the content of this
22 material because it's been mentioned in other decisions
23 of the Tribunal. This is not new. But I don't want to
24 confuse the issues. I don't want to waste time on
25 this, Ms Kulaszka.

1 You've made the point of what the
2 purpose it serves.

3 On the mediation question,
4 Mr. Warman, I don't think I'm going to get into the
5 details of the mediation. It's a broad sense of how --
6 mediation is not something that seems to be occurring
7 in these cases. I sense that out of that comment from
8 Ms Kulaszka.

9 With regard to section 41 and the
10 jurisdiction of the Commission, that's an objection
11 that's been raised from day one by the Attorney
12 General, by Mr. Warman. I've explained my position on
13 that point and I'm reiterating my position on that
14 point without repeating word-for-word what I said.

15 Now, Ms Kulaszka, I hear the purpose
16 for which you want to bring this into evidence. Just
17 go ahead and bring it. I don't want to go into the
18 details. Don't make it look in any way like you are
19 trying to attack the character of Mr. Warman. That
20 goes no where in this discussion.

21 If your point is simply that, what
22 you indicated earlier, that the effect of how section
23 13 is being used, just stick to that, please. We've
24 fallen behind on the schedule, as you told me earlier.
25 So we can't afford to lose this time. Our experts are

1 coming in first thing in the second round, first day of
2 the second round we have experts coming in. We have to
3 be able to get done through the merits of the complaint
4 by the end of this week.

5 MS KULASZKA: I hope we'll be done in
6 about half an hour, then maybe we could deal with that
7 motion.

8 MR. VIGNA: Just for the record, I'll
9 be objecting on the pleadings, but not at this point.

10 THE CHAIRPERSON: I understand,
11 Mr. Vigna.

12 MR. VIGNA: I just like to mention it
13 every time for the record.

14 MS KULASZKA: I would like to
15 produce, then, pages 1 to 16.

16 THE CHAIRPERSON: If it suits your
17 purpose to just enter these pages and not submit them
18 to the witness, just have them there, then you can
19 argue them on that basis, that would be even more
20 efficient.

21 MS KULASZKA: Mr. Warman, are you
22 content for the words of this speech to stand on their
23 own?

24 THE CHAIRPERSON: Is it your speech,
25 Mr. Warman, first of all?

1 MR. WARMAN: Pages 1 to 16 of this
2 tab?

3 MS KULASZKA: Correct.

4 MR. WARMAN: I believe are the
5 speech. But I think the date -- just for the record I
6 think the date may have been changed.

7 THE CHAIRPERSON: You mean the date
8 was not 6th of July?

9 MR. WARMAN: I just can't remember
10 what the exact date was. There was some change that
11 had transpired. It would have been within a couple of
12 months either way.

13 THE CHAIRPERSON: Plus or minus
14 months, two months.

15 I think I can say, given your
16 acknowledgement this is your speech, I can say it for
17 the record, if this helps you, Ms Kulaszka, that I
18 don't consider it merely produced but that the content
19 of what's said there was said by Mr. Warman at the time
20 of the speech.

21 MS KULASZKA: Yes, that's what I
22 gather from what he said.

23 MR. WARMAN: Only -- sorry, there is
24 only one other thing I should mention. None of the
25 images were actually shown because there was no Power

1 Point.

2 THE CHAIRPERSON: So there's a
3 suggestion in this transcript that images are being
4 shown but they were not shown, in fact.

5 MR. WARMAN: Exactly.

6 MS KULASZKA: Mr. Warman, on the next
7 page, page 17 there was a letter written to the
8 Montreal Mirror regarding anti-racist action. The last
9 paragraph you stated that:

10 "They deserved an apology for
11 unsubstantiated allegations of
12 serious criminality."

13 Are you aware that since the
14 complaint in this case was laid against.

15 THE CHAIRPERSON: , he has been
16 attacked six times by the ARA.

17 MR. WARMAN: A, that's not exactly
18 what the letter is about, and, B, no I'm not aware.

19 THE CHAIRPERSON: I'm treating only
20 up to page 16 produced. I think the other materials
21 may need to be produced by your own witnesses, Ms
22 Kulaszka. I didn't hear the witness recognize it.

23 MS KULASZKA: Do you recognize that
24 letter on page 17?

25 MR. WARMAN: I do, but it's simply

1 that it's not as described.

2 THE CHAIRPERSON: It's your letter,
3 signed by you?

4 MR. WARMAN: Yes, it is.

5 THE CHAIRPERSON: Sorry.

6 MS KULASZKA: What is the letter
7 about?

8 MR. WARMAN: The letter is actually
9 about an article that the paper wrote about a Montreal
10 individual involved in this milieu that took as fact a
11 number of her assertions that I believe were -- I
12 believe the credulity showing -- believing what was
13 told to the journalist was unwarranted.

14 MS KULASZKA: Could we produce that?

15 THE CHAIRPERSON: Yes. Mr. Warman
16 has recognized it as his letter.

17 MS KULASZKA: Part of -- we could
18 just put both pages in, 17 and 18.

19 THE CHAIRPERSON: Although page 17 is
20 really relevant.

21 MS KULASZKA: On page 19 is an
22 article, "Zundel Foes Hurl Eggs, Red Paint at his
23 House". It's dated November 1993.

24 Were you present at that
25 demonstration?

1 MR. WARMAN: Not that I recall.

2 MS KULASZKA: I think at one point
3 you had stated at one point you were present at the
4 demonstration in the early nineties. Do you think it
5 was that, in front of the Zundel house?

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

7 MS KULASZKA: Turning to page 20.
8 Have you ever seen that poster?

9 THE CHAIRPERSON: Mr. Warman, do you
10 remember the article?

11 MR. WARMAN: I don't recognize the
12 article.

13 THE CHAIRPERSON: Is there any great
14 objection? It's an article from the Globe & Mail.

15 MR. VIGNA: Not at this point but --
16 it's always the same thing. I won't repeat myself.

17 THE CHAIRPERSON: I understand. It
18 looks clearly to be like an article from the Globe &
19 Mail.

20 MS KULASZKA: So we'll produce that.

21 THE CHAIRPERSON: We might as well
22 produce that.

23 MS KULASZKA: Okay, page 20. Have
24 you ever seen this poster?

25 MR. WARMAN: No, I have not.

1 MS KULASZKA: You haven't?

2 MR. WARMAN: No, I have not.

3 THE CHAIRPERSON: I don't think this
4 falls in the same category, so we won't produce it.

5 MS KULASZKA: We'll skip over the
6 next page because it's just an article about the same
7 demonstration.

8 THE CHAIRPERSON: Skip it. Not
9 produced.

10 MS KULASZKA: We'll go over to page
11 23. Are you aware of the actions of anti-racist action
12 in Toronto that shut down a business because they
13 believed it was racist?

14 MR. WARMAN: Not in those terms. I'm
15 aware that there were protests at some point against
16 this store run by that individual, but I've never seen
17 this article.

18 MS KULASZKA: Can we produce that?
19 He's aware of the incident and it's an article from The
20 Toronto Star.

21 MR. WARMAN: Sorry, I should be
22 specific. I'm not aware of the specific incident. I'm
23 aware there were some sort of protest or protests.

24 THE CHAIRPERSON: Do you object to
25 it, Mr. Warman?

1 MR. WARMAN: Just on the basis if I
2 don't recognize it, she should be the one entering them
3 through the respondent, should be through their own
4 witnesses.

5 THE CHAIRPERSON: Since the incident
6 is not recognized by the complainant, then I won't
7 produce that.

8 MS KULASZKA: We'll proceed to page
9 24. Have you ever seen this comment before? It's a
10 comment in the Toronto Sun by Bob McDonald, used to be
11 a columnist for the Sun?

12 MR. WARMAN: No, I haven't seen this
13 article.

14 THE CHAIRPERSON: I also note half of
15 it is cut off.

16 MS KULASZKA: It goes to the next
17 page. It's one of these very long articles.

18 Turn to page 26. This was an
19 incident where three people, they were stabbed in a
20 subway by members of anti-racist action. They thought
21 they were racists. In fact they weren't. Were you
22 aware of that incident?

23 MR. WARMAN: No, I'm not. I've never
24 seen this article.

25 MS KULASZKA: Turn to page 27.

1 You've seen this commentary by Dick Chapman. It's
2 concerning the funding of anti-racist action.

3 MR. WARMAN: No, I have not.

4 MS KULASZKA: Turn to the page 28.

5 This was an article in the Toronto Sun and ARA
6 suggested that the pizzeria be torched because of
7 alleged racism. Were you aware of this article?

8 MR. WARMAN: No, I am not.

9 MS KULASZKA: Page 30. This is an
10 article from Now Magazine, 1997. It concerns
11 controversy over printing of the Canadian Human Rights
12 Commission poster. It was called "Stop the Hatred."
13 It listed anti-racist action in its -- on the poster.
14 Have you seen that article before?

15 MR. WARMAN: No, I have not.

16 MS KULASZKA: Were you aware of that
17 incident?

18 MR. WARMAN: No I was not.

19 MS KULASZKA: And on page 31 is a
20 copy of the poster. Have you seen that poster before?
21 It's printed by the Canadian Human Rights Commission.

22 MR. WARMAN: I don't know if I've
23 seen this poster. I've seen an anti-hate poster put
24 out by the Commission that may be similar, but I'm not
25 convinced that it's that one.

1 THE CHAIRPERSON: It's highly
2 illegible.

3 MS KULASZKA: It was a very big
4 poster.

5 THE CHAIRPERSON: There's something
6 right in the middle of it. Looks like a snake or
7 something.

8 MS KULASZKA: It's some sort of
9 graphic.

10 THE CHAIRPERSON: It's illegible. I
11 can just see "Stop the Hatred".

12 MS KULASZKA: If I could turn to page
13 32. This is publication called "On the Prowl". It's a
14 news bulletin of anti-racist from the spring of 1997.

15 Did you ever receive any of the
16 publications of anti-racist action called On the Prowl.

17 MR. WARMAN: I've seen some of them.
18 I don't believe that I've seen this one.

19 MS KULASZKA: Look at that front
20 page. You've never seen this one?

21 MR. WARMAN: Not as I recall, no.

22 MS KULASZKA: You can see there's a
23 graphic. It says, "Beating Nazis Tooth For a Tooth,
24 Eye For an Eye". Would you say that's their
25 philosophy?

1 THE CHAIRPERSON: Yes, sir?

2 MR. WARMAN: Just, again, relevance.

3 The question of relevance.

4 THE CHAIRPERSON: Ms Kulaszka?

5 MS KULASZKA: We're bringing it up
6 because since the complaint was laid, we'll be bringing
7 evidence that my client has been attacked numerous
8 times by the ARA. He was never targeted before, but he
9 is now.

10 And these groups have their belief
11 system and they believe that violence is justified;
12 that if you are a Nazi, if that is the way you are
13 classified, if you are a hater, then violence is
14 justified. And beating Nazis tooth for a tooth, eye
15 for an eye, seems to be their philosophy.

16 I was just asking Mr. Warman if he
17 had been aware of that since he had given a speech to
18 them.

19 THE CHAIRPERSON: Well, Mr. Warman, I
20 don't know if he's able to answer for the ARA. He's
21 not. I see him nodding his head.

22 However, as to the document itself, I
23 mean, you can produce it. If it's recognized by
24 Mr. Warman as being -- appearing to be the bulletin.

25 MR. WARMAN: I've already indicated I

1 haven't seen it before.

2 THE CHAIRPERSON: Ms Kulaszka?

3 MS KULASZKA: We'll proceed then to
4 the next page. It's hard to see but it's page 34 at
5 the bottom. Have you ever seen this poster before?

6 MR. WARMAN: No, I have not.

7 MS KULASZKA: Turning to the next
8 page, 35. Have you ever seen this poster before?

9 MR. WARMAN: Only because Mr. Fromm
10 brought it to the previous hearing.

11 MS KULASZKA: No, I mean, outside of
12 these hearings.

13 MR. WARMAN: No, I have not.

14 MS KULASZKA: Will you turn to page
15 36. This is an article that appears in an Ottawa
16 newspaper. It goes onto page 37 and there's a further
17 article from the same publication, different date. It
18 goes to page 39. Are you aware of these articles?

19 MR. WARMAN: No, I'm not.

20 MS KULASZKA: Turn to page 40. This
21 was a pamphlet. Have you ever seen that pamphlet
22 before?

23 MR. WARMAN: No, I have not.

24 MS KULASZKA: And on page 41 is a
25 photograph of a protest. It says, "Burn Zundel Down".

1 Same on page 42, and on page 43 these were
2 demonstrations in front of his house.

3 When you attended the demonstration
4 did you ever see such signs?

5 MR. WARMAN: No, I did not.

6 MS KULASZKA: On page 44 there's
7 another article, "Eatery Stormed". Are you familiar
8 with that article?

9 MR. WARMAN: No, I'm not.

10 THE CHAIRPERSON: So that goes down
11 to only documents 1 through 18 -- sorry, and the Globe
12 article that followed have you produced. Page 20 and
13 onwards I think have not been produced.

14 MS KULASZKA: It just goes up to page
15 19, correct, 1 to 19.

16 THE CHAIRPERSON: Yes, 1 to 19 -- no,
17 is 19 part of --

18 MS KULASZKA: Yes, it was produced.

19 THE CHAIRPERSON: It was part of 18?

20 MS KULASZKA: Yes, I think it was 1
21 to 19 has been produced.

22 Have you attended any ARA protests at
23 all.

24 MR. WARMAN: Yes, I believe I've
25 already indicated. Well, sorry, I should be more

1 specific. I have attended protests at which
2 anti-racist action were present among other groups.

3 MS KULASZKA: Where was that?

4 MR. WARMAN: There was one in
5 Toronto, two in Toronto that I'm aware of.

6 MS KULASZKA: Where?

7 MR. WARMAN: One was at the
8 courthouse on University and the other one was in
9 Cabbagetown near Mr. Zundel's residence.

10 MS KULASZKA: So the first one was
11 probably the Heritage Front hearing. There was a big
12 demonstration then, I think. That would be the early
13 nineties, correct?

14 MR. WARMAN: As I recall, yes.

15 MS KULASZKA: The second, would that
16 be the demonstration in front of Gary Shipper's
17 apartment or house?

18 MR. WARMAN: No, it wouldn't.

19 MS KULASZKA: In front of Zundel's
20 house.

21 MR. WARMAN: I think that's more
22 likely. In fact, that is likely.

23 MS KULASZKA: Do you know what year
24 that would be?

25 MR. WARMAN: No. The early nineties.

1 MS KULASZKA: I think that's it.

2 Thank you.

3 THE CHAIRPERSON: Mr. Vigna, you said
4 you that wanted to do a bit of redirect.

5 MR. VIGNA: Yes.

6 MR. WARMAN: Mr. Chair, if I could
7 have just a moment to discuss something with --

8 THE CHAIRPERSON: Yes.

9 (DISCUSSION OFF THE RECORD)

10 THE CHAIRPERSON: Is your other
11 witness available?

12 MS KULASZKA: Yes, he's available,
13 but maybe we could deal with that motion first.

14 MR. WARMAN: There is an issue with
15 regard to tab 7 of R-1.

16 THE CHAIRPERSON: Yes.

17 MR. WARMAN: Pages 1 to 6.

18 THE CHAIRPERSON: Yes.

19 MR. WARMAN: With regard to how those
20 documents came into the possession of the respondent,
21 because it is my belief that unless they can provide a
22 suitable explanation that those documents came into
23 their possession unlawfully. So I will be asking for
24 some sort of undertaking.

25 THE CHAIRPERSON: QuickLaw at the

1 bottom.

2 MR. WARMAN: Sorry, tab 8, excuse me.

3 THE CHAIRPERSON: If going to
4 QuickLaw is unlawful --

5 MR. WARMAN: You never know.

6 THE CHAIRPERSON: I haven't looked at
7 these documents at all.

8 MR. WARMAN: I know. I raised it
9 simply because Ms Kulaszka is an officer of the court
10 and, as such, I would appreciate some explanation as to
11 how these documents came to be in her possession and
12 how it is that she sought to bring them before the
13 Tribunal.

14 And, again, I'm quite happy to take
15 any undertaking that she can give with regard to a
16 reasonable explanation as to how those documents came
17 into her possession.

18 MS KULASZKA: What is he talking
19 about?

20 THE CHAIRPERSON: Pages 1 through 6
21 of tab 8.

22 MR. WARMAN: And I note I raised this
23 matter with Ms Kulaszka before lunch, specifically.

24 THE CHAIRPERSON: So you would
25 like -- because I was going to suggest can you discuss

1 it with her, but you have raised it with her.

2 MR. WARMAN: I simply brought it to
3 her attention.

4 THE CHAIRPERSON: Is it something
5 that needs to be addressed on the record at this point
6 before your re-direct?

7 MR. WARMAN: I'm happy to wait to
8 listen to any explanations.

9 THE CHAIRPERSON: Much prefer not to
10 interrupt your evidence, if I could, at this point.

11 Ms Kulaszka, consider what's been
12 said by Mr. Warman, please, and maybe you can provide
13 me your input at the end?

14 MS KULASZKA: Yes. These documents
15 aren't before the Tribunal.

16 THE CHAIRPERSON: Well, two issues.
17 Does she intend to use them, is that one? And, two, a
18 general question, how did she come by that. Could that
19 not be done between counsel? And I'm including you in
20 that, Mr. Warman.

21 MS KULASZKA: Considering they are
22 not in front of the Tribunal, I don't think it should
23 be dealt with in --

24 MR. WARMAN: Mr. Chair, my concern is
25 that is a bit of -- it's a roundabout effort to avoid

1 someone's duties as an officer of the court that sought
2 to place these documents that were brought here, that
3 were put within a binder, that were put before this
4 Tribunal.

5 Whether they were actually entered or
6 not -- I'm quite willing to let the matter lie until
7 tomorrow on the assumption that Ms Kulaszka, as an
8 officer of the court, will provide a good faith
9 explanation and an undertaking then I will raise it, if
10 necessary, tomorrow.

11 THE CHAIRPERSON: Fine. Okay. But
12 the point that I raise -- I don't even know what the
13 issue is with these documents. I don't want to know
14 right now. But I'm not quite sure what the concern is.
15 I haven't looked at them. I just see a bunch of white
16 sheets with writing on them. I'll let that be worked
17 out amongst yourselves.

18 In the meantime, Mr. Vigna, please
19 proceed.

20 RE-DIRECT EXAMINATION BY MR. VIGNA

21 MR. VIGNA: I would like you to look
22 at the binder --

23 MR. WARMAN: Sorry, if you can give
24 me one moment, please. Yes, thank you.

25 MR. VIGNA: Look at the green binder

1 which is the one -- the FreedomSite website.

2 THE CHAIRPERSON: HR-3.

3 MR. VIGNA: You were asked in
4 re-examination going tab per tab --

5 THE CHAIRPERSON: In
6 cross-examination.

7 MR. VIGNA: In cross-examination,
8 going tab per tab, whether such and such would be a and
9 if you were relying it on. What I would like you to do
10 is to look at the tab for yourself over all and then
11 tell us what flavour you get from the website as a
12 whole once you take every single tab, a bit like a
13 puzzle, taking every piece of the puzzle together, in
14 terms of the contents as a whole and not in a dissected
15 manner.

16 THE CHAIRPERSON: Ms Kulaszka?

17 MS KULASZKA: I would object to that.
18 Part of the problem with Mr. Warman's testimony is he
19 keeps talking about context, but they never brought an
20 expert here to explain context. And in this case, they
21 are trying to use Mr. Warman as an expert at this
22 point. They should have brought an expert to give this
23 type of testimony.

24 THE CHAIRPERSON: That's a good
25 argument against his answer, but I don't think it

1 prevents him from making his answer. Go ahead.

2 MR. WARMAN: I believe that the
3 materials that are contained in HR-3, when looked at in
4 their entirety, are indicative of the fact, of the
5 nature of the freedomsite.org as belonging within the
6 milieu of white supremacism and neo-Nazis.

7 MR. VIGNA: In that same example, if
8 you look, for example, at tab A, page 6, the second
9 last page, you see a picture of an individual there.

10 THE CHAIRPERSON: Tab A, second last
11 page. Yes?

12 MS KULASZKA: Picture of an
13 individual there.

14 MR. WARMAN: I do.

15 MS KULASZKA: And the name underneath
16 the picture?

17 MR. WARMAN: Yes, it's Wolfgang
18 Droege. Mr. Droege was a convicted terrorist who
19 attempted to -- who was involved in the attempted
20 mercenary takeover of the Caribbean island.

21 Among a variety of other things, he
22 was the predecessor or a pre-leader of the Heritage
23 Front before.

24 THE CHAIRPERSON: . According to
25 Mr. Blais --

1 MS KULASZKA: I object. He's not an
2 expert in the Heritage Front.

3 MR. WARMAN: According to the
4 judgment --

5 THE CHAIRPERSON: Hold on, there's an
6 objection.

7 MS KULASZKA: Mr. Warman isn't an
8 expert in the Heritage Front.

9 THE CHAIRPERSON: But if he has
10 knowledge of something. I'm not an expert on, what can
11 I say, the Conservative party of Alberta, but I know
12 that Mr. Klein was the head of that party. How does it
13 prevent him from drawing that conclusion if he has
14 knowledge of it?

15 MS KULASZKA: Because all he's doing
16 is basically labeling him, and I just went through this
17 with him. None of this is in front of the Tribunal.
18 The only thing that's in front of him at the Tribunal
19 is his picture.

20 THE CHAIRPERSON: More important
21 objection would be, how is it something that was raised
22 in cross-examination? I thought I already had this in
23 evidence in-chief. Mr. Warman already testified his
24 understanding that Mr. Droege -- and excuse me if I'm
25 not pronouncing it right -- was the former leader of

1 the Heritage Front. There was also mention made, I
2 believe, in the Blais decision to that effect.

3 MR. VIGNA: I'll rephrase my
4 question, Mr. Chair. The question is in relation to
5 the series of questions in cross-examination regarding
6 bits and pieces looked at in terms of the website
7 versus the site as a whole.

8 And perhaps, Mr. Warman, you can give
9 us quickly some specific reference to the website as a
10 whole in terms of --

11 THE CHAIRPERSON: I think it might be
12 helpful if you reference exactly the area of
13 questioning in cross-examination to which each answer
14 relates on the part of Mr. Warman. That way we'll have
15 less confusion on this issue.

16 MR. VIGNA: In tab B, Mr. Warman, you
17 were asked, links on the Freedom site.

18 MR. WARMAN: Yes.

19 MR. VIGNA: Tab B. You were asked in
20 cross-examination about whether these links, whether
21 you had gone to them or not, and what you knew about
22 them.

23 Now, I understand from your testimony
24 that you didn't go on these links specifically, but if
25 you look at the links referred to, is there any

1 knowledge you have about these four links in terms of
2 their content, or at least what they represent?

3 MR. WARMAN: Well, I've been to
4 the --

5 THE CHAIRPERSON: Hold on.

6 MS KULASZKA: I think this was
7 covered in-chief.

8 THE CHAIRPERSON: I think this was
9 covered in-chief.

10 MR. VIGNA: I'll move on.

11 THE CHAIRPERSON: You've covered a
12 lot of these points.

13 MR. VIGNA: You were asked in
14 cross-examination about tab 17, WHOIS.

15 THE CHAIRPERSON: Tab 17 of.

16 MR. VIGNA: HR-1. I'm looking for a
17 document, Mr. Chair. In tab 7-E, F.

18 THE CHAIRPERSON: Did we forget about
19 17?

20 MR. VIGNA: Yeah.

21 THE CHAIRPERSON: Hold on a second.
22 7-E, 17 or E.

23 MR. VIGNA: 7-E. 7-E.

24 THE CHAIRPERSON: The one that says
25 "Before 1840".

1 MR. VIGNA: It's that one but the tab

2 F.

3 THE CHAIRPERSON: So 7-F.

4 MR. VIGNA: Do you see that,

5 Mr. Warman?

6 MR. WARMAN: I do.

7 MR. VIGNA: You see the second

8 paragraph?

9 MR. WARMAN: The one that begins
10 "contrary" or the one that begins "In December"?

11 MR. VIGNA: "In December".

12 MR. WARMAN: I do.

13 MR. VIGNA: There's a correlation
14 between that and the document that follows.

15 MR. WARMAN: Between it and 7-G?

16 MR. VIGNA: The letter that was an
17 enclosure with the letter, I believe.

18 MR. WARMAN: Yes.

19 MR. VIGNA: In terms of paragraph 2,
20 it says:

21 "In December 2000 Marc Lemire
22 assisted an individual he had
23 met in the United States to
24 register this domain. Upon
25 receiving the updated complaint

1 where it was alleged this name
2 appeared as the owner Mr. Lemire
3 followed the standard process to
4 correct an inaccurate WHOIS data
5 through ICANN."

6 Were you given the name of the
7 individual in question?

8 MR. WARMAN: The individual that was
9 mentioned in the first sentence, no, I have never been
10 given that information nor any other information,
11 whether on discloser or otherwise, in terms of
12 Mr. Lemire's acknowledged involvement with the website.

13 MR. VIGNA: Tab 2 you were asked in
14 cross-examination about The International Jew.

15 THE CHAIRPERSON: Tab 2 of --

16 MR. VIGNA: HR-2. And you were
17 confronted -- I won't bring you to the specific
18 documents about this book being in the library or at
19 the university. Do you recall those tabs?

20 MR. WARMAN: I do.

21 MR. VIGNA: In terms of this
22 literature, The International Jew, do you know if it
23 has been the object of a judicial determination by the
24 Tribunal. And if so, which one?

25 MR. WARMAN: Yes. It was involved or

1 it was entered as an exhibit in the Bahr and Western
2 Canada For Us case. Bahr being B-A-H-R.

3 MR. VIGNA: And what was the outcome
4 in terms of The International Jew and the determination
5 by the Tribunal?

6 MR. WARMAN: The determination was
7 that the material, the exhibits that had been tendered
8 constituted hate messaging and a permanent cease and
9 desist order was issued.

10 MR. VIGNA: You were asked at one
11 point about private messaging and forums in the
12 cross-examination, and it was suggested that this was
13 like a conversation. Do you make any distinction
14 between that and an e-mail sent between two
15 individuals?

16 MR. WARMAN: Well, to the extent that
17 my previous testimony talked about private messaging
18 being sort of an internal website kind of back and
19 forth. But other than that, they are similar in terms
20 of conveying information between usually -- well,
21 one-on-one with a private message and e-mail -- it can
22 be sent to broader numbers of people.

23 MR. VIGNA: What about a message
24 board then, a forum and chat room? Or message board,
25 more particularly.

1 MR. WARMAN: Well, a message board,
2 such as the one in this case, is open to the public to
3 read and is not -- I would not compare it to e-mail
4 between individuals or private messaging.

5 MR. VIGNA: And in terms of the -- I
6 think you answered the question, but just to make sure.
7 Someone that wants to either look at the message board
8 or participate, what's the different operations
9 involved?

10 MR. WARMAN: Yes, I believe the
11 answer for that is already on the record, that you
12 could view all the material simply either by going in
13 directly through a bookmark or through the guest
14 function of the website.

15 THE CHAIRPERSON: I have that
16 evidence, Mr. Vigna.

17 MR. VIGNA: In cross-examination Ms
18 Kulaszka asked you on several occasions and suggested
19 that some of the messages or the contents that's before
20 the Tribunal for determination has been removed.

21 Can you tell us whether, in relation
22 to the website, the website is inactive today or is it
23 active? The Freedom site itself.

24 MR. WARMAN: Well, the last time I
25 looked at it within the past sort of week or so, it was

1 active.

2 MR. VIGNA: If you look at the
3 cross-reference quickly at tab C of the HR-2, the green
4 binder.

5 THE CHAIRPERSON: Tab C of --

6 MR. VIGNA: The green binder, HR-2.

7 THE CHAIRPERSON: That's HR-3.

8 MR. VIGNA: 3, sorry. You see the
9 different inscriptions on the left side where it says
10 "Home", "Organizations" and on and on?

11 MR. WARMAN: Yes.

12 MR. VIGNA: In terms of message
13 board, is that inscription independent of whether we
14 can actually go into it not today? Is it still on the
15 website, the headline at least, and the heading?

16 MR. WARMAN: As I recall.

17 MR. VIGNA: Just for purposes of
18 clarity, at one point you were referred to the actual
19 complaint, HR-1, and it's not necessary that you
20 actually look at the complaint, but you mentioned about
21 the limit.

22 Can you tell me more explicitly what
23 you meant by the -- I think you said it was a
24 three-page limit. What do you mean exactly?

25 MR. WARMAN: Simply that the

1 Commission provides a maximum three-page limit in order
2 to file an individual human rights complaint. Now,
3 because there were two separate respondents, I used
4 three pages for each of them.

5 MR. VIGNA: So we understand from
6 that, that it's not the whole story that is contained,
7 obviously, on three pages.

8 MR. WARMAN: No, absolutely not. In
9 fact, it indicates at page 3 -- sorry, page 2 it states
10 "Examples of jokes featured on the website include",
11 and then for each of the next categories, "Examples of
12 Jokes", "Examples of Jokes", it's explicit.

13 Then towards the top of page 3, it
14 indicates:

15 "Material contained in other
16 sections on the message board is
17 replete with further bigoted
18 commentary."

19 No, I think it's fairly clear that
20 these are simply examples of the material that I
21 considered to violate section 13 of the Act.

22 MR. VIGNA: On the issue of jokes.
23 It was suggested that -- the theory of the
24 respondent -- that these were just jokes and they
25 were -- you were confronted with Google searches where

1 you have lawyers' jokes and other types of jokes.

2 Do you consider the fact that some of
3 the postings, the headline is entitled Jokes and Trivia
4 would exempt liability for section 13 and they would
5 not be hate messages?

6 MR. WARMAN: No, I don't believe
7 that. In fact, I think the Tribunal has been emphatic
8 in previous decisions on that point.

9 MR. VIGNA: Now, in terms of the
10 identity of JR's Online, you explained in your
11 examination in-chief and you were cross-examined on the
12 issue about the fact that at one point there was one
13 individual and at another point there was another
14 individual that was brought to your attention.

15 Can you tell us in terms of time
16 frame when which individual is associated and which
17 other is associated to the website in question with the
18 WHOIS search? I believe it's JR's Online from memory.
19 If it's not, you can correct me.

20 MR. WARMAN: The WHOIS search for
21 JRBooksOnline that is contained at tab 17 pre-dates
22 notification of the respondent that the website was an
23 issue and the change occurs post-notification of the
24 concerns with regard to the website.

25 MR. VIGNA: Now, I would like you to

1 look at the document which contains the AIDS Secrets
2 and cross-reference it with another document.

3 THE CHAIRPERSON: Which document?

4 MR. VIGNA: By memory, it's "AIDS
5 Secrets". It's in HR-2.

6 MR. WARMAN: At tab 10.

7 MR. VIGNA: I would like you to look
8 for yourself quickly and then I will ask you to go to
9 tab 14 of the respondent's binder.

10 THE CHAIRPERSON: Which, by the way,
11 has not been produced yet.

12 Ms Kulaszka, you'll be producing it
13 through one of her witnesses later on. She has
14 undertakings.

15 MR. VIGNA: If you look at the two
16 documents. In terms of the language, the flavor, the
17 tone, the way the matter -- the subject matter is
18 presented, can you tell us if there is any distinctions
19 or if it's the same?

20 MR. WARMAN: Well, the first article
21 contained at tab 14 entitled "Demographic Differences
22 in Transfusion-Associated AIDS", is clearly different
23 in language and in tone. It's night and day versus the
24 AIDS Secrets article that was contained on the
25 FreedomSite by Mr. Strom. The one is --

1 MR. FROMM: Isn't Mr. Warman being
2 asked to provide an expert opinion? I don't think he's
3 been qualified as a literary scholar or analyst.

4 MR. VIGNA: Mr. Chair, before I even
5 answer the question, Mr. Fromm is an intervener. This
6 is factual. I don't see where his right to intervene
7 is even allowed.

8 And, second of all, other than the
9 fact he's not an expert, I think he can still read
10 language and understand the way that matter is
11 presented.

12 THE CHAIRPERSON: Then guess what, so
13 can I. So I'm thinking you better leave it to me.

14 MR. VIGNA: Sure, no problem.

15 Since the name was mentioned on
16 several occasions, Matt Lauder, do you know if he made
17 any publications or any literature on the issue of the
18 far right in Canada?

19 MR. WARMAN: I am aware he published
20 a fairly extensive study comprising the materials, or
21 constituting a study of the time he spent infiltrating
22 the neo-Nazi movement and white supremacist movements
23 in Canada.

24 MR. VIGNA: Finally, you were asked
25 in cross-examination the type of order that you are --

1 you are seeking, and you referred to the Kyburz
2 decision at paragraph 131. Is there anything that you
3 would like to say in regards to this present complaint
4 that should be, how should I say, adjusted in terms of
5 the actual remedy when we look at the Kyburz decision
6 and paragraph 131?

7 MR. WARMAN: I think it may be 113,
8 but I believe I made those clear at the time when I was
9 discussing it in terms of what appropriate changes
10 would need to be made.

11 THE CHAIRPERSON: Right, you
12 indicated which section, the three or four lines from
13 Kyburz that you omitted. I understood that.

14 MR. VIGNA: I finished for myself for
15 the Commission. I don't know if there is anything else
16 you would like add in terms of clarifying from the
17 cross-examination. If not, that's about it.

18 MR. WARMAN: If I can just have a
19 moment to review my notes.

20 MR. FOTHERGILL: I should mention I
21 hadn't discussed with Mr. Vigna in the lunch hour any
22 attempt that produce any -- but this is one suggest
23 area that arose after lunch, and I recognize I probably
24 should have raised this before he began the
25 re-examination.

1 But with your leave, there is one
2 subject area I would like to explore briefly with the
3 witness in regards to the constitutional issue. Would
4 it be appropriate for me to do that now or --

5 THE CHAIRPERSON: Would it have been
6 appropriate perhaps before the re-examination.

7 MR. FOTHERGILL: I recognize that.

8 THE CHAIRPERSON: I should have had
9 the inkling to ask you.

10 MR. FOTHERGILL: It's my
11 responsibility, too. I thought Mr. Vigna might go
12 there himself, but ultimately he didn't.

13 MR. VIGNA: Indeed he did --

14 THE CHAIRPERSON: That's fine.

15 MR. FOTHERGILL: It is, in fact, one
16 perhaps two questions on the same subject.

17 THE CHAIRPERSON: I'll let Mr. Warman
18 go through his material first. It will open the door
19 to the possibility Ms Kulaszka may want to ask
20 questions on your questions.

21 MR. WARMAN: Perhaps just one quick
22 question -- statement, whatever you want to call it.

23 Just again to re-emphasize the fact
24 or to address the questions that were directed towards
25 this sale of My awakening by David Duke, in fact I have

1 specifically discussed that work with -- in the past
2 with Chapters with regard to their previous -- to its
3 previous listing for sale, and that they had in fact
4 assured me that that work, and a number of other works,
5 were removed and that they were in fact removed.

6 But, again, the explanation they gave
7 me was that the "unavailable" was there because it was
8 too difficult to remove them from the catalog that was
9 on-line, and that the catalog may not in fact have been
10 theirs, per se.

11 MR. VIGNA: Mr. Chair, on this
12 specific point I have the Chapters document. I gave it
13 to the parties and I would suggest I produce it in
14 evidence.

15 THE CHAIRPERSON: Mr. Warman, since
16 now he's in his portion of re-examination. He can
17 refer to it. You can go ahead, in the event you want
18 to.

19 MR. WARMAN: No, I think the original
20 document is adequate in that it shows the fact that
21 it's listed as unavailable.

22 THE CHAIRPERSON: The one that --
23 without going to the exhibit now, the one that I had
24 noticed had said the word "unavailable" on it.

25 MR. WARMAN: Yes.

1 THE CHAIRPERSON: Had you at any time
2 explored with that company at Chapters Indigo, the
3 issue of used books? That was brought up in one of the
4 questions by Ms Kulaszka when we got into the
5 discussion about the word "unavailable".

6 MR. WARMAN: No, at the time the only
7 listing on the website was the "new books". So I
8 brought it to their attention that they were in fact
9 prohibited from importation as hate propaganda by
10 Canada Customs, provided them with that information,
11 and they naturally indicated they would take care of
12 that.

13 THE CHAIRPERSON: Okay. Is there
14 anything else, Mr. Warman?

15 MR. WARMAN: I think that's it.

16 THE CHAIRPERSON: Mr. Fothergill,
17 would you like to ask questions now?

18 CROSS-EXAMINATION BY MR. FOTHERGILL

19 MR. FOTHERGILL: Mr. Warman, you were
20 asked some questions about the ARA, the Anti-racist
21 Action group. Do you recall that?

22 MR. WARMAN: Yes, I do.

23 MR. VIGNA: My first question is, to
24 what extent are you in a position to advise the
25 Tribunal about the tactics or the philosophy of that

1 particular organization?

2 MR. WARMAN: Well, I believe that
3 I've probably already done that.

4 MR. FOTHERGILL: I'm not asking you
5 to do it. I'm asking you whether you are in fact in a
6 position definitively to explain the ARA's approach to
7 this Tribunal.

8 MR. WARMAN: No, I would not purport
9 to be in that position.

10 MR. VIGNA: And based on the
11 interactions you have had with that group, can you tell
12 us to what extent section 13 of the Canadian Human
13 Rights Act is the motivating factor for that
14 organization in the actions that they take?

15 MR. WARMAN: I'm not aware of them
16 ever having filed a complaint under section 13 to the
17 best of my knowledge.

18 MR. FOTHERGILL: My question is a bit
19 it more broader than that. It was suggested by Ms
20 Kulaszka that in fact section 13 of the Canadian Human
21 Rights Act is one of the reasons why they engage in
22 some of what she describes as the violent tactics that
23 they do. And I'm wondering if, based on your
24 interaction, you would agree with that?

25 MR. WARMAN: No. In fact, I have

1 never seen or read anything that makes a link between a
2 human rights complaint and a motivation for any actions
3 that they may engage in. They may use it as a further
4 example of why individuals should be considered to be
5 within sort of a neo-Nazi movement, but I've never seen
6 it used as a justification for any of their actions.

7 MR. FOTHERGILL: What about the
8 existence of the provision itself, quite apart from any
9 complaints that might be filed?

10 THE CHAIRPERSON: The existence of?

11 MR. FOTHERGILL: Of the provision
12 itself, section 13. Have you ever heard anybody
13 associated with ARA cite the existence of section 13 of
14 the Canadian Human Rights Act as a justification for
15 their actions?

16 MR. WARMAN: No, never.

17 MR. FOTHERGILL: Thank you.

18 THE CHAIRPERSON: I'll start -- given
19 those questions, I'll start with Mr. Vigna.

20 Do you have anything you want to add
21 to those question?

22 MR. VIGNA: No.

23 THE CHAIRPERSON: Ms Kulaszka? You
24 are going to have to limit yourself to that line of
25 questioning from the Attorney General's office.

1 RE-CROSS-EXAMINATION BY MS KULASZKA

2 MS KULASZKA: ARA targets people that
3 are defined as hate mongers, correct? That's one of
4 their targets, people who are hate mongers?

5 MR. WARMAN: Well, you know, whether
6 that word is used or whether the term individuals
7 involved in the neo-Nazi or white supremacist
8 movements. I think that's perhaps more accurate.

9 MR. VIGNA: Well, that is a major
10 target, isn't it? People who are defined as hate
11 mongers.

12 MR. WARMAN: Well, I mean, I can say
13 that I hate broccoli but that doesn't necessarily bring
14 me within the definition of individuals that I believe
15 that anti-racist action is involved with or opposed to.

16 MS KULASZKA: And you believe that
17 Holocaust denial and -- is a form of hate mongering,
18 correct?

19 MR. WARMAN: Just wondering if she
20 can provide some relevance to the cross-examination
21 that has just taken place by the Attorney General?

22 THE CHAIRPERSON: True. I would ask
23 you to limit your questions directly to the issues
24 dealt with in the questions.

25 MS KULASZKA: Yes. I was just trying

1 to get to the point where I don't think -- I was just
2 trying to the get to the point. Section 13 deals with
3 exposing people to hatred in ARA materials. They
4 identify hate mongers. That's what I was trying to get
5 to. Thank you.

6 THE CHAIRPERSON: Okay. So that's it
7 for Mr. Warman, then. Thank you, Mr. Warman.

8 MR. WARMAN: Thank you.

9 THE CHAIRPERSON: We have this
10 outstanding issue about the motion. Ms Kulaszka, you
11 mentioned just now.

12 Where are we at? I asked you all to
13 have a discussion during the break. Ms Kulaszka?
14 Where are we at on this motion?

15 First of all, there's a portion I was
16 told before the break that relates merely to the
17 evidence of the next witness. That was going to be
18 discussed, I believe, during the break.

19 Where are we at on that? Where are
20 we on the motion? Can anyone enlighten me on that?

21 MS KULASZKA: This is the motion by
22 Mr. Warman and should be dealt with at this time.

23 THE CHAIRPERSON: Just the motion
24 itself as a whole? Because I didn't see where the
25 relevance was to Mr. Klatt in the motion. The motion

1 seemed to me to be dealing with Rogers alone.

2 Mr. Warman?

3 MR. WARMAN: If I may. The issue
4 relates to the proposed testimony of Mr. Klatt.
5 Specifically, I would draw your attention to tab R-2,
6 tab 2.

7 THE CHAIRPERSON: R-2?

8 MR. WARMAN: Yes.

9 THE CHAIRPERSON: Okay. This would
10 be the affidavit I've already seen. Is it the one that
11 had been attached with the motion over the summertime?

12 MR. WARMAN: Yes, it is. And also
13 tab 3.

14 THE CHAIRPERSON: In that sense it's
15 irrelevant. Let me just look at tab 3. What's tab 3?

16 MR. WARMAN: Tab 3, 20 to 22.

17 THE CHAIRPERSON: I believe this also
18 has been attached to the motion of last summer, was it
19 not?

20 MR. WARMAN: I'm not sure all of this
21 had been. And then pages 24 to 42.

22 THE CHAIRPERSON: 24?

23 MR. WARMAN: To 42.

24 THE CHAIRPERSON: Extracts from
25 transcripts in other cases. I see how it could relate

1 to your motion in that sense.

2 Let me read through your motion one
3 more time, Mr. Warman. Do you wish to add anything to
4 your motion at this point in terms of submissions?
5 Would you like to make submissions on your motion?

6 MR. WARMAN: Perhaps I will let you
7 read through it and if you have any questions that
8 would be the best --

9 THE CHAIRPERSON: I was going to turn
10 to the respondent and see what they have to say in
11 regard to your motion.

12 MR. WARMAN: Sure, and then of course
13 we will have the right of reply.

14 THE CHAIRPERSON: Of course.

15 MR. WARMAN: Yes, sir. You have the
16 case, the two part --

17 THE CHAIRPERSON: Yes, S vs S?

18 MR. WARMAN: Yes.

19 THE CHAIRPERSON: Thank you. I've
20 read through it. Ms Kulaszka, can I hear from you?

21 MR. VIGNA: Yes, I'm ready, if
22 Mr. Warman wants to make his motion.

23 THE CHAIRPERSON: He's made his
24 motion. I understand his submissions are the motion
25 itself. That's what I just said earlier. I will hear

1 your submissions in reply.

2 MS KULASZKA: Can I get exactly what
3 remedy he wants? He just wants to quash the subpoena
4 to Rogers?

5 THE CHAIRPERSON: That's a fair
6 question. In the context we are looking at an
7 affidavit only, what is it exactly that you seek?

8 MR. WARMAN: It is to preclude the
9 introduction of that evidence and anything stemming
10 from the subpoena, because it's clear the affidavit is
11 simply in response to the subpoena. There was no
12 tendering an affidavit prior to the subpoena.

13 THE CHAIRPERSON: So it's the
14 exclusion of that evidence, basically.

15 MR. WARMAN: That, and the material
16 of Bernard Klatt related to the same issue.

17 MR. VIGNA: If Mr. Warman could set
18 out exactly what parties of Bernard Klatt's
19 affidavit --

20 MR. WARMAN: The entirety of it. --
21 that sole purpose for which it was tendered, and that
22 the rest of it is covered off within either Mr. Klatt's
23 expert -- anything in there that is unproblematic is
24 either already covered off in the context of
25 Mr. Klatt's expert report, or may be elicited through

1 his testimony.

2 THE CHAIRPERSON: Ms Kulaszka?

3 Let me bring discussion up a bit, as
4 you are setting yourself up.

5 What is the purpose for which you
6 wish to introduce this evidence?

7 MS KULASZKA: This is the posting
8 which is contained at tab 3 of R-1.

9 THE CHAIRPERSON: Right.

10 MS KULASZKA: This is the Ann Cools
11 posting which the respondent alleges was in fact
12 written and posted by Mr. Warman.

13 Up until the date this hearing
14 started, Mr. Warman had included the entire message
15 board in his case. And when I made the motion for the
16 subpoena I read the e-mail that Mr. Warman had sent.
17 This was in respect to the motion for particulars that
18 the respondent had made. And in response, Mr. Warman
19 stated that the entirety of the message board was in
20 issue.

21 I stated that if he had written this
22 post, it would be a gross violation and a gross abuse
23 of the process of this Tribunal. It also goes to
24 entrapment of.

25 THE CHAIRPERSON: . It also goes to

1 possible enticement of other people, almost inviting
2 their posts. In fact, no one ever did reply to this
3 posting. It goes to the Charter challenge with respect
4 to message boards in particular, and the liability of a
5 webmaster like Mr. Lemire. It goes to the abuse that
6 can be made of message boards, and, again, the
7 liability of the webmaster where there are thousands of
8 messages on a board.

9 Web boards are a vital part of the
10 Internet. Almost every website has a web board or a
11 discussion board. Can they be shut down merely because
12 of a few extreme comments? Many people enjoy them,
13 they enjoy reading the comments. They learn a lot
14 reading other people's comments. Cases like these
15 would be very detrimental to message boards because the
16 webmaster is going to say, if I can be held liable for
17 just a few extreme comments, I'm not going to have a
18 message board.

19 THE CHAIRPERSON: Had removed the
20 message board prior to learning of this complaint.

21 But message boards are a vital part
22 of free speech on the Internet and they contribute a
23 lot to free speech and knowledge exchange on the
24 Internet. If Mr. Warman wrote this message, then he
25 has come to this Tribunal with dirty hands.

1 It is my submission that the evidence
2 given by Rogers and Bernard Klatt will prove on a
3 balance of probability that Mr. Warman did write this
4 message, and I believe it should be put before this
5 Tribunal.

6 THE CHAIRPERSON: With regard to the
7 claim by the complainant, submissions in the motion
8 that this evidence will go to test his credibility as a
9 witness.

10 MS KULASZKA: It doesn't test his
11 credibility. I asked for the subpoena of Rogers on the
12 basis that I just stated, that it is an absolute gross
13 violation of the process under section 13 and before
14 this Tribunal.

15 This case is dealing with
16 credibility, that as far as I could tell with S versus
17 S, the credibility of the wife was an issue because she
18 was trying to prove an oral arrangement, therefore
19 credibility was a vital issue.

20 In this case, Mr. Warman's
21 credibility really isn't an issue concerning the proof
22 of the documents in issue because they have been
23 printed off the website. I don't think there is -- the
24 only issue that might arise in the Stormfront because
25 Hannya Rizk couldn't find it.

1 THE CHAIRPERSON: From the beginning
2 stated that he was the owner, webmaster of Freedomsite.
3 I don't know how it arises really as an issue in this
4 case.

5 But the abuse of the process is what
6 it's about. And it goes to the -- very much to the
7 constitutional argument in this case and the liability
8 of a webmaster of a message board.

9 THE CHAIRPERSON: We do have evidence
10 that Mr. Warman did post on other message boards,
11 right? All those pogue mahone and axetogrind were on
12 other message boards, or were they on this one?

13 MS KULASZKA: Pogue mahone was on
14 Stormfront, axetogrind was on VNN forum and -- well,
15 credibility is not -- I mean, he's admitted those were
16 his pseudonyms he used on those sites.

17 THE CHAIRPERSON: My issue is this:
18 I hear what you are saying and you should -- by now all
19 of you understood where I lean in terms of this debate,
20 where I intended to rule on these issues of what
21 evidence can get in.

22 I do have a concern about confusing
23 the issues, spending unnecessary and inordinate amount
24 of time to achieve the result being sought.

25 Now, this witness has indicated he

1 did not post it. I have a sense that the amount of
2 time we will spend attempting to establish to
3 contradict that posting will be significant through
4 this evidence. And I already have -- and as you've
5 indicated, we're not relying on -- no one is relying on
6 this evidence to make the complaint.

7 The Commission and complainant are
8 relying on the material that is already before the
9 Tribunal.

10 So all I'm trying to say, we know
11 Mr. Warman posts on message boards and we see how he
12 posts. We've seen it with pogue mahone and axetogrind.
13 I don't see it's that dissimilar than from what we're
14 seeing here with those other posts.

15 So how much time would you be
16 spending on this evidence, if you were to go down this
17 road?

18 MS KULASZKA: We're getting an
19 affidavit from Rogers. So it's not like a represent
20 ive that's being called and information that is being
21 set out in the affidavit for you. And the evidence of
22 Bernard Klatt is quite simple. He's going to go
23 through the logs. He's going to show 10 points of
24 similarity, including the Internet protocol address. I
25 would think maybe half an hour.

1 THE CHAIRPERSON: Where does that
2 bring us? We have the statement of Mr. Warman he
3 didn't do it and we'll have the evidence that you
4 introduce that suggests that -- I've seen this evidence
5 before. Speaking of vacuum -- but I saw all this
6 material. You brought it before me when you made your
7 motion to name Mr. Warman as a respondent.

8 So it cannot definitively put a
9 finger on Mr. Warman. You don't have some sort of
10 proof that says it had to be Mr. Warman. It's someone
11 from Ottawa who was assigned an Internet protocol
12 address or, something like that, at the time.

13 MS KULASZKA: It will be proved by
14 the logs and by the affidavit of Rogers on a balance of
15 probabilities. That's my submission.

16 THE CHAIRPERSON: I understand.

17 MS KULASZKA: You know, right up
18 until this hearing started they were including the
19 entire message board, and as soon as we got that
20 subpoena from Rogers, all of a sudden they stand up and
21 say, it's only the messages we're producing.

22 Now it's a motion to quash the Rogers
23 subpoena.

24 They are -- Mr. Warman doesn't want
25 this information in front of this Tribunal and I

1 understand why. But I think I've made submissions
2 about why it is relevant. If he did this then he has
3 come to this Tribunal with dirty hands, absolutely.

4 THE CHAIRPERSON: What does that
5 result in? All the other submissions I understand.
6 What do you mean by "dirty hands" and how does that
7 affect the analysis that the Tribunal will have to
8 make?

9 MS KULASZKA: He has come to this
10 Tribunal alleging that Mr. Lemire is violating section
11 13. If he wrote that posting he himself has violated
12 section 13 on that site, purporting to the
13 interpretation --

14 THE CHAIRPERSON: To follow your
15 logic, as he has done on Stormfront and as he as done
16 on VNN.

17 MS KULASZKA: Correct.

18 THE CHAIRPERSON: We've gotten there
19 already.

20 MS KULASZKA: But this is
21 FreedomSite. This is the subject of this hearing.

22 THE CHAIRPERSON: Okay. I think I've
23 heard enough.

24 Mr. Vigna?

25 MR. VIGNA: First of all, Mr. Chair,

1 the affidavit that's being mentioned, I've never seen
2 it.

3 THE CHAIRPERSON: The affidavit of
4 Rogers or Mr. Klatt?

5 MR. VIGNA: Rogers.

6 THE CHAIRPERSON: No, we have not
7 seen that.

8 MR. VIGNA: We're speaking a bit in
9 the void. We're taking it for granted that we can just
10 produce the affidavit and it's going to be half an
11 hour. I have no clue what the affidavit is about and
12 I'm far from being able to cross-examine simply on an
13 affidavit that can lead to conclusions which I am not
14 able to cross-examine on.

15 THE CHAIRPERSON: So you are invoking
16 your right to cross-examine on the affidavit.

17 MR. VIGNA: If the motion is not
18 granted, obviously I will minimally want the right to
19 cross-examine because was we can't shoot out hypothesis
20 and then not be able to cross-examine what exactly is
21 being put forth. At this point in time I don't even
22 have the affidavit.

23 THE CHAIRPERSON: So you are working
24 on the hypothesis then that it's the subpoena that you
25 are dealing with, because the motion was to suppress

1 the subpoenas?

2 MR. VIGNA: Yes.

3 Now, in terms of the -- lost my train
4 of thought. The example I wanted to give, Ms Kulaszka
5 is saying, my colleague is saying, he's coming here
6 with dirty hands. The language that's being used is
7 shocking in itself, but let's look at it from a
8 different perspective.

9 In a criminal trial, for example, you
10 have two people committing a bank robbery then one of
11 the co-accused testifies against the other. Does that
12 mean that that testimony is not valid to convict
13 somebody?

14 In a murder trial, you have a
15 professional hit man coming and testifying. Does that
16 mean because the hit man is involved in the murder, the
17 murder for the person that's accused is not -- we
18 cannot put that evidence forth to the Tribunal?

19 I know this is not a criminal trial.
20 But at the end of the day what I'm trying to say
21 basically, it's not whether this posting was there
22 or -- Mr. Warman has told you under oath that it's not
23 him that did the posting. But even if it was, which
24 we're not saying it is, because it's clear from
25 Mr. Warman's testimony that he disassociates himself

1 from this posting.

2 How does that affect the postings
3 that have been put before the Tribunal, which are what
4 the Tribunal has to determine at the end of the day,
5 are those postings hateful or not?

6 There's been a motion in the summer
7 to try to put Mr. Warman as a respondent. Now, that
8 motion was rejected and now we are indirectly doing
9 what --

10 THE CHAIRPERSON: No, they are
11 alluding to something I did say in that ruling, which
12 is referenced even in Mr. Warman's motion. And that is
13 that:

14 "The respondent appears to argue
15 that if the complainant had made
16 the post in question others had
17 somehow been enticed to post
18 hate messages of their own."

19 I said at the time that it wasn't
20 necessary to name Mr. Warman as a respondent in the
21 case in order to make that defence. So they are making
22 the defence here in the context of the existing file.

23 And so their evidence is that this
24 posting, if made by someone who later files a
25 complaint, is perhaps abusive and ultimately perhaps is

1 of the assertion that it brings the administration of
2 justice into disrepute is going to be made.

3 And she's got an interesting point.
4 As of the opening of the hearing, the impression, as I
5 indicated earlier, was all of the message board was
6 going to be put in front of me. And one of those
7 messages would have been planted by the complainant.
8 Now that's changed, I understand. But she wishes to
9 make arguments on it.

10 Go on.

11 MR. VIGNA: We put in a whole series
12 of postings in evidence. How can one single posting
13 affect the whole series of postings, even if the theory
14 of the respondent is that there's been postings that
15 have been infiltrated and there's been a sort of
16 entrapment and this and that.

17 How can that be with one single
18 posting versus the number of postings that are put in
19 evidence? I mean, if you actually come to the
20 conclusion, which we're saying is not what you will
21 hopefully do, that this posting was put by the
22 complainant, which is highly contested.

23 How could that take away the fact
24 that there's a bunch of postings that are irrefutably
25 been proven to not be associated to the complainant and

1 which have been in the message board of the respondent
2 for which he has control as a webmaster and as a
3 registrant?

4 So this is a red herring, in my view,
5 Mr. Chair, I respectfully submit, in the sense that
6 it's one fish in a sea of fishes.

7 THE CHAIRPERSON: That's an
8 interesting point you raise, Mr. Vigna, and I would
9 like Ms Kulaszka to address that.

10 What if the other parties, Ms
11 Kulaszka -- I'll get to you in a second, Mr. Warman.

12 What if the other parties were to
13 concede the fact that one out of the 133 pages -- one
14 message on the 133 messages was written by Mr. Warman
15 given that he is not now alleging that the entire
16 message board is discriminatory nor is he requesting
17 that the website be "shut down", but rather that
18 Kyburz-style order be issued?

19 I have to deal with the facts as they
20 are at this time. I can't work on the hypothesis we
21 were working on in the past. How will that change your
22 ability to make your arguments?

23 MS KULASZKA: Again, what really
24 disturbs me is the Commission's position where they
25 know Mr. Warman is posting this kind of material and

1 yet they continue to use him as a witness. They are
2 not -- Mr. Warman, I asked him if the Commission had
3 asked him about these type of postings.

4 They are not warning him. They are
5 not talking to him about it. They are allowing him to
6 continue making these complaints even though he himself
7 probably is violating section 13.

8 THE CHAIRPERSON: You, yourself, in
9 order to support that point of view, are able to rely
10 on evidence that I already have in front of me which
11 has not been disputed by Mr. Warman. That is clearly
12 proven at this point.

13 You have established, not just one on
14 balance of probabilities, beyond any doubt that
15 Mr. Warman posts on these websites material that -- now
16 this perhaps is subject to interpretation, what
17 language you want to use, but he did refer to them as I
18 guess problematic under section 13. And he's done so,
19 and he's been found to do so in some of the other
20 decisions of the Tribunal -- correct me if I'm wrong on
21 that point -- on similar -- on message boards,
22 similarly structured members.

23 I don't want us to waste an
24 inordinate amount of time on this confusing the issues
25 for one more message.

1 MS KULASZKA: No. The point is, it's
2 a complainant in this case wrote one of those messages
3 on the board then I believe it should be before you.

4 THE CHAIRPERSON: Only because it
5 happens to be the very board that the respondent
6 writes, administered.

7 MS KULASZKA: Right. And many of the
8 posts that are being relied upon -- I'll have to count
9 them up -- Craig Harrison. One person. And his
10 postings must be very high percentage of the postings
11 that are being relied upon -- the Craig Harrison
12 postings.

13 THE CHAIRPERSON: In this case, you
14 are not alleging that there are multiple postings by
15 Mr. Warman. You are alleging one posting by
16 Mr. Warman.

17 MS KULASZKA: Correct. The
18 complainant actually posted that on the very board he
19 complained about. And I believe it should be before
20 you. It won't take that much time.

21 THE CHAIRPERSON: Do I have your word
22 on that?

23 MS KULASZKA: No.

24 MR. VIGNA: Mr. Chair, the posting in
25 question, I didn't say in any way, shape or form we're

1 admitting --

2 THE CHAIRPERSON: I know that.

3 Suppose, I said --

4 MR. VIGNA: Because Ms Kulaszka, my
5 distinguished friend is sort of insinuating that --

6 THE CHAIRPERSON: Only because I
7 asked her that question.

8 MR. VIGNA: I want to make that
9 clear.

10 The second thing about when she says
11 it's going to be very short, I respectfully disagree.
12 Because if that kind of evidence is going to be lead, I
13 want to have the full ample right to cross-examine at
14 very length, and it will take a long time. I mean, if
15 this is allowed, it's fairly inconceivable for me not
16 to be able to cross-examine at length on all the
17 details.

18 THE CHAIRPERSON: I didn't say you
19 wouldn't be able to.

20 Mr. Warman?

21 MR. WARMAN: Yes. There have been a
22 number of arguments raised on the part of the
23 respondent, none of which actually address the case law
24 that has been put before you and what the actual state
25 of the law is in this regard.

1 I would like to perhaps just address
2 them very shortly.

3 The first issue is with regard to the
4 question of a liability of a webmaster. It is proposed
5 that is essential, that on that basis this must be
6 before you. But that's not the case.

7 The fact is, is that it is already
8 before you that it is possible to make postings on
9 forums that provide for such things. So if you have an
10 open forum that people can go and make postings there.
11 If they are not pre-cleared then that is self-evident,
12 that they will appear there without anyone having
13 reviewed them. Already -- that evidence is already
14 before you.

15 Further, with regard to the question
16 of filtering. Tab 14 of R-2 goes to this very
17 question. So Mr. Klatt already proposes to tender this
18 material as evidence that will be put before you in a
19 circumstance that he will be perfectly capable of and
20 it will not -- it will not go against the state of the
21 law.

22 THE CHAIRPERSON: I did not
23 understand your referring to on the filtering.

24 MR. WARMAN: Sorry. So the question
25 is, what if these message boards are open message

1 boards? What if anybody can just go there and post all
2 they want, whether it's as -- whether it takes you 10
3 seconds to sign up as a pseudonym or whether you can
4 just do it as a guest or anonymous, whatever?

5 So the question that has been put
6 before you and the argument put before you is, oh, my
7 God, how horrific can that be? What if other people go
8 there and make nasty messages and then the webmaster is
9 held responsible?

10 That, of course, is not the case
11 because web boards -- there are web boards in existence
12 that you can go and messages have to be submitted in
13 advance and then the person who controls that web board
14 permits them to be posted.

15 In fact, there was an example given
16 at a Tribunal hearing just the last week or so in
17 Ottawa, that that was the case.

18 That I believe is the question that
19 is already intended to be covered by Mr. Klatt at tab
20 14, the fact that there is either filtering software
21 out there for message boards that deal with explicit
22 words, or, B, that there are in fact boards where it's
23 quite easy to structure them that messages have to be
24 looked at in advance before they are actually posted.

25 So the third question, it is urged,

1 is the question of dirty hands.

2 Now, at the risk of belabouring the
3 issue, again, the Tribunal's jurisdiction is not to
4 review the motivation of the complainant. That is a
5 section 41 proviso under the Act which permits the
6 Commission, where requested by a respondent, to review
7 whether a complaint has been made in good faith or is
8 trivial, frivolous or vexatious.

9 That remedy or that opportunity was
10 not utilized in this case. The respondent cannot now
11 come before the Tribunal and attempt to do an end-run
12 section 41 complaint, which is, in my respectful
13 submission, what is transpiring here.

14 Again, further to that, the
15 jurisdiction to review the Commission's decision to
16 refer this matter to the Tribunal is, again, with the
17 Federal Court. If they had a disagreement with that
18 Commission's decision to put this matter before the
19 Tribunal, then their remedy was to conduct a judicial
20 review application before the Federal Court within the
21 timeline provided.

22 And Ms Kulaszka, as I think is fairly
23 well known, is familiar with the process of
24 implementing a judicial review application before the
25 Federal Court, having been involved in the Zundel, and

1 extensive series of Zundel cases.

2 Fourth. The respondent admits that
3 there is no argument with regard to enticement or
4 incitement, because they admit, and Ms Kulaszka has
5 very honestly admitted to you there were no subsequent
6 postings on that thread.

7 Fifth. With regard to what was being
8 relied on. What was being relied on was the ability to
9 introduce any postings, not that each and every one of
10 the postings would be entered at this Tribunal hearing.
11 I think that that should have been fairly self-evident,
12 that what was taken was a defensive legal position,
13 that it was open to submit any of those, not that each
14 and every one of those messages would be produced and
15 that it is the standard procedure before the Tribunal
16 that it is only the evidence which is put before the
17 Tribunal that would be considered.

18 With regard to the question of
19 whether this will come in or could come in through an
20 affidavit, that is clearly not the case simply from the
21 Commission's position with regard to cross-examination,
22 and I agree with that wholeheartedly.

23 Perhaps most to the point, though, I
24 would take you to the actual state of the law, which is
25 what Ms Kulaszka has studiously avoided in her

1 submissions.

2 The state of the law is as stated in
3 Sopinka et al., 2nd edition, and the five-member
4 decision of the Court of Appeal of Manitoba.

5 THE CHAIRPERSON: It's what you
6 already cited in your --

7 MR. WARMAN: It is, yes.

8 It makes it clear that -- excuse me,
9 just one moment.

10 Character evidence:

11 "The vast majority of cases
12 dealing with the use of evidence
13 of character are cases where
14 such evidence is attempted to be
15 introduced by way of
16 cross-examination."

17 That is what has transpired here.

18 "On cross-examination, subject
19 to the discretion of the trial
20 judge to disallow any question
21 which is vexatious or
22 oppressive, a witness can be
23 asked literally anything as a
24 test of his or her credibility.
25 This broader rule is subject to

1 the qualification that if the
2 question is irrelevant to the
3 facts in issue, as in this case,
4 but is asked purely for the
5 purpose of testing credibility,
6 the cross-examiner is bound by
7 the answer. Evidence cannot be
8 lead in reply to contradict the
9 witness."

10 That is the state of the law.

11 THE CHAIRPERSON: With regard to
12 credibility issues. Ms Kulaszka says she is not
13 attacking your credibility.

14 MR. WARMAN: Well, I submit to you
15 that there is no other purpose but to introduce as bad
16 character evidence. And in fact, that was made quite
17 explicit at the time that those questions were asked
18 and at the time that subsequent questions were asked.
19 That those questions went clearly to the question of
20 bad character and credibility and I do not recall my
21 friend again saying that at the time.

22 So again, in S v S, the Manitoba
23 Court of Appeal relies on a case called Hickey and
24 Fitzgerald. And it states that it is allowed -- excuse
25 me.

1 "Much latitude is usually
2 permitted in cross-examination
3 of witnesses. It is allowed
4 whether the questions are or not
5 material to the issue. But
6 there must be some limit to it
7 where the questions put are
8 wholly irrelevant to the issue.
9 It has been decided in several
10 cases that with a view to
11 impeaching the character or
12 credibility of a witness, he may
13 be asked on cross-examination
14 questions with regard to crime
15 or other improper conduct on his
16 part, but where the question is
17 irrelevant to the issue, the
18 answer of the witness is
19 conclusive."

20 It then goes onto list a number other
21 examples, and one of which I believe is just relevant
22 perhaps to indicate what the circumstances were.

23 This is an arson, or an alleged
24 arson, and a fire insurance policy application. And
25 the question that deals with is whether the individual

1 had ever made a previous claim in relation to that or
2 had ever had property destroyed by fire and under what
3 circumstances.

4 The witness answered no, and it was
5 proposed to draw or to bring forward evidence
6 subsequent to that that would disprove that, and that
7 was not permitted.

8 It states that the answers of the
9 witness, when given, would be conclusive. And on
10 appeal to the divisional court for an application for
11 new trial, the divisional court dismissed the
12 application saying, we see no reason to depart from the
13 views expressed by the learned judge who gave the
14 judgment in this case.

15 So simply to summarize, the issue
16 that is proposed to be dealt with through the subpoena
17 and through any evidence that would be lead subsequent
18 to that, relies exclusively on a matter that is not
19 before this Tribunal and is not relied on by the
20 complainant or the Commission.

21 The questions put by counsel for the
22 respondent to me on 1 February, 2007 were, thus,
23 directly related to the issue of credibility of the
24 witness, and the respondent was so put on notice.

25 And I submit to you the state of the

1 law is clear. And that it is as described by Sopinka
2 and by the five-member panel of the Manitoba Court of
3 Appeal in *S v S*; that:

4 "Answers given by witnesses in
5 response to questions not
6 relating to a point in issue,
7 designed solely to test the
8 credibility of the witness are
9 conclusive, and that further
10 witnesses may not be
11 subsequently called to attempt
12 to contradict the answers
13 given."

14 And on that basis the subpoena and
15 any subsequent information that might flow from it
16 should be quashed.

17 THE CHAIRPERSON: I hear you on those
18 points, but Ms Kulaszka has raised other ones.

19 Ms Kulaszka, do you wish to address
20 any of those last points by Mr. Warman?

21 MS KULASZKA: Just to give a more
22 explicit history to this. We had applied in a motion
23 for particulars, further particulars about which hate
24 messages were being relied upon. In your judgment and
25 your ruling of August 16th, 2006, you stated:

1 "To put forth over a hundred
2 pages of messages and then
3 reserve the right to pick out
4 any one of these messages and
5 argue at the hearing that it
6 constitutes a violation of
7 section 13 (1) of the Act denies
8 him a true and effective
9 opportunity to know the case
10 that he must meet. If the
11 Commission and Mr. Warman take
12 the position that each message
13 found on each of the disclosed
14 pages constitutes a hate
15 message, then they should do so
16 explicitly. Mr. Lemire can
17 then consider himself forewarned
18 and prepare himself
19 accordingly."

20 In response to that ruling,
21 Mr. Warman wrote an e-mail, submission. It was from --
22 that is at tab 1, page 32 of the respondent's R-1
23 binder. He stated:

24 "Dear Ms. Joyal: Please accept
25 this as my response to paragraph

1 28 of the Tribunals's order of
2 16 August, 2006. In terms of
3 the hate messaging material I
4 personally will be relying on
5 the follow evidence that has
6 been previously disclosed: The
7 entirety of the FreedomSite
8 message board."

9 That was very clear. And now he
10 comes to the hearing and he's trying to restrict it.

11 Mr. Warman states that the respondent
12 should have made a submission to the Commission under
13 section 41. But he did not have the evidence before
14 this matter went a Tribunal. He didn't know that there
15 was good evidence that Mr. Warman wrote that posting
16 because he didn't have the evidence.

17 Mr. Warman disclosed documents which
18 had the date and time he accessed those documents on
19 the FreedomSite. By looking at logs only then could.

20 THE CHAIRPERSON: Determine that in
21 fact the person with the same Internet protocol address
22 wrote the Ann Cools message. It was only then the
23 matter was already before the Tribunal.

24 With respect to filters, this is the
25 first time Mr. Warman has raised the matter of filters.

1 He never raised this matter in his evidence in-chief.
2 And I made my submissions regarding credibility before.

3 THE CHAIRPERSON: Okay. Do you wish
4 to add anything? What I'm planning on doing is taking
5 it under advisement overnight and give you a ruling in
6 the morning.

7 MR. WARMAN: Just one very brief
8 point. The question of whether the information was
9 available to -- at what point the evidence was
10 available to.

11 THE CHAIRPERSON: . The evidence is
12 contained in the complaint itself. It states the dates
13 in question, and it gives I believe 29 separate
14 examples of portions of the website that were visited.
15 So the evidence was clearly available ever since the
16 point where the complaint was provided to Mr. Lemire.

17 MS KULASZKA: The evidence given in
18 the complaint was not detailed enough. It didn't
19 contain enough detail to prove anything, only the
20 documents themselves.

21 THE CHAIRPERSON: You're alluding to
22 IP addresses and things like that? Is that what you
23 are alluding to?

24 MS KULASZKA: Date and time.

25 THE CHAIRPERSON: Date and time.

1 MS KULASZKA: I'll review the
2 material and get back to you on this in the morning.

3 MR. VIGNA: To add, I think what
4 should be focused is the nexus between what's being
5 proposed and the theory that is being advanced, and if
6 this posting can actually advance the theory.

7 THE CHAIRPERSON: Well, I think -- Ms
8 Kulaszka, did you hear Mr. Vigna's last comment?

9 MS KULASZKA: No, sorry, if he could
10 repeat that.

11 MR. VIGNA: I said what's important
12 in analyzing this issue is to see what nexus there is
13 between this posting and the theory that's been
14 advanced by the respondent. It has to be somewhat of a
15 plausible theory and I think it's important that
16 there's a certain nexus between both.

17 THE CHAIRPERSON: At the level to
18 which it will -- the information will advance the case
19 as contrasted to what? To the time spent on the file?
20 Is that what you mean?

21 MR. VIGNA: No. First of all, the
22 respondent is saying, one, that it's not for the issue
23 of credibility. I think that's been clearly stated at
24 this point. So it's not for the issue of credibility.

25 The only other option, which I seem

1 to understand from the respondent is that it's to
2 advance their theory of the case or the defence that a
3 certain way there's been entrapment or whatever.

4 So what I would like to submit is
5 there's one single posting that hypothetically is being
6 alleged would be associated with the complaint, which
7 is not proven.

8 Can that, ultimately, have somewhat
9 or any impact on the theory of being advanced by the
10 respondent to absolve themselves of liability for the
11 whole series of postings and exemption from liability,
12 section 13?

13 I respectfully submit, even in the
14 very liberal outlook, if this posting would be admitted
15 and potentially -- which I think will not be the
16 case -- associated to Mr. Warman, cannot take away the
17 fact that the whole series of postings, the website in
18 itself, the context, the entire evidence will always
19 lead in one logical conclusion at the end of the day.

20 THE CHAIRPERSON: Let me flip that on
21 you. What's the downside? If that's the case -- so
22 basically you are saying, to sort of paraphrase you:
23 Our case is solid, you are saying. So whether that is
24 true -- whether this was posted by Mr. Warman or not,
25 our case is solid. It won't make a difference. Our

1 arguments are strong. So if it goes in, what's the
2 downside?

3 MR. VIGNA: The downside is this:
4 First of all, the Tribunal has to have a balancing
5 between presenting relevant evidence, taking
6 consideration of the interests of justice. Just about
7 any evidence can be introduced to present just about
8 any theory or basically evidence which is reliable,
9 relevant and that can advance a certain theory.

10 We are going to spend whole number of
11 days, witnesses, objections, on this issue. And at the
12 end can we have a plausible expectation that this can
13 advance the theory of the respondent. I respectfully
14 submit that that is not the case.

15 So you have to balance the amount of
16 energy, time and what potentially we can expect from
17 this type of evidence. It's not one single document,
18 and at the end of the day you would be able to make
19 your determination based on the entire evidence.

20 There is going to be one expert
21 witness; there's cross-examination; Rogers; the
22 objection on the affidavit. The whole entire follow-up
23 that will lead to this posting, which will have to be
24 heard by the Tribunal, and it sets some precedent
25 that -- in a human rights case of this type, you will

1 allow just about any evidence to prove some --

2 THE CHAIRPERSON: This is not any
3 case. This is not any case. This is a special case as
4 compared to all the other ones because of the nature of
5 the defence that's been raised. It's unique. But I
6 have a duty to run an expeditious hearing under the
7 Act.

8 MR. VIGNA: Basically what I'm
9 saying, Mr. Chair, is there has to be a certain
10 plausibility of the proposed evidence in terms of nexus
11 with the theory which is being proposed. And I fail to
12 see that. That's what I'm basically saying. That's
13 what you have to consider and you have to balance that
14 out with the interests of justice and the time that has
15 to be consumed by this Tribunal.

16 THE CHAIRPERSON: One last time. I'm
17 being looked at in a very dirty way by the court
18 reporter. I will allow you one last comment, Ms
19 Kulaszka.

20 MS KULASZKA: I think we're all just
21 starting to repeat ourselves over and over again. But
22 I will say that Bernard Klatt's testimony on this would
23 that probably be about half an hour.

24 THE CHAIRPERSON: Well, you open the
25 door to the other side, having to put up a battle

1 royale against this one little piece of evidence. And
2 I see it's little because you've already established to
3 me the possibility and the fact that Mr. Warman has
4 posted on at least one of the websites at issue this
5 the case, Stormfront, and another one that you've
6 introduced, VNN, and that anyone can do so. Your point
7 is made.

8 And I ask you, in the interests of
9 the entire process, we want to get through all this.
10 Is it necessary for us to go down that path? That's
11 what I'm putting to the parties. Is it necessary for
12 us to go down this path because if it's for any other
13 motive, such as the credibility issue -- the
14 authorities are clear from Sopinka onwards. But do we
15 need to go down that path for the other point?

16 That's the question that I'm asking
17 you in fairness, because we all have an interest here
18 that we get through this evidence and get to the crux
19 of the matter, which is your defence that you've
20 raised, the large defence that you've raised. And I
21 fail to see whether -- not fail to see. I'm not
22 committed to that extent. I'm wondering whether it's
23 necessary.

24 In a way I'm trying to work through
25 this in another way than having to come hard and fast.

1 Because hard and fast one way or another, someone will
2 find themselves in a situation they find
3 unsatisfactory. And I'm not sure the interests of
4 justice in the large sense are served, necessarily, by
5 us going down that path. That's what I put to you.

6 MS KULASZKA: I think we've got the
7 time to do it. It won't take that much time. I think
8 the interests of justice are served because the theory
9 of the defence is Mr. Warman posted this on the very
10 website that he complains about. He is the subject of
11 protests and complaints by -- because of Mr. Fromm on
12 the very day he receives a letter, a formal complaint
13 about his conduct, that very night he starts running
14 off and printing off the documents. What was he doing
15 writing that post?

16 I think it goes very much to the
17 Charter argument. What is going on with these cases?
18 What is the effect on freedom of speech when the
19 complainant is posting these types of things on the
20 very web board he subsequently complains about.
21 Absolutely is necessary to be before you.

22 THE CHAIRPERSON: I've heard you all.
23 Now, stop here, it's 4:20, but we've
24 lost a lot of time on this point. Is anyone willing to
25 start with Mr. Klatt's evidence on other issues at this

1 point in time, after we take a break?

2 MR. WARMAN: I have no objection.

3 MR. VIGNA: We might as well continue
4 tomorrow, Mr. Chair.

5 THE CHAIRPERSON: I don't want to
6 hear at the end, oh, well we haven't finished. We need
7 another week-and-a-half of hearings. This is not how
8 it's going to run. I want us to try to keep a tight
9 ship on this. I'm willing to work. Are you?

10 MS KULASZKA: I think we can start
11 tomorrow. I'll go over matters with Mr. Klatt tonight
12 and we'll be ready to go.

13 THE CHAIRPERSON: You're the
14 navigator and skipper of that ship this week, Ms
15 Kulaszka. Last week it was Mr. Vigna. You are the
16 skipper this week. You have to get that ship through
17 those narrows.

18 MR. VIGNA: Yes, I think we will.

19 THE CHAIRPERSON: All right, then,
20 I'll give all a break. See you tomorrow morning.

21 --- Adjourned at 4:21 p.m.

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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 6th
day of February, 2007.

Sandra Brereton
Certified Shorthand Reporter
Registered Professional Reporter