

**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° CAUSE:**

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

HEARING HELD IN THE HOLIDAY INN SELECT,  
2525 WYECROFT AVE., OAKVILLE, ONTARIO  
ON MONDAY, JUNE 25, 2007 AT 9:30 A.M. (LOCAL)

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

Margot Blight	For the Canadian Human Rights Commission
Barbara Kulaszka	For the Respondent
Simon Fothergill Alicia Davies	For the Attorney General of Canada
Douglas Christie	For the Canadian Free Speech League
Paul Fromm	For the Canadian Association for Free Expression

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1 Oakville, Ontario

2 --- Upon resuming on Monday, June 25, 2007

3 at 9:30 a.m.

4 THE CHAIRPERSON: So we have  
5 Ms. Blight, I understand. So, Ms. Blight, perhaps you  
6 should announce yourself for the record.

7 MS. BLIGHT: My name is Margot  
8 Blight. I'm here on behalf of the Canadian Human  
9 Rights Commission.

10 THE CHAIRPERSON: Thank you.

11 And the other participants are -- I  
12 can barely see anybody. We're all here. I want to  
13 make sure that everyone is here. With the pedestals, I  
14 can't see everyone. We are all here, okay.

15 So, where would do we begin today?  
16 You have your witness here, Ms. Blight?

17 MS. BLIGHT: Mr. Goldberg is here.

18 THE CHAIRPERSON: Do the others want  
19 us to address this issue that took place in the  
20 correspondence over the last while regarding the  
21 medical certificates?

22 MS. KULASZKA: I guess there's a few  
23 things. I want to address what happened with the  
24 security issue first.

25 THE CHAIRPERSON: I'm not too

1           entirely familiar with the security issue. You are  
2           refergring to --

3                           MS. KULASZKA: That was one of the  
4           reasons Mr. Fine asked for the adjournment. It was all  
5           left in the air. He never did reveal what the security  
6           issue was, and I think I sent a letter to you outlining  
7           my concerns.

8                           Ms. Blight has now sent a letter to  
9           the parties. I don't think she sent a letter to you  
10          and I want to file that as an exhibit.

11                          THE CHAIRPERSON: Is that a letter  
12          dated June 21st?

13                          MS. KULASZKA: It's dated June 21st.

14                          THE CHAIRPERSON: I was CC'd.

15                          MS. KULASZKA: So you did get a copy?

16                          THE CHAIRPERSON: It's a paragraph  
17          letter?

18                          MS. KULASZKA: No, it starts,  
19                                    "At the hearing on May 11th the  
20                                    Commission raised a concern  
21                                    involving security."

22                          THE CHAIRPERSON: I don't have that.

23                          MS. KULASZKA: No, it wasn't sent to  
24          you, and I'll just put on the record,

25                                    "The Commission had learned that

1                                   both its security guards in  
2                                   attendance at the Tribunal --"

3                                   MS. BLIGHT:  Mr. Chairman, I'm going  
4                                   to object to this being read into the record.  The  
5                                   security issue was not raised by Mr. Fine as one of the  
6                                   issues in reason of which an adjournment was sought.  
7                                   The adjournment was sought solely because of counsel's  
8                                   illness.

9                                   THE CHAIRPERSON:  That's true.

10                                  MS. BLIGHT:  The parties opposite  
11                                  asked that particulars be provided of the security  
12                                  issue.  Particulars have been provided, although you  
13                                  did not order particulars to be provided.  And we have  
14                                  indicated that it is our intention not to raise this  
15                                  issue.

16                                  So it would be my submission the  
17                                  matter has been put to rest and there is really nothing  
18                                  to be dealt with in this regard.

19                                  THE CHAIRPERSON:  Ms. Kulaszka, my  
20                                  recollection was the reason I granted the adjournment  
21                                  was because of counsel's inability to proceed.  I know  
22                                  they brought up a security issue, and you remember how  
23                                  I addressed it and you remember my concerns ultimate  
24                                  with the way Mr. Fine presented it.  And I have  
25                                  reiterated how many times in this hearing that all of

1           that stuff is background noise that I'm not paying  
2           attention to; that my focus is on the evidence in this  
3           hearing.

4                           Don't try to raise these issues. It  
5           doesn't make a difference in the outcome. It's over,  
6           it's dead. It's not even on my radar chart, all that  
7           stuff that he talked about there. It doesn't relate to  
8           Mr. Lemire. I know that. He agreed to that, Mr. Fine  
9           ultimately.

10                           So I don't know what may have gone on  
11           between counsel on your own business, but it's not  
12           relevant to this case.

13                           MS. KULASZKA: I know that in the end  
14           the reason you gave the adjournment, it was sickness of  
15           two counsel. However, when Mr. Fine came into the room  
16           he said, "I want an adjournment for two reasons," for  
17           two reasons. One is illness and the second one is a  
18           very serious security issue.

19                           THE CHAIRPERSON: For point of  
20           clarification from the Tribunal's point of view, I did  
21           not adjourn that case because of the so-called security  
22           issue, particularly after the latter conversation I had  
23           with Mr. Fine. Okay.

24                           The reason I adjourned it is because  
25           legal counsel asked me to -- they told me they could

1 not provide -- on their oath of office, they could not  
2 proceed that day. I accepted their word as officers of  
3 the court to not proceed that day.

4 And to go to the next point then,  
5 before we waste too much time on this, I did not issue  
6 an order or a ruling or anything of that sort that they  
7 provide medical certificates. I asked, I requested  
8 that they provide them to me. As officers of the  
9 court, they gave me their word they would provide them.  
10 That's what it was. It wasn't elevated to any higher  
11 standard.

12 There is a distinction, and perhaps I  
13 should point this out to Mr. Fromm. There is a  
14 distinction between the other file, and I don't want to  
15 discuss the other file any further. I'm a little upset  
16 that counsel start dealing with other cases in which  
17 they are not involved and raising them in front of me  
18 in the context of this case.

19 But the distinction is that was a  
20 party asking for an indefinite adjournment without  
21 speaking to me ever directly in the other case.

22 Here I had legal counsel, an officer  
23 of the court asking me for a postponement. That's an  
24 entirely different situation, in my mind.

25 Now, that being said -- I want to

1 dispose of this right away. That being said,  
2 Commission counsel on their oath of office said they  
3 wanted an adjournment, and they also undertook to  
4 provide something to me at my request. And they did  
5 not provide it.

6 MS. BLIGHT: It was provided, Mr.  
7 Chairman.

8 THE CHAIRPERSON: With conditions I  
9 did not accept.

10 So that being said, it remains  
11 outstanding. It's not an order, it's not a ruling. It  
12 was a request from the Tribunal. And the Tribunal will  
13 remember these things the next time a request comes  
14 along of that sort and they don't provide it.

15 This is what was sought from the  
16 Tribunal. It wasn't provided the way it was asked for  
17 from the Tribunal, but that's the matter.

18 Yes, Mr. Christie?

19 MR. CHRISTIE: Sir, your comments I  
20 understand and I appreciate about the health of  
21 counsel, but the one counsel who said that he was  
22 mentally incapable of carrying on referred to the  
23 nature of this threat as a major contributor to his  
24 mental state. And I read the transcript with some  
25 interest on that point, having asked for it. And there

1 has been a serious innuendo cast over either the  
2 respondent, or those who intervened on his behalf.

3 THE CHAIRPERSON: With whom has that  
4 innuendo been cast?

5 MR. CHRISTIE: Towards yourself --

6 THE CHAIRPERSON: I'm telling you  
7 right now, sir, it means absolutely nothing to me. It  
8 is irrelevant. It's out of the picture. I'm the only  
9 person who counts at this time.

10 MR. CHRISTIE: We, I think, are  
11 entitled to an apology.

12 THE CHAIRPERSON: From Commission  
13 counsel?

14 MR. CHRISTIE: Yes. Because an  
15 allegation was made that was by no means requiring any  
16 secrecy at all and, were the truth known, it would have  
17 had no innuendo effect against the respondent or the  
18 intervenors. But the way it was left at the time, as  
19 if it was some deep dark secret of grave significance,  
20 and the record is clear what was said by Mr. Fine.

21 We are concerned that -- regardless  
22 of what Your Honour, yourself, may derive from this, it  
23 was unnecessary to keep it secret. There was nothing  
24 in the nature of a justification for the secrecy and it  
25 has left an unfair impression vis-a-vis our position

1 and there is certainly no justification for somehow  
2 sweeping it under the rug now.

3 THE CHAIRPERSON: I'm not trying to  
4 sweep it under the rug, sir. I want us to proceed with  
5 the case. We have one witness left, then we can go to  
6 final submissions. And this has no bearing on that  
7 case. If it has some kind of bearing in a public  
8 forum, that's not my forum. My forum is here.

9 If this has something to do with the  
10 back and forth -- the ongoing back and forth between  
11 Commission and perhaps Mr. Lemire or other  
12 participants, I don't know, but it has no bearing on  
13 the case. I don't need to know that. And I don't know  
14 it, by the way. I don't know what transpired, any of  
15 that information. It may have made it to other  
16 individuals in this room, but not to me.

17 MR. CHRISTIE: Well, it isn't, in our  
18 submission at least, appropriate for aspersions to be  
19 cast in a secret manner and then just --

20 THE CHAIRPERSON: That's fair, and I  
21 took offence to the way they were cast as well  
22 initially.

23 MR. CHRISTIE: Well, they are never  
24 clarified. We get a letter and my friend doesn't want  
25 it put on the record.

1 THE CHAIRPERSON: I don't know what  
2 the letter says. Go on.

3 MR. CHRISTIE: Well, I think it  
4 should be put on the record and it should be identified  
5 that this was not a matter involving a need for  
6 secrecy, and it was a factor in Mr. Vigna's claim of  
7 illness. And for some reason, I maintain, that this  
8 does not indicate the degree of candor or the degree of  
9 credibility one would expect, either from counsel or  
10 from the Commission itself. And I'm quite concerned  
11 that we seem to take this as acceptable and I don't --

12 THE CHAIRPERSON: Let me go back on  
13 one point. You're saying that this letter clarifies  
14 what Mr. Fine was alluding to, so it helps complete the  
15 record?

16 MR. CHRISTIE: Yeah, and Ms. Kulaszka  
17 was about to read it and my learned friend jumped up  
18 and objected.

19 THE CHAIRPERSON: What is the source  
20 of your objection, Ms. Blight?

21 MS. BLIGHT: My objection was that  
22 the adjournment was granted on a completely different  
23 ground.

24 THE CHAIRPERSON: That's true,  
25 however --

1 MS. BLIGHT: There were never any  
2 allegations made with respect to any of the parties to  
3 this proceeding. It was a concern Mr. Fine wanted the  
4 opportunity to look into. The parties asked for  
5 particulars, no order was made, particulars were  
6 provided, and it's irrelevant to the conduct and the  
7 merits and everything else.

8 Now, Mr. Chairman, I heard you make a  
9 ruling when I first rose to make this objection. I  
10 heard you to state to Ms. Kulaszka all of this was  
11 background noise and that you were not going to  
12 entertain it.

13 THE CHAIRPERSON: No, it's true  
14 that --

15 MS. BLIGHT: So I'm now responding to  
16 the same objection for a second time.

17 THE CHAIRPERSON: Hold on a second. I  
18 had an opportunity to hear. It is background noise,  
19 but the truth is that Mr. Fine did raise this point to  
20 the point I felt misled. I felt I had been taken  
21 because I, thereafter, interrogated Ms. Kulaszka on her  
22 activities the previous day. That was bothersome.

23 Now, if all this is going to do is  
24 complete the facts relating to that discussion, I don't  
25 see what's wrong with that. But is there a privilege

1           being claimed? Are you invoking Section 37 perhaps?

2                       MS. BLIGHT: No, there's no privilege  
3           being claimed. My only objection was based on complete  
4           irrelevance to any of the matters that are before you  
5           in this hearing. Now, if you wish to receive the  
6           document and, you know, for --

7                       THE CHAIRPERSON: I seem to be the  
8           only person that doesn't know what is in this document.  
9           It seems to have been exchanged by everybody in the  
10          room except me.

11                      MS. BLIGHT: It was done so because  
12          the parties had requested particulars and the  
13          Commission has indicated to you that we do not intend  
14          to raise the matter before you. No aspersions are  
15          being cast and by raising this yet another time, all  
16          the respondents and supporting intervenors are doing  
17          are simply underlining the fact that a security concern  
18          was raised at the hearing and more particulars are  
19          being put in about it. And to the extent that it is  
20          background noise and should not be affecting the  
21          conduct of this hearing, respondent and supporting  
22          intervenors, really are in contradiction to their own  
23          position.

24                      THE CHAIRPERSON: I said it's  
25          background noise, but it's not irrelevant. I mean, it

1           took up our entire day of proceedings last time, or a  
2           good portion of it. It's not irrelevant. I just  
3           thought it was unnecessary. That's what I meant by  
4           background noise.

5                           It certainly is relevant and -- look,  
6           if there's nothing confidential or privileged in this  
7           document, I don't see why it just can't be entered into  
8           the record, along with everything else. Look in front  
9           of me how much material I have. What's the big deal?  
10          Let's get it over with.

11                           MS. BLIGHT: I'm concerned, quite  
12          frankly, that this is just the start of evidence that's  
13          going to now be starting to be poured in with respect  
14          to this so-called security issue. Are we going to be  
15          cross-examining the people that were involved in this?  
16          I mean, if this is reading it into the record and  
17          that's the end of it, I have much less of a concern.

18                           THE CHAIRPERSON: Ms. Kulaszka, is  
19          this your intention, to proceed with this matter much  
20          further?

21                           MS. KULASZKA: My intention is to  
22          file the letter.

23                           THE CHAIRPERSON: That's it?

24                           MS. KULASZKA: That's it.

25                           THE CHAIRPERSON: That's fine. I'm

1 going to file the record, the letter.

2 THE REGISTRAR: Letter dated June  
3 21st, 2007 from Margot Blight to Richard Warman, Simon  
4 Fothergill, Marvin Kurz, Steven Skirka, Joel Richler,  
5 Paul Fromm, Barbara Kulaszka and Doug Christie will be  
6 filed as Respondent Exhibit R-18.

7 EXHIBIT NO. R-18: Letter dated  
8 June 21, 2007

9 THE CHAIRPERSON: Thank you. I've  
10 read it.

11 MS. KULASZKA: If I can just put it  
12 into the record?

13 THE CHAIRPERSON: It is. You want to  
14 read it into the record?

15 MS. KULASZKA: Just the one sentence.

16 THE CHAIRPERSON: Go ahead.

17 MS. KULASZKA:

18 "At the hearing on May 11, 2007  
19 Commission raised a concern  
20 involving security. The  
21 Commission had learned that both  
22 its security guards in  
23 attendance at the Tribunal on  
24 May 10th, 2007 had been  
25 separately followed after being

1 in the Tribunal. This was  
2 reported to the appropriate  
3 police authorities and remains  
4 in their hands. The Commission  
5 does not intend to pursue this  
6 complaint before the Tribunal  
7 upon resumption of the hearing  
8 on June 25th, 2007."

9 Signed, "Margot Blight."

10 If I can just the raise the matter of  
11 costs?

12 THE CHAIRPERSON: Yes.

13 MS. KULASZKA: Mr. DuFresne contacted  
14 me. He wants some more information regarding the costs  
15 I have claimed, and I haven't provided that yet. I  
16 haven't had time. But I'm not sure whether he has  
17 provided costs to the other parties, and if they want  
18 to raise that they can address the Tribunal.

19 THE CHAIRPERSON: These things do  
20 take time. We experience the same kind of difficulties  
21 at the Tribunal getting reimbursed for our expenses  
22 sometimes. There's time involved in government.

23 Is there anything in particular you  
24 wish to raise, Mr. Fromm? I'm sorry I can see you  
25 behind that table.

1                   MR. FROMM: Yes. I'm not very happy  
2 at the great length of time taken. I submitted my  
3 expenses a day or two after the hearings ended on the  
4 11th. I finally got a fax on the 15th of June querying  
5 this and that, so I think -- I don't think the  
6 undertaking was handled in an expeditious way that you  
7 might have expected, particularly considering the  
8 pretty clear assurances that you were given.

9                   THE CHAIRPERSON: Okay. Would you  
10 like me perhaps to ask the Commission to act with  
11 more -- in a more expeditious manner?

12                   MR. FROMM: Yes.

13                   THE CHAIRPERSON: Please act in a  
14 more expeditious manner. Please pass the word onto the  
15 office.

16                   MS. BLIGHT: I will convey that.

17                   THE CHAIRPERSON: To Mr. Fine,  
18 particularly. He gave me his word.

19                   MS. BLIGHT: I'll convey that  
20 request.

21                   MR. FROMM: Just for the record, I  
22 would like to note Mr. Warman's not here again.

23                   THE CHAIRPERSON: Dually noted. Mr.  
24 Christie, same situation for you?

25                   MR. CHRISTIE: Yes, I did submit.

1 I've received nothing.

2 THE CHAIRPERSON: As I say --

3 MS. BLIGHT: I believe Mr. Christie  
4 has received correspondence in response to his  
5 requesting additional documentation.

6 THE CHAIRPERSON: I took his remark  
7 to be he received no compensation. That's fine. As  
8 long as you convey the message. I'll see -- you can  
9 keep me informed of how things are proceeding.

10 I am somewhat familiar with  
11 reimbursement of expenses in government. It's not  
12 immediate. But, nonetheless, it has been a month.  
13 Things should be moving along.

14 All right, then. Next item then  
15 would be the witness, right? Mr. Christie, are you  
16 calling that witness?

17 MS. BLIGHT: Mr. Chairman, just  
18 because you were making some comments with respect to  
19 the medial certificates when Mr. Christie rose to bring  
20 you back to the security issue, I have not had a chance  
21 to address you in that regard.

22 THE CHAIRPERSON: If you wish to, go  
23 ahead.

24 MS. BLIGHT: The Commission's  
25 understanding was that your rulings with respect to the

1 medical certificates had been made -- very explicitly  
2 made that the certificates were to be provided for the  
3 eyes of the Tribunal only. And those were the  
4 conditions of which the Tribunal was reminded. And  
5 Commission's counsel's correspondence enclosing the  
6 medical certificates, which were then returned and then  
7 there was a volume of additional correspondence.

8 Now, I have asked that this be dealt  
9 with along with scheduling matters and now there's a  
10 motion with respect to Dr. Karen Mock. I requested  
11 that it all be dealt with at -- tomorrow afternoon in  
12 order that we might permit the witness to leave, if not  
13 at 1 p.m. perhaps a little early, in order to attend a  
14 ceremony at which a member of his immediate family is  
15 receiving an award in Ottawa at 7:30 tomorrow.

16 THE CHAIRPERSON: I understand.

17 MS. BLIGHT: Now, that appointment  
18 was arranged well in advance of the previous  
19 adjournment. But I can advise you that no one did,  
20 during that flutter of activity that morning, ask the  
21 witness whether he was available on these dates.

22 So the witness is here, will  
23 accommodate the Tribunal in whatever he's ordered to  
24 do, but it would be much appreciated if we could  
25 arrange our schedule in order to allow him to leave a

1 little early tomorrow.

2 THE CHAIRPERSON: All these are  
3 preliminary issues, and secondary issues will be dealt  
4 with at a later time.

5 I want to say for the record, last  
6 week I was at another hearing at which Mr. Fromm was in  
7 attendance acting as agent for one of the parties. Mr.  
8 Fromm approached me through the registry officer at the  
9 time that he and Ms. Kulaszka had sent some  
10 correspondence back to my Ottawa office.

11 At that point I asked for Commission  
12 counsel, who is not involved in any of these cases but  
13 who was there for the other case, to stand next to us  
14 and then he informed me of the fact this correspondence  
15 had been sent.

16 Commission counsel then undertook to  
17 speak to Ottawa, then she came back to us and explained  
18 that indeed the reason for the request that you had  
19 made in your letter, Ms. Blight, was because the  
20 gentleman needed to attend a certain graduation  
21 ceremony of a child.

22 MS. BLIGHT: It is not a graduation  
23 ceremony, but it is an award of --

24 THE CHAIRPERSON: In any event,  
25 that's when Mr. Fromm and I learned of that situation.

1           And Mr. Fromm -- I asked him then at that point in the  
2           presence of Commission counsel, I just want to say for  
3           the record, that he communicated with counsel that are  
4           on the left side of the room, I think we called it at  
5           the time, and he undertook to do so, to convey that  
6           information that Commission counsel gave.

7                           I just wanted to put that on the  
8           record. I told Mr. Fromm I would put that on the  
9           record as soon as we came in today.

10                           Is there any objection that we  
11           proceed with the witness immediately and deal with any  
12           other matters when that witness is not present?

13                           MS. KULASZKA: I gather from Ms.  
14           Blight's comments that he will be leaving a little  
15           early tomorrow afternoon, coming back Wednesday, if  
16           required?

17                           THE CHAIRPERSON: That is what I  
18           understand from Commission counsel at my other hearing  
19           last week.

20                           MS. BLIGHT: That's correct, if  
21           required.

22                           MS. KULASZKA: I have no objection.

23                           THE CHAIRPERSON: We'll have enough  
24           time to go through witness then. So we can call the  
25           witness then? Ms. Kulaszka, are you calling that

1 witness or is --

2 MS. KULASZKA: Yes, I requested him  
3 to come so he could be cross-examined on his affidavit.  
4 And Mr. Christie will be doing the first  
5 cross-examination.

6 THE CHAIRPERSON: Okay, but you  
7 maintain the right to cross-examine as well?

8 MS. KULASZKA: Yes, I have a great  
9 deal of material to go through.

10 THE CHAIRPERSON: Okay. I recall  
11 there was a disclosure of material that took place on  
12 that Friday morning or -- was it Friday or Wednesday?

13 MS. KULASZKA: Yes, that has been  
14 filed at R-17, I believe.

15 THE CHAIRPERSON: It's your binder.  
16 Okay. Ms. Kulaszka?

17 MS. BLIGHT: Two things. First of  
18 all, are we to refer to R-17 and am I to understand  
19 that I'm to --

20 THE CHAIRPERSON: It's been in the  
21 record already.

22 MS. BLIGHT: To get the binder out  
23 for purposes of --

24 THE CHAIRPERSON: That's the binder  
25 that had been filed that other day with respect to the

1 three witnesses, Hannya Rizk, Dean Steacy, Harvey  
2 Goldberg.

3 MS. BLIGHT: The second thing is --  
4 I'm rising in anticipation. Mr. Goldberg swore an  
5 affidavit that's two pages long with respect to his  
6 participation in searching for the documents referred  
7 to in the order for disclosure.

8 The Commission's position is that Mr.  
9 Goldberg can be cross-examined on the content of his  
10 affidavit but he has also been subpoenaed as a witness.  
11 And to the extent that the questioning goes beyond the  
12 affidavit, it's the Commission's position that Mr.  
13 Goldberg is being called as a witness for the  
14 respondent and must be examined in-chief.

15 THE CHAIRPERSON: Makes some sense.  
16 That shouldn't pose a problem for you, Ms. Kulaszka, to  
17 proceed in that manner?

18 MS. KULASZKA: Well, if anything  
19 arises we can deal with it as we go along.

20 THE CHAIRPERSON: I didn't notice  
21 that you were conducting yourself in too much of a  
22 cross-examination manner with respect to the other  
23 witnesses either.

24 MS. KULASZKA: No, I've got a lot of  
25 documents I'm quite happy to be on record.

1 THE CHAIRPERSON: So with that being  
2 said, who will start? Let's bring the witness in. And  
3 Mr. Christie --

4 MS. KULASZKA: Mr. Christie is going  
5 to do his cross-examination, I will do mine second.

6 THE CHAIRPERSON: So, Mr. Christie,  
7 follow the same pattern that we discussed just now.  
8 Thank you, sir. Mr. Christie?

9 MS. BLIGHT: Mr. Chair, I cannot see  
10 the witness at all from where I'm seated. So perhaps  
11 we might be able to move this podium.

12 SWORN: HARVEY GOLDBERG

13 CROSS-EXAMINATION BY MR. CHRISTIE

14 MR. CHRISTIE: How old are you, sir?

15 MR. GOLDBERG: I'm 56 years old.

16 MR. CHRISTIE: Where were you  
17 employed, sir?

18 MR. GOLDBERG: I'm employed at the  
19 Canadian Human Rights Commission.

20 MR. CHRISTIE: What is the status or  
21 nature of your employment?

22 MR. GOLDBERG: I am the team leader  
23 of Strategic Initiatives in the Knowledge Centre.

24 MR. CHRISTIE: And what does this  
25 have to do with Section 13 of the Canadian Human Rights

1 Act?

2 MR. GOLDBERG: As a senior policy  
3 advisor, I advise the Commission on issues relating to  
4 a broad range of matters, and one of them is policy  
5 considerations with regard to Section 13.

6 MR. CHRISTIE: What is your  
7 educational background?

8 MR. GOLDBERG: I have a Bachelors  
9 degree in political science and Masters degree in  
10 political science.

11 MR. CHRISTIE: Where did you get your  
12 Bachelors degree?

13 MR. GOLDBERG: At the University of  
14 Manitoba.

15 MR. CHRISTIE: And when was that?

16 MR. GOLDBERG: I graduated in 1973.

17 MR. CHRISTIE: That was from the  
18 University of Manitoba, not the University of Winnipeg?

19 MR. GOLDBERG: That's correct.

20 MR. CHRISTIE: And your Masters is  
21 from that same institution?

22 MR. GOLDBERG: No, it's not.

23 MR. CHRISTIE: Where is it from?

24 MR. GOLDBERG: Carleton University.

25 MR. CHRISTIE: And those two academic

1 degrees, did they involve any consideration of the  
2 subject of the origin of freedom?

3 MR. GOLDBERG: I studied political  
4 philosophy, yes.

5 MR. CHRISTIE: What subjects and  
6 writings did you read in terms of political philosophy?

7 MR. GOLDBERG: That's a long time  
8 ago. I can't recall, but the classics, Aristotle,  
9 Plato, Mills, that type of thing.

10 MR. CHRISTIE: Rousseau?

11 MR. GOLDBERG: Yes.

12 MR. CHRISTIE: Anybody else you  
13 recall? Descartes?

14 MR. GOLDBERG: No, I don't recall  
15 studying Descartes.

16 MR. CHRISTIE: Did you write a thesis  
17 for your Masters Degree?

18 MR. GOLDBERG: Yes, I did.

19 MR. CHRISTIE: What was it about?

20 MR. GOLDBERG: About the New  
21 Democratic Party in Manitoba.

22 MR. CHRISTIE: Would you place  
23 yourself on the left of the political spectrum?

24 MS. BLIGHT: Mr. Chairman, I object,  
25 this is irrelevant.

1                   MR. CHRISTIE:  Actually, Mr.  
2           Chairman, we are dealing with the question of the  
3           constitutional validity of certain pieces of  
4           legislation.  This is a person having authoritative  
5           control over the administration of that legislation and  
6           if, in fact, a demonstrable political bias could be  
7           demonstrated, it would seem reasonable to infer that  
8           the powers that are vested in the administration of  
9           this legislation could be seen as being not  
10          demonstrably justifiable in a free and democratic  
11          society, particularly vis-a-vis the administration of  
12          it on the Internet, which is a pretty germane issue  
13          here.

14                    So I thought it appropriate to  
15          explore, at least in some degree, the background of the  
16          political attitudes of the persons charged with the  
17          administration of the Act.

18                    If we were, for instance, examining  
19          whether someone had a strong Marxist or stated bias in  
20          favour of regulation of speech, it could be a relevant  
21          factor to determine whether this is necessarily  
22          consistent with a free and democratic society.

23                    So that's my reasoning and I hope  
24          that's helpful to explain.

25                    MS. BLIGHT:  First of all, there's

1           been no evidence to establish this Mr. Goldberg is in  
2           any manner in authoritative control of the  
3           administration of the statute.

4                       Second of all, as a public servant,  
5           his personal political views cannot, even if he were  
6           within an authoritarian control, have any bearing on  
7           his administration of the statute.

8                       Neither one of those have been  
9           established in evidence. So without the kind of  
10          evidentiary foundation to make an examination of the  
11          witness's personal political views relevant, this is  
12          coming entirely from left field, if I may say. If the  
13          chairman were to rule that a background were necessary,  
14          I would, of course, reserve the right to present any  
15          further objections once that were laid.

16                      MR. CHRISTIE: He referred to himself  
17          as policy advisor. I can't imagine anyone in a better  
18          position to administer or affect policy. Usually the  
19          term policy advisor means someone who advises on  
20          policy. Usually they are hired to advise because they  
21          are respected advisors.

22                      THE CHAIRPERSON: Consistent with my  
23          previous practice where I interpret these things  
24          broadly, I will allow it, but it's on the line, Mr.  
25          Christie. I don't want to know the man's personal

1 political beliefs.

2 MR. CHRISTIE: I wasn't asking that.  
3 I asked him how would he place himself on the left wing  
4 of the political spectrum.

5 THE CHAIRPERSON: You're right on the  
6 line. Go ahead.

7 MR. CHRISTIE: Can you answer that.

8 MR. GOLDBERG: Yes, I would say place  
9 myself on the left of the spectrum.

10 MR. CHRISTIE: Now, is there a  
11 committee to vet the applications or complaints under  
12 Section 13?

13 MR. GOLDBERG: No, there's no such  
14 committee.

15 MR. CHRISTIE: How is the  
16 determination made as to whether to proceed with a  
17 Section 13 complaint?

18 MR. GOLDBERG: The determination of  
19 whether to proceed is made by the Canadian Human Rights  
20 Commission sitting as a Commission.

21 MR. CHRISTIE: And is there  
22 sub-committee of the whole Commission to make decisions  
23 on Section 13(1)?

24 MR. GOLDBERG: No, there is no  
25 sub-committee of the Commission.

1 MR. CHRISTIE: So how many members of  
2 the Commission make a decision as to whether to proceed  
3 with the complaint under 13(1) or not?

4 MR. GOLDBERG: It varies. The  
5 Commission -- let me correct myself. If you mean a  
6 subcommittee -- when the Commission meets it can meet  
7 as the whole Commission, which I believe right now is  
8 five members, or it can meet by what they call  
9 divisions, which can be as little as one member, as  
10 many as two -- two or three members.

11 MR. CHRISTIE: Is there a division to  
12 examine Section 13(1) complaints?

13 MR. GOLDBERG: No, there's not.

14 MR. CHRISTIE: Is there an anti-hate  
15 team?

16 MR. GOLDBERG: Yes, there is.

17 MR. CHRISTIE: What's that?

18 MR. GOLDBERG: Starting in 2000 --  
19 early winter of 2003, the Commission began to move to  
20 an approach where we had teams that worked with the  
21 investigators from their various perspectives to assist  
22 in the processing of complaints, so we established a  
23 team to deal with Section 13 cases which consisted of a  
24 manager of investigations, several investigators, a  
25 person from our Knowledge Centre to provide policy

1 advice and also a person from the Knowledge Centre who  
2 was a lawyer and provided legal advice.

3 MR. CHRISTIE: Are you a member of  
4 the anti-hate team?

5 MR. GOLDBERG: I prefer to call it  
6 Section 13 team, but yes, I am a member of it.

7 MR. CHRISTIE: So there's a Section  
8 13 team?

9 MR. GOLDBERG: Correct.

10 MR. CHRISTIE: So I asked if there  
11 was any subcommittee responsible for decisions  
12 regarding Section 13. Would that be the Section 13  
13 team?

14 MR. GOLDBERG: No, it would not. We  
15 do not make decisions. We are not part of the  
16 Commission.

17 THE CHAIRPERSON: I understood the  
18 word divisions, when you used it earlier, to mean  
19 divisions of the formal Commission; is that correct?

20 MR. GOLDBERG: That's correct.

21 MR. CHRISTIE: So the Section 13 team  
22 looks at Section 13 complaints, correct?

23 MR. GOLDBERG: That's correct.

24 MR. CHRISTIE: And do they make  
25 recommendations to the Commission on whether to proceed

1 with charges, shall we call them complaints?

2 MR. GOLDBERG: No, the team doesn't  
3 make recommendations. Under the Act, an investigator  
4 is appointed to investigate complaints, and it's a  
5 statutory mandate of the investigator to make a  
6 recommendation to the Commission.

7 MR. CHRISTIE: What function does the  
8 anti-hate team or the Section 13 team have?

9 MR. GOLDBERG: The function of the  
10 team is to collaborate with the investigator and  
11 investigative staff to analyze incoming complaints, to  
12 review investigative reports in order to try and ensure  
13 that there's a high quality of the reports, the reports  
14 are comprehensive and concise and that the  
15 recommendations are clear for the Commissioners.

16 MR. CHRISTIE: So who makes the  
17 report that the Section 13 team examines? The  
18 investigator?

19 MR. GOLDBERG: The investigator is  
20 mandated under the Act to prepare the investigation  
21 report and present it -- and it is presented to the  
22 Commission.

23 MR. CHRISTIE: And the Section 13  
24 team examines the investigator's report for the reasons  
25 you've described?

1 MR. GOLDBERG: That's correct.

2 MR. CHRISTIE: And does it make  
3 recommendations to the investigator on how to improve  
4 the report?

5 MR. GOLDBERG: I don't know if you  
6 would call it recommendations. There's a discussion of  
7 the reports, and in the final analysis it's the  
8 investigator who makes the recommendation to the  
9 Commission.

10 MR. CHRISTIE: And have there been  
11 any Section 13 meetings that you don't attend?

12 MR. GOLDBERG: Do you mean, do I  
13 attend every meeting of the Section 13 team?

14 MR. CHRISTIE: Well, have there been  
15 any Section 13 meetings you have not attended?

16 MR. GOLDBERG: Yes.

17 MR. CHRISTIE: How many?

18 MR. GOLDBERG: I couldn't tell you.

19 MR. CHRISTIE: Who is the chairman of  
20 the Section 13 team?

21 MR. GOLDBERG: John Chamberling.

22 MR. CHRISTIE: And what part do you  
23 play in the Section 13 team?

24 MR. GOLDBERG: I provide a policy  
25 perspective and a general analytical perspective in

1 terms of a -- trying to help ensure the reports are  
2 clear, concise, that any policy considerations,  
3 although that really -- it's not that much of a policy  
4 usually -- are dealt with in a report.

5 MR. CHRISTIE: How do you determine  
6 that the reports are clear and concise? What do you do  
7 to make that result?

8 MR. GOLDBERG: Over my career in the  
9 Commission I've read thousands of investigation reports  
10 that have involved reviewing thousands of cases. So  
11 based on my experience and based on guidelines the  
12 Commission has developed, I know what the Commission --  
13 members of the Commission, the chief member and members  
14 of the Commission expect of a report.

15 MR. CHRISTIE: Well, do you make  
16 changes to the report to satisfy what you know to be  
17 the desires of the Commission?

18 MR. GOLDBERG: We -- no.

19 MR. CHRISTIE: Well, then, you say  
20 you just read the reports, you don't do anything to  
21 them?

22 MR. GOLDBERG: No, I didn't say that.

23 MR. CHRISTIE: What do you do to  
24 them?

25 MR. GOLDBERG: We have a general

1 discussion of a report and we might say, in paragraph  
2 15 that -- what you are trying to explain doesn't come  
3 out as clearly as it might. You may want to redraft  
4 the paragraph to clarify this point, or even things  
5 like, you know, there's an inconsistency, there's a  
6 difference in the numbers in paragraph 15 and paragraph  
7 16, you want to check them, things like that.

8 MR. CHRISTIE: That's called  
9 revision, isn't it?

10 MR. GOLDBERG: I wouldn't call that  
11 revision, no.

12 MR. CHRISTIE: Would you call it  
13 editing?

14 MR. GOLDBERG: No.

15 MR. CHRISTIE: What would you call it  
16 when you advise people how to improve their reports and  
17 make recommendations to change them?

18 MR. GOLDBERG: That's what I would  
19 call it, advising them how to improve their reports and  
20 make recommendations to them.

21 MR. CHRISTIE: To make them more  
22 acceptable to the Commission?

23 MR. GOLDBERG: Not more acceptable,  
24 no.

25 MR. CHRISTIE: What is your objective

1           then in making recommendations to change the reports?

2                       MR. GOLDBERG:  The Commission deals  
3           with hundreds and hundreds of reports a year, and they  
4           have a limited amount of time in which to do that.  
5           It's absolutely essential for the good functioning of  
6           the Commission and also for the benefit of both the  
7           respondent and the complainant.

8                       The reports are clearly written so  
9           they -- that they explain what the basis of the  
10          recommended decision are and how the investigator  
11          reached that decision.  That -- the investigator, in  
12          the final analysis, has as a statutory mandate to that  
13          report, but other Commission staff assist in ensuring  
14          that that objective is achieved.

15                      MR. CHRISTIE:  You repeated that a  
16          number of times, but do you ever make recommendations  
17          to clarify what the investigator's recommendations  
18          should be?

19                      MR. GOLDBERG:  As I said, we have  
20          discussions about the report, yes.  We certainly  
21          discuss recommendations.  Sometimes we even get draft  
22          reports before a recommendation is written.  It is  
23          discussed amongst staff, yes.

24                      MR. CHRISTIE:  Then you draft the  
25          recommendation?

1 MR. GOLDBERG: No, I've never drafted  
2 a recommendation.

3 MR. CHRISTIE: Well, you recommended  
4 a draft recommendation and the investigator decides if  
5 it's acceptable to him then. Is that how it works?

6 MR. GOLDBERG: In this the final  
7 analysis the investigator is responsible for his or her  
8 report, yes.

9 MR. CHRISTIE: And you would be  
10 senior to the investigators?

11 MR. GOLDBERG: No, I'm not senior to  
12 the investigators. I have no supervisory control over  
13 investigators.

14 MR. CHRISTIE: I didn't ask if you  
15 had supervisory control. You're senior to them, you're  
16 senior to them. What do you mean by senior? What do  
17 you think senior means?

18 MR. GOLDBERG: In this context, I'm  
19 not sure. My level in terms of job classifications is  
20 higher than that, than them, yes.

21 MR. CHRISTIE: Your experience at the  
22 Commission is how many years?

23 MR. GOLDBERG: I've been at the  
24 Commission since 1989.

25 MR. CHRISTIE: Did the investigators

1 have more experience than you?

2 MR. GOLDBERG: Some of them do, yes.

3 MR. CHRISTIE: Which ones?

4 MR. GOLDBERG: Mr. Chamberling has  
5 been there as long as I have.

6 MR. CHRISTIE: Longer or as long?

7 MR. GOLDBERG: I'm not quite sure.

8 Just about the same. Could I get a class of water?

9 MR. CHRISTIE: Sure. How often does  
10 the anti-hate team or the Section 13 team convene?

11 MR. GOLDBERG: Tuesday mornings, if  
12 required.

13 MR. CHRISTIE: And how many members  
14 attend?

15 MR. GOLDBERG: Four or five.

16 THE CHAIRPERSON: Sorry?

17 MR. GOLDBERG: Four or five.

18 MR. CHRISTIE: And the investigator  
19 is one?

20 MR. GOLDBERG: There are at the  
21 moment I believe -- well, there's been some changes,  
22 but there's usually two investigators.

23 MR. CHRISTIE: Could you, in your  
24 position as a policy advisor, advise in regard to how  
25 to contact ISPs?

1 MR. GOLDBERG: Contact them in what  
2 regard?

3 MR. CHRISTIE: In regard to Section  
4 13, which is something you seem to be involved in.

5 MR. GOLDBERG: No, I would not.

6 MR. CHRISTIE: You wouldn't have made  
7 any recommendations as to how to contact ISPs?

8 MR. GOLDBERG: No, I would not.

9 MR. CHRISTIE: Are you aware of any  
10 contact by the Canadian Human Rights Commission with  
11 ISPs?

12 MR. GOLDBERG: Yes.

13 MR. CHRISTIE: In what capacity would  
14 you be familiar with that?

15 MR. GOLDBERG: I would be familiar  
16 with it in my capacity with regard to the policy work I  
17 do. I've had -- I personally had contacts in the  
18 Commission -- had contact with Internet service  
19 providers to discuss issues of common interest with  
20 regard to Section 13.

21 MR. CHRISTIE: So you have in your  
22 capacity as a policy advisor become aware of  
23 communications with ISPs; is that correct?

24 MR. GOLDBERG: That's correct.

25 MR. CHRISTIE: And in your capacity

1 as policy advisor have you personally communicated with  
2 ISPs?

3 MR. GOLDBERG: Yes, I have.

4 MR. CHRISTIE: In Canada?

5 MR. GOLDBERG: Yes, I have.

6 MR. CHRISTIE: In the United States?

7 MR. GOLDBERG: No, I have not.

8 MR. CHRISTIE: Elsewhere in the  
9 world?

10 MR. GOLDBERG: No.

11 MR. CHRISTIE: Have you --

12 THE CHAIRPERSON: Repeat the places?  
13 I just missed them. In Canada and the United States?

14 MR. GOLDBERG: No, just the Canada.

15 MR. CHRISTIE: Never communicated  
16 with an ISP in the United States?

17 MR. GOLDBERG: Not that I can recall.

18 MR. CHRISTIE: And you are not aware  
19 of any communications by the Human Rights Commission of  
20 Canada with an ISP in the United States?

21 MR. GOLDBERG: I didn't say that.

22 MR. CHRISTIE: Is that true?

23 MR. GOLDBERG: I believe that the  
24 Commission has communicated with ISPs in the United  
25 States. That's hearsay. I don't have personal

1 knowledge of it but I've heard that they have.

2 MR. CHRISTIE: And as a policy  
3 advisor would you have advised them whether they should  
4 or shouldn't do that?

5 MR. GOLDBERG: No.

6 MR. CHRISTIE: So if the Commission  
7 is communicating with ISPs in the United States, it's  
8 contrary to your advice or with your advice?

9 MR. GOLDBERG: Neither.

10 MR. CHRISTIE: So you wouldn't have  
11 advised them about it at all?

12 MR. GOLDBERG: Not to my  
13 recollection, no.

14 MR. CHRISTIE: When you became aware  
15 of it -- could you tell us when you became aware of  
16 communication with ISPs in the United States?

17 MR. GOLDBERG: I can't say  
18 specifically. I do recall knowing of some discussion  
19 that there was going to be contact made with ISPs in  
20 the United States -- with one ISP in the United States  
21 with regard to some website in Canada, but I don't  
22 recall any particulars.

23 MR. CHRISTIE: What was the name of  
24 the ISP?

25 MR. GOLDBERG: I do not know.

1 MR. CHRISTIE: When was it, in terms  
2 of years?

3 MR. GOLDBERG: Maybe two, three years  
4 ago.

5 MR. CHRISTIE: So it was your  
6 knowledge that someone at the Commission was going to  
7 communicate with an ISP in the United States about a  
8 website in Canada?

9 MR. GOLDBERG: I can't recall whether  
10 I knew about it before or after.

11 MR. CHRISTIE: Well, did you offer  
12 any policy advice about it?

13 MR. GOLDBERG: No.

14 MR. CHRISTIE: Did you consider that  
15 it was something that was so normal you wouldn't bother  
16 advising about it?

17 MR. GOLDBERG: I would have  
18 considered that it was a legal issue, and I don't do  
19 legal advice.

20 MR. CHRISTIE: Well, as the member of  
21 the Section 13 team you would have become aware of this  
22 because it's not something that would apply to any  
23 other section of the Act?

24 MR. GOLDBERG: No, your assumption is  
25 incorrect.

1 MR. CHRISTIE: Would ISP  
2 communication be relevant to any other administration  
3 of the Human Rights Act other than Section 13?

4 MR. GOLDBERG: No, it would not, but  
5 the Section 13 team doesn't get involved in every  
6 action that's taken or investigation or the enforcement  
7 of a complaint.

8 MR. CHRISTIE: Are you a policy  
9 advisor in respect to 13(1) of the Act?

10 MR. GOLDBERG: Yes.

11 MR. CHRISTIE: Is there any other  
12 policy advisor with respect to Section 13(1) of the  
13 Act?

14 MR. GOLDBERG: There's a number of  
15 policy advisors. We can be assigned to different  
16 issues at different times.

17 MR. CHRISTIE: Well, I'm concerned  
18 about Section 13 of the Act. Is there any other policy  
19 advisor who is ever entrusted with the responsibility  
20 of advising on policy in respect of 13, besides  
21 yourself?

22 MR. GOLDBERG: Section 13 has been in  
23 the Canadian Human Rights Act for 30 years so I'm sure  
24 that -- I know there have been -- other people have  
25 advised the Commission on Section 13 of the Canadian

1 Human Rights Act. There are other people now that  
2 provide advice.

3 MR. CHRISTIE: I'm asking whether  
4 there's any other policy advisor, other than you at the  
5 present time, regarding Section 13(1) of the Act?

6 MR. GOLDBERG: I'm the primary  
7 person, yes.

8 MR. CHRISTIE: Was there anybody  
9 else?

10 MR. GOLDBERG: There are lawyers. For  
11 example, there's one person who is the head of our  
12 policy section who also provided some advice on the  
13 issue.

14 MR. CHRISTIE: When you say "our  
15 policy section" --

16 MR. GOLDBERG: Policy section within  
17 the Knowledge Centre.

18 MR. CHRISTIE: Are you aware as a  
19 policy advisor respecting Section 13(1) as to any  
20 internal memos directing the method of approaching  
21 ISPs?

22 MR. GOLDBERG: No, I'm not.

23 MR. CHRISTIE: So you have no  
24 knowledge of any policy statements regarding how to  
25 approach ISPs in respect to Section 13?

1                   MR. GOLDBERG: I have no recollection  
2 of any such policy advice that may exist, but I do not  
3 have any recollection.

4                   MR. CHRISTIE: Are you aware of any  
5 methods of research that you have advised or become  
6 aware of in regard to tracking Canadians using ISPs or  
7 communicating on the web?

8                   MR. GOLDBERG: I have been in the  
9 periphery of some discussions about what investigation  
10 techniques could be used to determine who was behind a  
11 website, yes, I have.

12                   MR. CHRISTIE: So were you aware of  
13 the methods used to track people who use ISPs or are  
14 communicating on the web?

15                   MR. GOLDBERG: Just in a very general  
16 sense. I'm not a technical expert, no. That's my  
17 answer.

18                   MR. CHRISTIE: Well, what are you  
19 aware of?

20                   MS. BLIGHT: Mr. Chairman, we will  
21 not be getting into any evidence of investigation  
22 techniques per se, as the Commission continues to  
23 assert a specified public interest under Section 37 of  
24 the Canadian -- the Canada Evidence Act and these  
25 matters pertain to investigation techniques.

1                   MR. CHRISTIE: Mr. Chair, this is a  
2 study, if we are allowed to proceed, of whether or not  
3 provisions of Section 13(1) constitute a reasonable  
4 limit as they are now written on the basis of evidence  
5 which we've endeavored to lead.

6                   Investigation techniques, were they  
7 comparable to those of the statutes in East Germany,  
8 would certainly be relevant to whether they would be  
9 compoundable with a free and democratic society.

10                  My friend refers to this  
11 all-encompassing claim of Section 37(1), which I gather  
12 from her remarks she wishes to throw like a blanket  
13 over any inquiry about investigative techniques.

14                  First of all, Section 37(1) can only  
15 be invoked by an official or the minister. My friend  
16 is not an official and there's no claim of official  
17 status nor is there any definition of official status  
18 for that matter.

19                  THE CHAIRPERSON: There is,  
20 official -- the statute cross references to the  
21 Criminal Code ultimately, does it not?

22                  MR. CHRISTIE: The statute is the  
23 Canada Evidence Act and I don't believe Section 37  
24 defines official, nor does the Canada Evidence Act, but  
25 I have another concern.

1 THE CHAIRPERSON: But I may have  
2 dealt with that. I think there's a reference that  
3 ultimately leads us to a definition under the Criminal  
4 Code.

5 MR. CHRISTIE: I'm not sure about  
6 that. I don't want to address that without certainty.  
7 But, my friend eludes to her assertion that she has  
8 made this objection before, and that this is an old  
9 objection which may or may not be true. The claim of  
10 Section 37 privilege, she now says applies to all  
11 investigative techniques.

12 I've examined Section 37 --

13 THE CHAIRPERSON: Maybe you should  
14 pull it up.

15 MR. CHRISTIE: I think the witness  
16 should be asked to wait until we've discussed this,  
17 please.

18 THE CHAIRPERSON: Would you please  
19 step outside for a moment?

20 MR. CHRISTIE: First of all, my  
21 friend advises me that, and I agree to the extent of my  
22 recollection, you said there can't be a blanket  
23 privilege.

24 First of all, there has to be a  
25 specific question, then there has to be this claim of

1 privilege, then it has to be demonstrated or stated  
2 what the specific public interest is. We've been  
3 through that.

4 THE CHAIRPERSON: A specified public  
5 interest is what it says.

6 MR. CHRISTIE: Yes. Now, there's no  
7 clarification in the legislation about what that means,  
8 but we could argue about that. Let's leave that for  
9 the moment.

10 But I understand, and I make the  
11 submission, there is no entitlement to a blanket claim  
12 of privilege vis-a-vis everything to do with  
13 investigation, because if such were the case we might  
14 as well terminate this now, go to the Superior Court.

15 However, my friend makes the further  
16 assertion, and this brings us to subsection 3 of  
17 Section 37. She makes the assertion, we've made this  
18 before and this is our claim.

19 I've thought about this in a number  
20 of contexts and I've analyzed this before in the case  
21 of Barr, but that's in a criminal context, but the same  
22 thing applies.

23 This section does not say who has to  
24 bring the objection to the Superior Court, and my  
25 position is it's got to be the person claiming the

1 objection because he who asserts must prove is a  
2 fundamental principle of law.

3 The objection is asserted by, in this  
4 case my friend, and if there's an objection to be  
5 brought and justified, it has to be brought and  
6 justified by the person making the objection, not the  
7 person opposing the objection anymore than if we were  
8 here today. My friend would stand up and say,  
9 "objection", would the Court call on me, or you, sir,  
10 call on me to explain why the objection is not valid?  
11 No, because it's their objection and they should bring  
12 it to the Court within the 10 days so they don't have  
13 the power to stymie the proceeding.

14 THE CHAIRPERSON: Interesting point.  
15 Do I have any jurisdiction to address that issue?

16 MR. CHRISTIE: I think you do because  
17 they are asking you to apply that provision of the  
18 Canada Evidence Act, and you have authority to do a  
19 whole lot of things.

20 First of all, to interpret the law as  
21 it comes before you; secondly, to apply even the  
22 Charter. I used to argue that, for God's sake don't  
23 give Tribunals the power to rule on the legislative  
24 authority, or the legislative -- constitutional  
25 competence of their own legislation.

1                   But the courts have overruled that  
2                   argument many times, and they have said  
3                   notwithstanding -- and of course in this case you are a  
4                   lawyer, sir, and that I understand that, and many are,  
5                   but I was of the view and argued strenuously that only  
6                   Superior Court judges should be allowed to rule on the  
7                   constitutional validity of enabling legislation. And  
8                   the courts have said no.

9                   The first place to discuss this and  
10                  to have a ruling is right before yourself, sir, and  
11                  others in your position.

12                 So I say, you have the authority and  
13                 statutory mandate to interpret the law on issues of law  
14                 that arise. You have, also, the duty to interpret, in  
15                 my submission, Section 37(3), and my argument very  
16                 simply is, if it's true this objection has been made  
17                 before, then it was incumbent upon the Crown, or  
18                 whoever my friend speaks for, in this case the  
19                 Commission, to have brought that within 10 days before,  
20                 I would think, the Federal Court, under 3(A) because  
21                 you are a body, as I understand it, endowed with  
22                 authority under an Act of Parliament.

23                 Therefore, I submit, that if the  
24                 usual practice and principles of fundamental justice  
25                 apply to the interpretation of that legislation, A, he

1           who asserts must prove, B, it is the Commission who  
2           asserts it, C, the Commission claims to have asserted  
3           it before and has never brought it to the Court for  
4           consideration and they cannot raise it again simply by  
5           repeating it.

6                           If the objection has not been  
7           advanced and defended before the appropriate Tribunal  
8           or, rather, jurisdiction within the time required by  
9           the Act, then the claim or objection cannot stand.

10                          There's no statutory authority to  
11           make it if they haven't done what I say is their duty.  
12           They would love to cast on us the duty in the middle of  
13           a proceeding, to justify their objection or attack  
14           their objection. But it's their objection. They have  
15           to advance it under Section 37(3) and they haven't done  
16           so.

17                          So I think for those two reasons,  
18           either we have to proceed and require answers about the  
19           investigative process --

20                          MS. KULASZKA: Yes, if I could make  
21           submissions on that.

22                          As you know, the section invoked the  
23           last time around -- and we have filed a judicial review  
24           about that and the Tribunal given notice of that.

25                          Mr. Christie now raises what really

1 is a very interesting legal point. I didn't consider  
2 it. I just filed a judicial review. But it is a very  
3 important point: Who is to file the judicial review?  
4 Whose burden is it to prove this, and usually if an  
5 objection was raised, of course the counsel from the  
6 Commission would have to justify the objection and you  
7 would hear a response and that's the way it would work.

8 And I think you do have the  
9 jurisdiction to decide this issue for this reason.

10 When this hearing started in January,  
11 you had previously ordered many documents to be  
12 disclosed. Many of those documents were disclosed very  
13 first day of that hearing by being dumped on my desk  
14 here in the hearing room, and I never brought a  
15 judicial review to many of the exemptions claimed in  
16 the document, privilege claimed under Section 37,  
17 because I simply didn't have time at that point.

18 But this point that Mr. Christie has  
19 raised is very interesting because if the burden is  
20 upon the Commission to bring the judicial review then  
21 they do not bring a judicial review to assert that  
22 privilege within the 10 days, that means they should  
23 disclose those documents in their entirety.

24 THE CHAIRPERSON: Now, you are  
25 referring back to those earlier documents?

1 MS. KULASZKA: Yes. It is a very  
2 important point in this case because there are many,  
3 many documents that were disclosed which will be put in  
4 evidence and, of course, censored but if --

5 THE CHAIRPERSON: I'm just trying to  
6 follow your logic. The first question I'm going to ask  
7 you is, do you have any authority for these statements  
8 that you're making?

9 MS. KULASZKA: I have looked for  
10 authority and I haven't found anything on this point  
11 about who is to bring the application. I don't think  
12 it's been raised.

13 THE CHAIRPERSON: My experience on  
14 whenever 37 has been raised in the past with the  
15 Tribunal is it wasn't dealt with in the way you are  
16 suggesting, not in this case but in other cases, and  
17 perhaps a previous iteration of 37 before the  
18 amendments that would have taken place --

19 MS. KULASZKA: Has someone raised  
20 about who is to bring the application? Who has the  
21 burden?

22 THE CHAIRPERSON: Would it be my  
23 decision to make, would be first question. The second  
24 one is, I'm just following through in the logic. Would  
25 it not mean then once it's invoked by the other side

1           then we have to suspend all discussion on that evidence  
2           for 10 days until such time as one of the -- whichever  
3           party who is responsible for making the review has the  
4           opportunity to make that review?

5                         MS. KULASZKA:  Yes, either way that's  
6           the way it works.

7                         THE CHAIRPERSON:  Right.  Either way  
8           that's the way it works but we do proceed to the next  
9           order of the agenda.

10                        MS. KULASZKA:  My point is with  
11           respect to the many documents that were disclosed over  
12           which Section 37 was claimed as privilege, I think you  
13           do have the authority to rule who has the burden under  
14           Section 37 to bring that judicial review and since they  
15           haven't brought a judicial review, if the burden lies  
16           on the Commission then you have the power to order them  
17           to produce them uncensored.

18                        THE CHAIRPERSON:  All that being  
19           said, I gather your submission is that the Tribunal has  
20           the authority to examine subsection 37(3) and examine  
21           the question of who has the burden.  I'm not sure I do  
22           have that jurisdiction to examine it, but assuming I  
23           do, it doesn't change things as they are proceeding  
24           here at this moment.

25                        An objection has been raised under

1           37(1) for the current evidence. I think you are  
2 bringing up the point for the disclosed documents of  
3 January and that may be of interest. We may deal with  
4 it at some point.

5                   MS. KULASZKA: Certainly questions  
6 being asked of Mr. Goldberg, I'm sure they are going to  
7 invoke Section 37 again.

8                   THE CHAIRPERSON: Once they invoke it  
9 it's triggered. That's the plane that we've been  
10 discussing at that level throughout the course of these  
11 37 objections, that the matter is removed from my  
12 hands. It rests with the Superior Court to determine  
13 whether their claim -- provided the claim is made in  
14 conformity with Section 37(1) that their claim is  
15 valid, and conformity includes specified public  
16 interest.

17                   MS. KULASZKA: I think the only  
18 person who could decide who is to bring the application  
19 is you. So you would order -- say you hold the  
20 Commission, if it wants to, to state a Section 37  
21 claim. You would have the power to say, if you don't  
22 bring a judicial review within 10 days then the  
23 question has to be answered. And if they don't like  
24 that, of course they can take it to judicial review of  
25 your order. Because otherwise, if you don't make an

1 order either way then who is going to bring the  
2 application?

3 THE CHAIRPERSON: I'm being a little  
4 mechanical here. I'm hearing this argument for the  
5 first time being raised by the respondents, this tactic  
6 or this approach on 37(3).

7 However, I'm saying from a practical  
8 perspective, whether I have the authority to say the  
9 burden rests on this side or that side, to deal with  
10 the objection, once the objection is made do I have  
11 anything else to say, provided the steps outlined in  
12 37(1) have been taken.

13 MR. CHRISTIE: Excuse me.

14 Yes, you do have something to say.  
15 Because it would be purely academic if this was the  
16 first time the objection was raised. And that's why I  
17 made the point, that my learned friend is saying, this  
18 is the position we have taken before.

19 THE CHAIRPERSON: I don't accept  
20 that. I was quite explicit with Mr. Vigna every time  
21 he made his objection last time, that he had to  
22 specify -- the specified public interest on each  
23 occasion, which he did. It became a bit tiresome at  
24 times but he was doing that.

25 So there are no blanket exceptions

1 here. They have to be specified, but he was doing  
2 that. And it was in order to enable the record to be  
3 complete so that whomever, whom I gather in this case  
4 was the respondent, seeks review from the Superior  
5 Court, has something to go by.

6 MR. CHRISTIE: If an objection of  
7 this nature is raised for the second time, and more  
8 than 10 days have elapsed since it was raised before,  
9 it's my submission that the objection has not been  
10 defended by the objector and is no longer open to  
11 raise.

12 So what I'm saying is, it seems very  
13 clear to me that what my learned friend is doing is  
14 repeating the objections of Mr. Vigna, vis-a-vis the  
15 same items. And if that happens, it's not just  
16 academic anymore. It becomes, you've had your chance,  
17 you made your objection, 10 days are passed, you took  
18 no steps to justify your objection, it has no longer  
19 any validity under Section 37.

20 THE CHAIRPERSON: Because the  
21 objection relates to a similar specified public  
22 interest?

23 MR. CHRISTIE: No, that would be not  
24 a justifiable position. Because the same public  
25 interest could justify, or attempt to justify, on

1           action to a variety of items. But if that item has  
2           been objected to before, if that particular piece of  
3           information has been claimed under Section 37 once  
4           before, you can't just keep doing it again and again if  
5           you haven't defended that.

6                           THE CHAIRPERSON: Certainly if the  
7           Superior Court were to have ruled that that item is not  
8           subject to that kind of a privilege or exception,  
9           certainly I would not consider it to be a valid point  
10          to be raised again. It was my understanding that rests  
11          in the hands of the Superior Court, according to my  
12          previous rulings, although this particular argument has  
13          not been raised before.

14                          So I've been discussing this with  
15          this side. I would like to hear from this side. Ms.  
16          Blight, would you would to speak first?

17                          MS. BLIGHT: Mr. Fothergill will  
18          address the point here and I will follow.

19                          MR. FOTHERGILL: I may be able to  
20          assist you more based on practice than authority.

21                          To my knowledge, there is no  
22          authority that states who has the burden. But I can  
23          tell you in practice there are examples of both the  
24          objector and the person who disagrees with the  
25          objection applying to the Superior Court for

1 resolution. The statute is silent about it, and what  
2 flows from that, in my submission, is either the  
3 objecting party or the party satisfied with the  
4 objection can bring the matter to the Superior Court.

5 So I can give you some practical  
6 examples, both of which were under Section 38 but they  
7 have a similar structure.

8 In the APEC Inquiry, which I was  
9 involved, the Crown made certain objections based on  
10 national security and international relations, and it  
11 was the person seeking disclosure that applied to the  
12 Superior Court for a ruling.

13 In the Arar Inquiry, in which I was  
14 also involved at the specific request of Commission  
15 O'Connor, it was the Crown that applied. And I think  
16 if I had the opportunity to look at some point there  
17 may even be a ruling from Commissioner O'Connor about  
18 that admittedly in the context of Section 37, where he  
19 states his preference, indeed his expectation, that he  
20 who objects would seek clarification from the Federal  
21 Court. But he also acknowledges that that is not  
22 actually required by the statute. So in fact any part  
23 could apply.

24 Now, if I can bring this back to what  
25 your obligations are in this particular case. I would

1 simply refer to Section 37(1).1, which is the  
2 obligation on the court person or body before whom the  
3 objection is made.

4 And that states very simply that if  
5 an objection is made under subsection (i) the court  
6 personal body shall ensure that the information is not  
7 disclosed other than in accordance with this Act.

8 And so if my friends wish to assert  
9 that you at some point after the expiration of 10 days  
10 have the power to cause the disclosure information that  
11 is nonetheless the subject of an objection, in my  
12 submission, they have to demonstrate to you where in  
13 this Act that is authorized.

14 Based on my knowledge of the  
15 provision, you will not find that authority. The only  
16 body that has the power to order disclosure after  
17 objection is made is, in fact, the Superior Court, and  
18 you can see that in Sections 4.1 and -- sorry  
19 subsection 4.1, subsection 5 and onwards, subsection  
20 6 --

21 THE CHAIRPERSON: 3.

22 MR. FOTHERGILL: -- which deals with  
23 the kinds of orders that can be made respecting  
24 disclosure, and of course they can only be made by the  
25 Superior Court to whom the application is made.

1                   So in summary, in my submission,  
2                   either party can apply to the Superior Court. There is  
3                   no obligation on one party over another to apply. The  
4                   Commission could, the attorney general could, and  
5                   certainly the respondents could.

6                   But in the absence of an application,  
7                   the duty on this Tribunal is clear, which is not to  
8                   permit the disclosure of the information, and if no  
9                   application is made by any party then the information  
10                  remains subject to confidentiality. And, conversely,  
11                  if an application is made by any party then it is only  
12                  the Superior Court that can make a subsequent ruling  
13                  respecting to disclosure.

14                  THE CHAIRPERSON: He's right.

15                  MS. BLIGHT: I have nothing to add to  
16                  my friend's submission that the statute doesn't provide  
17                  for the objection expiring after 10 days if it doesn't  
18                  go to court.

19                  But I would like to point you, Mr.  
20                  Chairman, to the report of proceedings of the last two  
21                  days. And you will recall a discussion that was on the  
22                  record about -- in which respondent's counsel requested  
23                  that the transcripts be expedited. And the reason was  
24                  that her time frame for bringing a Section 37  
25                  application was 10 days. And I believe I'm not

1 misquoting the record when I cite Ms. Kulaszka as  
2 having said, "We have 10 days."

3 So to now stand having made that  
4 admission on record and say, "Well, it was the  
5 Commission's obligation and, therefore, they haven't  
6 made the application within 10 days", is akin to  
7 inviting the Commission out onto a branch and now  
8 seeking to cut it off.

9 So it would be my submission that the  
10 respondent is estopped in this particular case from  
11 making that argument vis-a-vis the evidence that was  
12 tendered at the last hearing.

13 And with respect to the evidence  
14 that's being tendered and the objections which are  
15 being made today, I suppose it's an argument they can  
16 raise, and an interesting one, I suppose, before the  
17 Federal Court.

18 THE CHAIRPERSON: Ms. Kulaszka?

19 MS. KULASZKA: When I said "we" I  
20 meant Mr. Lemire and myself. I can't speak for the  
21 other parties. It is an interesting point, and as I  
22 stated, I didn't think of it.

23 THE CHAIRPERSON: I think that last  
24 comment was a fair comment. We all proceeded under  
25 that understanding. You can't limit it just to

1           yourself. At those conference calls where this was  
2           discussed and subsequently -- we were all present, all  
3           parties were present.

4                       MS. KULASZKA: I'm glad Mr.  
5           Fothergill has brought up the point there is no  
6           authority, because it is an important point.

7                       THE CHAIRPERSON: I found it  
8           interesting that in one inquiry the Commission had, I  
9           suppose -- was it a Commissioner? It was the Arar  
10          commissioner, right? He ordered the one side -- was it  
11          an order or expectation?

12                      MR. FOTHERGILL: On the contrary, it  
13          was specifically not an order. And I can try find the  
14          ruling perhaps during break. But I think Commissioner  
15          O'Connor acknowledged the statute did not require one  
16          party rather than another to apply. He expressed his  
17          preference that the Crown would apply, and his  
18          expectation.

19                      THE CHAIRPERSON: I could see where  
20          that makes -- look, ultimately this issue has to be  
21          resolved. We can't just take it completely away from  
22          the hands of the court. The statute is far too  
23          explicit. This is not ultimately a decision for me to  
24          make.

25                      MS. KULASZKA: I think Mr. Fothergill

1           made a good point that you have to act according to  
2           Section 37. Section 37 has a limitation period.

3                        If a relevant question is asked and a  
4           Section 37 public interest privilege is claimed, then  
5           if they do not bring a judicial review application  
6           within the 10 days, then their time has expired and the  
7           question should be asked. I think it's --

8                        THE CHAIRPERSON: The objection may  
9           be determined -- it says the objection may be  
10          determined on application.

11                      MR. FOTHERGILL: I'm sorry to rise  
12          again, but, with respect, that's not an accurate  
13          characterization of what I said. You are bound by the  
14          statute and what the statute provides is that nobody  
15          moves within 10 days to bring it to the Superior Court,  
16          I would argue that the information remains protected.  
17          There is nothing in the statute that says that if no  
18          application is made within 10 days that the information  
19          can thereby be disclosed. That's what's missing.

20                      MS. KULASZKA: The statute is silent  
21          on that and, therefore, you do have the jurisdiction to  
22          say, okay, you've asserted the privilege, if you don't  
23          bring an application within the limitation period the  
24          question has to be answered.

25                      THE CHAIRPERSON: Glass half empty or

1 half full.

2 MS. BLIGHT: In any event, Mr.  
3 Chairman, there has been an application to the Federal  
4 Court by the respondent.

5 MR. CHRISTIE: Not on this blanket  
6 claim. May I say something since I brought this --

7 THE CHAIRPERSON: I specified that --  
8 I don't think a blanket claim meets the test of 37.

9 MR. CHRISTIE: I agree.

10 THE CHAIRPERSON: And for that reason  
11 I've always asked counsel for the Commission to be very  
12 explicit about which claim they are making on what  
13 item, so that the record is clear on that point. I  
14 think that is what is anticipated here by Section 37.

15 MS. BLIGHT: Mr. Chairman, there has  
16 been an application made to the Federal Court with  
17 respect to the Commission's invocation of Section 37 in  
18 the last set of hearings. So those were made within  
19 the 10 days.

20 These are new objections that we are  
21 bringing in respect of this witness's testimony. So  
22 even if my friend is correct, there's really nothing  
23 for us to be arguing about.

24 THE CHAIRPERSON: I don't accept the  
25 concept of blanket. If it so happens that the

1 objection is similar to the previous objections, that's  
2 the result.

3 Does anyone have an idea from a  
4 practical perspective on the time frame of the Federal  
5 Courts hearing that objection?

6 MR. CHRISTIE: The problem with the  
7 whole process, if it rests on the respondent to make  
8 the objection to the objection, as it were --

9 THE CHAIRPERSON: That's not what  
10 it's saying. The language says that somebody has to  
11 file an action to determine the objection. The  
12 objection may be determined on application in  
13 accordance with subsection 2.

14 MR. CHRISTIE: My submission, sir, is  
15 that's a question that has to potentially be resolved  
16 by or could be resolved by a court but it has to be  
17 resolved here, and if the Crown wanted to, or anyone  
18 wanted to and felt that they were justified in doing  
19 so, they could seek judicial review of that judgment  
20 just as they can any other legal question that you  
21 resolve, which you do every day.

22 THE CHAIRPERSON: I'm not quite sure  
23 it's judicial review. You use that term, but really  
24 what we are talking about is a mandated role of the  
25 court to determine the objection. It's not a question

1 of my decision being reviewed. I don't even know if I  
2 am making a decision. It says once the objection is  
3 made the objection is determined by the Superior Court.

4 MR. CHRISTIE: But if it's not  
5 determined in the time set by the limitation, do you  
6 really think that if we didn't bring the application  
7 within 10 days that the Commission would be saying, oh,  
8 it's okay you can bring it later and it doesn't really  
9 matter?

10 The whole problem rests on the  
11 principle that he who asserts must prove, and the Arar  
12 Inquiry, shall we call it, recommendation is consistent  
13 with the fundamental principle, and I know of no other,  
14 that if the burden wasn't with the person asserting the  
15 claim, which is always the government of course, they  
16 could effectively stymie any inquiry and never bring  
17 the matter to court themselves and the poor respondent  
18 sits there trying to carry on with the proceeding.

19 THE CHAIRPERSON: Until such time as  
20 the Federal Court has spoken, and one could argue that  
21 issue has been settled at that point once the Federal  
22 Court has spoken, and then one would expect that the  
23 objecting party would no longer be able to make that  
24 objection if that objection has been rejected by the  
25 Superior Court.

1 MR. CHRISTIE: But the practical  
2 situation is we are stuck here.

3 THE CHAIRPERSON: It's problematic.

4 MR. CHRISTIE: We can't be in two  
5 places at one.

6 THE CHAIRPERSON: Let me consider  
7 your point this way. I think the common ground is that  
8 the objection can be made at this point and it has to  
9 be determined by a Superior Court. That's clear in the  
10 legislation.

11 Who should bring it? It was actually  
12 raised by counsel for the attorney general, that a  
13 preference -- that in the past Tribunals have indicated  
14 the preference be placed, or the -- a preference be  
15 indicated by the Tribunal of who should undertake to do  
16 it. Ultimately, the debate still gets decided by the  
17 Superior Court. It's just that it might be more  
18 practical from a practical point of view that it gets  
19 resolved that way.

20 I guess that's what it boils down to.  
21 But I still don't see myself as suddenly derived in  
22 this jurisdiction to deal with the material once the  
23 objection has been raised, provided the criteria of  
24 37(1) have been met in terms of the invocation of the  
25 objection.

1                   As for past material, Ms. Kulaszka,  
2 we were all working on that understanding. I think the  
3 estoppel argument is a significant one. We all were  
4 working on that understanding. This is the first time  
5 that this point is being raised by anyone, and I don't  
6 think it would be fair to -- because fairness is the  
7 ultimate test in the conduct of my proceedings. I  
8 don't think it would be fair to anyone to say, well,  
9 you see, you should have made that -- filed that motion  
10 to the Federal Court three months ago.

11                   We were all working on a single  
12 hypothesis. The first time it's coming forth is right  
13 now in terms of dealing with it in a different manner.  
14 So that's fair.

15                   But I think it might also be fair for  
16 the respondent's side to say -- for a whole number of  
17 reasons, including resources, including the fact  
18 that -- indeed the objection is being claimed by the  
19 Commission that perhaps the Tribunal should indicate  
20 its preference that the Commission bring it before the  
21 Federal Court and perhaps request the Federal Court to  
22 deal with it in a very expeditious manner. It keeps  
23 repeating itself. We need this issue resolved.  
24 Because there is a common thread.

25                   Although I don't accept blanket

1           privileges, there is a common thread in the privilege  
2           being claimed, and that is investigative techniques. I  
3           believe that's the term used. So I would love to have  
4           this matter resolved by the Federal Court.

5                       MR. CHRISTIE: It seems, with all due  
6           respect, that unless it is the essential core of our  
7           thrust on this, legislation is really effectively  
8           defeated.

9                       Our view, I might say on behalf of  
10          the Canadian Free Speech League, is that infinite  
11          police powers attributed to people collecting thoughts  
12          is inherently dangerous in a free and democratic  
13          society and something which we should very seriously  
14          consider on the merits of the constitutional challenge.

15                      THE CHAIRPERSON: Your position has  
16          been clear from the onset.

17                      MR. CHRISTIE: I'll pass on --

18                      THE CHAIRPERSON: We have to -- it's  
19          something that's sitting there out there. Has a stay  
20          application been made before the Federal Court?

21                      MS. KULASZKA: No, I've never made a  
22          stay application.

23                      THE CHAIRPERSON: We'll be done with  
24          this witness and then we'll see how quickly it can be  
25          resolved.

1                   My point is that -- we're not going  
2                   to work with the past. We'll work with the future. And  
3                   if you like, perhaps tomorrow afternoon if you would  
4                   like for me to consider this preference issue, I'll  
5                   consider it.

6                   I mean, ultimately the debate will  
7                   take place there, but perhaps it would be easier for  
8                   the Commission to make its application. All I  
9                   understand the Federal Court will do is simply  
10                  determine the objection. It's not a question of really  
11                  shifting burdens there. I think it's simply the  
12                  determination of the objection. It's not really a case  
13                  where it's a matter of evidence where one person has to  
14                  make a prima facie case for something like that.

15                  Do you take issue with that, Mr.  
16                  Fothergill?

17                  MR. FOTHERGILL: I do, and you're  
18                  testing my recollection of jurisprudence. But I think  
19                  Gaugin and Gibson does place the initial burden on the  
20                  seeking to cause disclosure, and although Section 37  
21                  has been substantially -- drafted since then I think  
22                  that case still governs the general process and there's  
23                  a threshold question about whether the court reviewing  
24                  the matter should inspect the information.

25                  To counter Mr. Christie's suggestion

1           that there's a legal principle that he who objects must  
2           prove, I can only also tell you that the jurisdiction  
3           governing Section 37 generally proceeds on the  
4           assumption the person seeking disclosure bears the  
5           burden of showing the disclosure would not be  
6           injurious.

7                           THE CHAIRPERSON: I'm not going to  
8           debate that at this time because it's not a matter for  
9           me to debate.

10                          MR. FOTHERGILL: Can I just add  
11           something more on the issue of practice? The Arar case  
12           is the only one I'm aware of where a Commission  
13           actually expressed a preference for the objector to  
14           apply. And the circumstance may be sought unusual  
15           because the Commission itself was security-cleared, so  
16           they actually knew what the information was.

17                          And the reason I raise that is  
18           because -- there should, in my respectful submission,  
19           be a more rigorous discussion about relevance before  
20           the matters are taken to Federal Court, especially if  
21           the onus is going to be to put on the agent of the  
22           state as the Commission.

23                          It's fine for a party in the position  
24           of respondent to go to the Federal Court and make the  
25           argument of relevance, but if the onus is going to be

1 placed on a public authority, I think it would be  
2 appropriate for the Tribunal to itself rule on the  
3 issue of relevance first, because in the absence of  
4 some indication that these particular investigative  
5 techniques were used to investigate Mr. Lemire, it's  
6 difficult to see how the Tribunal and/or --  
7 constitutional jurisdiction decision is going to be --  
8 is going to allow you to consider the investigative  
9 techniques in a broader context.

10 There has to be some indication the  
11 very techniques that were used against Mr. Lemire such  
12 as the statute is operating in an unconstitutional way  
13 in relation to him.

14 If it's not in relation to him, this  
15 Tribunal will not have the jurisdiction to consider the  
16 constitutionality of it because, as you've said on  
17 numerous occasions, you are not here the  
18 constitutionality provision as a whole, but only how it  
19 is applied against Mr. Lemire. And if investigative  
20 techniques were not used to investigate him, it's not  
21 going to assist you.

22 THE CHAIRPERSON: That's your  
23 position, but I don't understand that to be the  
24 position of the respondents. I don't think it's worth  
25 spending more time on this at this point. I think we

1           should just move on and it will get resolved at one  
2           point.

3                               How you want me to proceed in terms  
4           of my own time frame pending the outcome of that -- the  
5           existing application before the Federal Court, putting  
6           aside the potential new application that may arise out  
7           of these questions, we'll discuss at a later point.

8                               So we'll call the witness back. I  
9           want the record to be clear the last time, so I'm going  
10          to ask you, Ms. Blight, to be as specific as your  
11          colleague has in the past in terms of specifying the  
12          objection that you are making.

13                              MR. CHRISTIE: Welcome back, Mr.  
14          Goldberg.

15                              THE CHAIRPERSON: Do we need to  
16          repeat the question?

17                              MR. CHRISTIE: I will do that.

18                              THE CHAIRPERSON: Repeat the  
19          question, and if you are going to invoke and make the  
20          objection, make that point clearly.

21                              MS. BLIGHT: It was made clearly on  
22          the record, Mr. Chairman.

23                              THE CHAIRPERSON: I'll ask you to  
24          repeat it then.

25                              MR. CHRISTIE: Are you aware of what

1 methods of research are used to track Canadians using  
2 ISPs or communicating on the web?

3 MS. BLIGHT: The objection was raised  
4 by the Canadian Human Rights Commission. It's a  
5 specified public interest pertaining to investigative  
6 techniques of the Commission.

7 MR. CHRISTIE: Well, that's not a  
8 question relating to the investigative techniques of  
9 the Commission. I asked if he was aware of methods of  
10 research used to track Canadians. I didn't ask what  
11 the methods were.

12 THE CHAIRPERSON: Fine line.

13 MS. BLIGHT: That was not the  
14 question posed.

15 THE CHAIRPERSON: We'll start from  
16 scratch. Ask your question one by one. As you get to  
17 one for which you have an objection, make the  
18 objection. Let's start brand new.

19 So, are you aware of any  
20 investigative techniques?

21 MR. CHRISTIE: Methods of research  
22 used to track Canadians using ISPs or communicating on  
23 the web?

24 MR. GOLDBERG: I'm vaguely aware of  
25 them, yes.

1 MR. CHRISTIE: And have you at any  
2 time prepared memoranda in regard to the policy  
3 respecting -- using such methods to track Canadians  
4 using ISPs or communicating on the web?

5 MR. GOLDBERG: The only such memo  
6 that I recall is at one point I recommended that the  
7 Commission could look into hiring forensic computer  
8 investigators.

9 MR. CHRISTIE: In terms of the  
10 methods of research used to track Canadians using ISPs  
11 or communicating on the web, do you focus on the  
12 content or the individual communicator?

13 MR. GOLDBERG: Could you repeat the  
14 question, please?

15 MR. CHRISTIE: In terms of methods of  
16 research used to track Canadians using ISPs or  
17 communicating on the web, do you focus on the content  
18 or do you focus on the individual communicator?

19 THE CHAIRPERSON: I see that Ms.  
20 Blight has stood up.

21 MS. BLIGHT: I'm listening carefully.

22 THE CHAIRPERSON: So you are not  
23 making an objection?

24 MS. BLIGHT: Well, I will object  
25 under Section 37 to the extent that the witness is

1 being asked to reveal investigative techniques.

2 THE CHAIRPERSON: This is fairly  
3 minimal. He's asking to focus on the content or  
4 communicator.

5 MS. BLIGHT: Well, the investigation  
6 strategy of the Commission would fall generally under  
7 investigation techniques. So I'm content to permit the  
8 witness to answer to the extent that we can stay away  
9 from the investigative techniques or strategy side of  
10 this question.

11 THE CHAIRPERSON: But you are not  
12 objecting at this point. There's no formal objection  
13 under Section 37.

14 MR. CHRISTIE: She's advising the  
15 witness, sort of.

16 THE CHAIRPERSON: It's like in a  
17 hockey game. There are some checks you can make that  
18 don't constitute penalties.

19 MR. CHRISTIE: We're counting on the  
20 referee. I don't think there's an objection. I'm  
21 sensing there is no objection.

22 And I'm asking again, in terms of the  
23 methods of research used to track Canadians using ISPs  
24 or communicating on the web, does your policy focus on  
25 the content or on the communicator.

1                   MR. GOLDBERG:  There's no policy that  
2                   I'm aware of.

3                   MR. CHRISTIE:  Do you have any  
4                   knowledge of filtering methods to identify the origin  
5                   of certain words on the Internet?

6                   MS. BLIGHT:  That I will object to,  
7                   Mr. Chairman.  Under Section 37 of the Canada Evidence  
8                   Act, a specified public interest, being the  
9                   Commission's investigative techniques.

10                  MR. CHRISTIE:  Well, it has to be a  
11                  public interest, and the Commission's investigative  
12                  techniques are not a public interest in all  
13                  circumstances.  And particularly not of public interest  
14                  when we're assessing whether those investigative  
15                  techniques are a breach of freedom of expression and  
16                  meet the test of Section 1.

17                  We automatically are aware from all  
18                  the authorities that limitations of this kind do breach  
19                  Section 2(B).  We are now investigating, and quite  
20                  correctly investigating, the constitutional question of  
21                  whether they are demonstrably justifiable in a free and  
22                  democratic society.  And in that sense, the public  
23                  interest is in examining the very investigative  
24                  techniques themselves.  And to extend the concept of  
25                  public interest to stifle the process of serving the

1 public interest is a circular and unjustified argument.

2 THE CHAIRPERSON: Interesting  
3 argument, Mr. Christie. Bring it to the Superior  
4 Court.

5 MR. CHRISTIE: What resources or  
6 intelligence do you share with police agencies for the  
7 purpose of tracking Canadians using the web to  
8 communicate?

9 MS. BLIGHT: I object, Mr. Chairman,  
10 based on specified public interest under Section 37 of  
11 the Canada Evidence Act. This pertains both to  
12 Commission investigation techniques and to police  
13 investigation techniques as well as to the efficiency  
14 of both operations.

15 MR. CHRISTIE: As a policy advisor to  
16 the Canadian Human Rights Commission, do you consider  
17 yourself a police agency?

18 MR. GOLDBERG: No.

19 MR. CHRISTIE: Do you consider  
20 yourself a person or agency responsible for the  
21 supervision of communication in Canada?

22 MR. GOLDBERG: No.

23 MR. CHRISTIE: Do you consider it  
24 appropriate to gather intelligence from police sources  
25 to spy on Canadians?

1 MR. GOLDBERG: No.

2 MR. CHRISTIE: And do you, therefore,  
3 receive information from the Canadian Security  
4 Intelligence Service for that purpose?

5 MS. BLIGHT: Mr. Chairman, I object  
6 under Section 37 of the Canada Evidence Act, the  
7 specified public interest privilege being the  
8 possibility of compromising law enforcement activities.

9 MR. CHRISTIE: There's no compromise  
10 to law enforcement because he says he's not a law  
11 enforcement body. That was a preliminary question. He  
12 said he's not there to spy on --

13 THE CHAIRPERSON: He isn't but the  
14 Commission is, perhaps.

15 MS. BLIGHT: The question related to  
16 CSIS, Mr. Chairman.

17 THE CHAIRPERSON: Yes, I know. The  
18 Commission is invoking the privilege, not the  
19 individual witness.

20 MR. CHRISTIE: I take it you've  
21 already ruled that my learned friend is an official?

22 THE CHAIRPERSON: Yes, we can go and  
23 examine that. But I seem to recall we've had this  
24 discussion at least during the conference calls. If  
25 one follows the track in this Act, she is here

1 representing the Canadian Human Rights Commission. We  
2 certainly have ruled that way with regard to Mr. Vigna.  
3 If we are going to make a distinction between Mr. Vigna  
4 and Mr. Dufresne and Ms. Blight --

5 MS. KULASZKA: I know that was a  
6 conference call, I'm not too sure about it, I can't  
7 remember. But could we leave that open? I would like  
8 to investigate it and maybe make submissions later.

9 THE CHAIRPERSON: Follow the line,  
10 you'll see it gets you to the Criminal Code, and a very  
11 broad definition of officer.

12 MR. FROMM: If Ms. Blight makes --  
13 objected -- invoke Section 37 on behalf other public  
14 bodies like CSIS, I can understand perhaps invoking it  
15 on behalf of the Canadian Human Rights Commission, but  
16 her last objection was on behalf of a body I don't  
17 think she represents.

18 THE CHAIRPERSON: I don't know if  
19 it's limited to that. If -- I'm willing to hear you on  
20 officer, but assuming this is an officer --

21 MR. CHRISTIE: You mean if she's an  
22 officer she can protect any body of which she is not an  
23 officer? It's beyond me. It's getting very  
24 interesting.

25 THE CHAIRPERSON: It is, and I would

1           like to get some information on that, but that's how I  
2           read 37. That's the way it's been drafted.

3                       MR. CHRISTIE: So what resources or  
4           intelligence are being shared with CSIS or police  
5           agencies on behalf of the Canadian Human Rights  
6           Commission is a matter that you say affects the  
7           investigative techniques you use?

8                       MS. BLIGHT: Mr. Chair, I've already  
9           objected to that question.

10                      MR. CHRISTIE: No, not that question.

11                      THE CHAIRPERSON: Different question.

12                      MS. BLIGHT: The witness is being  
13           cross-examined on my objection, and that is not  
14           permissible.

15                      THE CHAIRPERSON: I mean, it doesn't  
16           arise from your earlier question, it arises from the  
17           objection of the last question. I don't know how it  
18           contributes to the debate.

19                      MR. CHRISTIE: Well, there is no  
20           debate. These are questions. But what I'm asking is,  
21           do you claim, sir, that you cooperate in investigation  
22           with police agencies in fulfillment of the mandate of  
23           the Canadian Human Rights Commission?

24                      THE CHAIRPERSON: Which could also be  
25           asked, do you cooperate with police agencies?

1 MS. BLIGHT: And I was going rise on  
2 the form of the question, Mr. Chairman. This is  
3 resembling more and more cross-examination where  
4 propositions are being put to the witness. None of  
5 this has anything to do with his affidavit and the  
6 witness has been more than cooperative. If anyone has  
7 been causing Mr. Christie difficulty, it has been me.

8 MR. CHRISTIE: It has been who?

9 THE CHAIRPERSON: I didn't hear that.

10 MS. BLIGHT: Me.

11 MR. CHRISTIE: I agree.

12 MS. BLIGHT: There's no need to  
13 cross-examine.

14 MR. CHRISTIE: Pardon me --

15 THE CHAIRPERSON: Can you think of  
16 any agencies that you cooperate other than with the  
17 Commission that are involved in police investigation  
18 techniques?

19 MR. GOLDBERG: I'm sorry, could you  
20 repeat that?

21 THE CHAIRPERSON: Are you aware of  
22 any and could you name any agencies, police agencies,  
23 with which the Commission cooperates?

24 MS. BLIGHT: I would object to the  
25 naming, but the general question, is there cooperation

1 with police agencies, I have no objection to.

2 THE CHAIRPERSON: All right. Would  
3 you like to hear the answer?

4 MR. CHRISTIE: Would I be allowed to  
5 ask the questions?

6 THE CHAIRPERSON: I'm just going to  
7 rephrase your question. If you would like to adopt my  
8 question, please feel free to do so.

9 MR. CHRISTIE: Well, if that were the  
10 case I think it would be probably unnecessary for me to  
11 be here.

12 Sir, would you advise the Human  
13 Rights Commission as the policy advisor that it would  
14 be acceptable to use the investigative powers of police  
15 agencies to gather information on the communication of  
16 Canadians?

17 MS. BLIGHT: I object, Mr. Chairman,  
18 that calls for speculation. "Would you advise". The  
19 question could properly be put in terms of, have you  
20 advised.

21 THE CHAIRPERSON: Would you and have  
22 you advised. I don't see it as speculative. If that's  
23 his view, and perhaps the Commission has not followed  
24 his opinion, then it may be relevant. Would you and  
25 have you advised in this manner.

1 MR. CHRISTIE: There are two  
2 questions. I prefer the first one first.

3 Would you in your understanding of  
4 the policy that you advise upon, would you advise,  
5 using police powers of search and seizure, to acquire  
6 information on behalf of the Canadian Human Rights  
7 Commission?

8 MR. GOLDBERG: Would you repeat that,  
9 please.

10 MR. CHRISTIE: Would you advise as a  
11 policy adviser to the Canadian Human Rights Commission  
12 that they use the police powers of search and seizure  
13 to acquire information on the communication of  
14 Canadians?

15 MR. GOLDBERG: No, I would not.

16 MR. CHRISTIE: Are you aware of any  
17 circumstance in which that has occurred?

18 MR. GOLDBERG: No, I'm not.

19 MR. CHRISTIE: Are you aware of the  
20 circumstances of the Kulbashian case?

21 MR. GOLDBERG: Just vaguely.

22 MR. CHRISTIE: Would you advise that  
23 it would be appropriate for the Commission to use the  
24 powers of the police to search and seize items from  
25 residential premises to acquire the information

1 necessary for Human Rights complaints? Would you  
2 consider that appropriate?

3 MR. GOLDBERG: To give that advice?  
4 Would that be appropriate for me to give that advice?

5 MR. CHRISTIE: No. Would you  
6 consider that conduct advisable or appropriate?

7 MR. GOLDBERG: I would not have an  
8 opinion on that.

9 MR. CHRISTIE: So you take no  
10 position. It may or may not be, according to your  
11 understanding, within the mandate of the Human Rights  
12 Commission?

13 MR. GOLDBERG: I would consider that  
14 to be a legal issue. I'm a policy advisor, I don't  
15 give legal advice.

16 MR. CHRISTIE: Do you give policy  
17 advice?

18 MR. GOLDBERG: Yes, I give police  
19 advice.

20 MR. CHRISTIE: Do you recommend as a  
21 matter of policy that your Commission do that?

22 MR. GOLDBERG: No, because that's a  
23 legal issue.

24 MR. CHRISTIE: Well, have you ever  
25 sought legal opinion on that issue?

1 MR. GOLDBERG: I don't see seek legal  
2 opinions.

3 MR. CHRISTIE: How do you give policy  
4 advice without seeking legal opinions?

5 MR. GOLDBERG: The legal function and  
6 the policy function are separate. If legal opinion is  
7 required, it is done by the legal officers of the  
8 Commission.

9 MR. CHRISTIE: So what policy advice  
10 do you give?

11 MR. GOLDBERG: I give advice on  
12 things like whether amendments may or may not be  
13 required, what's happening in other jurisdictions with  
14 regard to hate on the Internet or hate activity, what  
15 possibilities there are for cooperation with other  
16 Human Rights Commissions or non-governmental  
17 organizations that are involved in this issue.

18 MR. CHRISTIE: Do you advise on what  
19 extent the Human Rights Commission should assist police  
20 in prosecutions under Section 319(ii) of the Code?

21 MR. GOLDBERG: No, I do not.

22 MR. CHRISTIE: Do you communicate  
23 with police officials and meet with them in order to  
24 discuss these issues?

25 MR. GOLDBERG: I have, yes.

1 MR. CHRISTIE: How often?

2 MR. GOLDBERG: Two or three times.

3 MR. CHRISTIE: What policy directives  
4 are issued, either to you or by you, to explain the  
5 relationship with the Canadian Human Rights Commission  
6 to the police?

7 MR. GOLDBERG: None that I'm aware  
8 of.

9 MR. CHRISTIE: Do you have any policy  
10 directives issued by you as to the relationship of the  
11 Canadian Human Rights Commission to Canadian Security  
12 Intelligence Service?

13 MR. GOLDBERG: Not that I'm aware of.

14 MR. CHRISTIE: Have you participated  
15 in meetings to date between Canadian Human Rights  
16 Commission personnel and police forces?

17 MR. GOLDBERG: Yes, I have.

18 MR. CHRISTIE: And have you  
19 participated in meetings between Canadian Human Rights  
20 Commission and Canadian Security Intelligence Service?

21 MR. GOLDBERG: They participated in a  
22 meeting with police officers as well, yes.

23 MR. CHRISTIE: Do you exchange  
24 private information or information publically available  
25 about individuals in Canada at such meetings.

1 MS. BLIGHT: I object to any  
2 information being illicited with respect to information  
3 being exchanged between police and the Commission about  
4 individuals under Section 37 of the Canada Evidence Act  
5 on the basis of a specified public interest in law  
6 enforcement and investigative techniques.

7 MR. CHRISTIE: Again, I submit to  
8 you, sir, that the investigation of whether the conduct  
9 of those administering this Act is consistent with a  
10 free and democratic society is in the public interest  
11 and, as a matter of fact, it's mandated by the  
12 constitution itself.

13 We're engaged in a legal inquiry onto  
14 that very issue and to invoke this so-called privilege  
15 at this point in this way is a blatant attempt to  
16 defeat the constitutional inquiry itself.

17 THE CHAIRPERSON: Thank you. Your  
18 point is noted.

19 MR. CHRISTIE: Do you consider the  
20 policy of the Canadian Human Rights Commission to be  
21 consistent with exchanging private information about  
22 individuals with police forces?

23 MR. GOLDBERG: I don't know what  
24 policy you are referring to.

25 MR. CHRISTIE: I say the policy of

1 the Canadian Human Rights Commission. Is that  
2 sufficiently clear?

3 MR. GOLDBERG: Are you speaking about  
4 a document or the Commission's general approach to  
5 things?

6 MR. CHRISTIE: Well, actually, sir,  
7 it could be a document. It could be its general  
8 approach to things. Who but you would know better the  
9 policy of the Canadian Human Rights Commission? Can you  
10 answer that question?

11 MR. GOLDBERG: No, I can't.

12 MR. CHRISTIE: Well, then, I suggest  
13 you are a person with knowledge of the policy?

14 MR. GOLDBERG: Yes, I am. Can you  
15 repeat the question, please?

16 MR. CHRISTIE: Would you say it's  
17 consistent with the policy of the Canadian Human Rights  
18 Commission to exchange information about private  
19 individuals in Canada with police forces?

20 MR. GOLDBERG: That would depend on  
21 the circumstances.

22 MR. CHRISTIE: It's not inappropriate  
23 in all circumstances then?

24 MR. GOLDBERG: In the context of an  
25 investigation, it would not be inappropriate.

1 MR. CHRISTIE: An investigation what,  
2 of a police department or the Commission itself?

3 MR. GOLDBERG: Of the Commission.

4 MR. CHRISTIE: So, therefore, it is  
5 quite clear that you would agree that it's consistent  
6 with the policy of the Canadian Human Rights Commission  
7 to derive information from police forces?

8 MR. GOLDBERG: I'm sorry, repeat that  
9 question.

10 MR. CHRISTIE: I asked you whether it  
11 would be an inquiry of the police force or of the  
12 Commission, and you said of the Commission. Therefore,  
13 I said to you it's obvious that you mean that it's  
14 appropriate in your view of the policy of the Human  
15 Rights Commission to receive information on individuals  
16 from police forces.

17 MS. BLIGHT: Mr. Chairman, it was my  
18 impression that you had directed Mr. Christie to  
19 proceed by direct examination. This is putting words  
20 in the witness's mouth. It's classic cross-examination  
21 and it is inconsistent with your directives and Mr.  
22 Goldberg being examined in-chief.

23 THE CHAIRPERSON: I'm sure you can  
24 manage to put the question a different way.

25 MR. CHRISTIE: He asked the question

1 to be repeated.

2 THE CHAIRPERSON: Is that how it came  
3 up?

4 MS. BLIGHT: No, the witness answered  
5 the question clearly and then Mr. --

6 THE CHAIRPERSON: I'm not going to do  
7 playbacks or anything like that. Ask your question  
8 again, Mr. Christie, and be mindful of the guidelines  
9 we've set down.

10 MR. CHRISTIE: What internal memos  
11 exist to direct the method of approaching ISPs?

12 MR. GOLDBERG: There are none that  
13 I'm aware of.

14 MR. CHRISTIE: Are there memos on the  
15 methods of research to be used to track Canadians  
16 generally using ISPs or communicating on the web? Are  
17 there memos to that effect?

18 MR. GOLDBERG: No.

19 MR. CHRISTIE: And is all such  
20 conduct proceeded with on verbal communication?

21 MR. GOLDBERG: I wouldn't know.

22 MR. CHRISTIE: Have you ever written  
23 a letter to an ISP yourself?

24 MR. GOLDBERG: No, I have -- I have  
25 to invite them to a conference, yes.

1 MR. CHRISTIE: And have you or others  
2 under your control advised ISPs of the consequences of  
3 not cooperating?

4 MR. GOLDBERG: I have nobody under my  
5 control and I have never written such advice.

6 MR. CHRISTIE: Who reports to you?  
7 Does anybody report to you?

8 MR. GOLDBERG: Nobody reports to me.

9 MR. CHRISTIE: What use of police  
10 search and seizure powers do you consider consistent  
11 with the policy of the Canadian Human Rights  
12 Commission?

13 MR. GOLDBERG: I have no view on  
14 that. That's a legal issue. I'm a policy advisor. I  
15 wouldn't know.

16 MR. CHRISTIE: Do you have any  
17 knowledge of the use of police search and seizure  
18 powers under the Criminal Code to assist the Commission  
19 in obtaining information for prosecution under Section  
20 37(1).

21 MS. BLIGHT: Mr. Chairman, I'm rising  
22 on behalf of the Commission to object to that question  
23 under Section 37 of the Canada Evidence Act on the  
24 basis that it specified public interest of  
25 investigative techniques.

1                   MR. CHRISTIE: Well, the question was  
2                   has he knowledge of facts, not techniques. And I asked  
3                   if he had knowledge of the facts relating to the use of  
4                   police search and seizure powers under the Criminal  
5                   Code to assist the Commission to obtain information for  
6                   prosecution. That is not a policy matter. That is not  
7                   a matter related to --

8                   THE CHAIRPERSON: What's the  
9                   information that is being sought here? Section 37  
10                  speaks of the disclosure of information, so the  
11                  information you wish to have disclosed is whether the  
12                  nature, if they exist, of exchanges of police  
13                  organizations to obtain information that has been  
14                  obtained itself through search and seizure powers under  
15                  the Criminal Code. Is that it?

16                  MR. CHRISTIE: What use of search and  
17                  seizure powers under the Criminal Code was made by the  
18                  Commission to obtain information for prosecution under  
19                  Section 13(1)?

20                  THE CHAIRPERSON: So there is  
21                  information there that you wish to have disclosed, and  
22                  that's what you are objecting to?

23                  MS. BLIGHT: The question pertains to  
24                  the use by the Commission of search and seizure powers  
25                  under the Criminal Code, and my objection is based on

1 the question, not any information that --

2 THE CHAIRPERSON: Your objection has  
3 to be to information. A minister of the Crown or other  
4 persons interested may object to the disclosure of  
5 information before a court, person or body with  
6 jurisdiction.

7 MS. BLIGHT: The question seeks to  
8 illicit information which would touch directly upon  
9 investigative techniques.

10 THE CHAIRPERSON: Your previous  
11 comments are noted again, Mr. Christie.

12 MR. CHRISTIE: Thank you.

13 Is the Canadian Human Rights Act a  
14 remedial statute?

15 MR. GOLDBERG: Yes.

16 MR. CHRISTIE: Is it a criminal  
17 statute?

18 MR. GOLDBERG: No.

19 MR. CHRISTIE: In your understanding  
20 of the general overall policy, do you think it would be  
21 appropriate to use criminal powers to enforce a  
22 remedial statute?

23 MR. GOLDBERG: I have no opinion on  
24 that.

25 MR. CHRISTIE: You have no opinion on

1           that?

2                           MR. GOLDBERG:   That's a legal issue.  
3           I wouldn't comment.

4                           MR. CHRISTIE:   I thought it was a  
5           policy issue.  This is -- maybe I'm not making myself  
6           clear.  We did agree it was a remedial statute.  How  
7           did you get that information?  Is that a legal opinion?

8                           MR. GOLDBERG:   No, that's -- the  
9           courts have made it clear that the Canadian Human  
10          Rights Act is remedial legislation.

11                          MR. CHRISTIE:   So you got that from  
12          the courts?

13                          MR. GOLDBERG:   Yes.

14                          MR. CHRISTIE:   And you understand it?

15                          MR. GOLDBERG:   Yes, I do.

16                          MR. CHRISTIE:   And I asked you if it  
17          was a criminal statute and you said no.  I guess that  
18          wasn't -- is that a policy question?  How did you  
19          answer that?

20                          MR. GOLDBERG:   Again, the courts have  
21          made it clear that the human rights law in Canada  
22          overall is remedial, not criminal in nature.

23                          MR. CHRISTIE:   So those are two legal  
24          questions you've answered.  I have a policy question.  
25          Do you, sir, think it's appropriate to use criminal law

1 powers to enforce a remedial statute?

2 MR. GOLDBERG: As a general  
3 proposition, no.

4 MR. CHRISTIE: Have you advised as a  
5 matter of policy that the special mandate of the  
6 Canadian Human Rights Commission could be interpreted  
7 as assisting police in prosecutions under the Criminal  
8 Code?

9 MR. GOLDBERG: No, I have not.

10 MR. CHRISTIE: Have you ever  
11 participated in any such cooperation?

12 MR. GOLDBERG: No, I have not.

13 MR. CHRISTIE: Are you aware of other  
14 Commission staff participating in such cooperation?

15 MR. GOLDBERG: No, I'm not.

16 MR. CHRISTIE: Was there ever  
17 anything placed by you in terms of policy, or are you  
18 aware of any policy in writing to explain the  
19 relationship of the Canadian Human Rights Commission to  
20 the police or CSIS, to any of the staff of Canadian  
21 Human Rights Commission?

22 THE CHAIRPERSON: Can you repeat the  
23 question? I'm sorry, I didn't follow you.

24 MR. CHRISTIE: Are you aware of any  
25 policy directives issued by you or by the Commission to

1 explain the relationship of Canadian Human Rights  
2 Commission personnel to police or CSIS?

3 MR. GOLDBERG: There are in manuals  
4 for investigators. I have not personally read them.  
5 That's all I can say.

6 MR. CHRISTIE: So you are aware of  
7 policy directives in the manuals to investigators to  
8 explain the relationship of the Canadian Human Rights  
9 Commission to the police or CSIS?

10 MR. GOLDBERG: No. All I said was  
11 I'm aware there are investigative manuals. I'm not  
12 sure whether they contain that information or not.

13 MR. CHRISTIE: So as a matter of  
14 policy -- you being a person in charge of policy or  
15 advising on policy -- do you not think it appropriate  
16 to explain to those involved in your administration the  
17 proper relationship of their activities to police or  
18 CSIS?

19 MR. GOLDBERG: That's not within my  
20 mandate as a policy advisor, that would be a legal  
21 issue.

22 MR. CHRISTIE: So there's never been  
23 a policy directive issued by you to explain the  
24 relationship between your organization and the police  
25 or CSIS?

1 MR. GOLDBERG: No.

2 MR. CHRISTIE: What meetings have  
3 occurred, to your knowledge, between the Canadian Human  
4 Rights Commission and various police forces?

5 MR. GOLDBERG: I have met, I would  
6 think, three or four times with officials of various  
7 police services.

8 MR. CHRISTIE: What police services?

9 MS. BLIGHT: Mr. Chairman, I rise on  
10 behalf of the Commission to object to the information  
11 being illicit based on Section 37 of the Canada  
12 Evidence Act based on the specified public interest of  
13 law enforcement.

14 MR. CHRISTIE: Does the Canadian  
15 Human Rights Commission have a supervisory minister?

16 MR. GOLDBERG: No, we do not.

17 MR. CHRISTIE: Does the Canadian  
18 Human Rights Commission have to account for its conduct  
19 to any elected body?

20 MR. GOLDBERG: Yes, to the Parliament  
21 of Canada.

22 MR. CHRISTIE: In what manner?

23 MR. GOLDBERG: We table an annual  
24 report in both houses of Parliament and part of the  
25 standing orders requires that the annual report of the

1 Canadian Human Rights Commission is permanently tabled  
2 before the Standing Committee on Justice and Human  
3 Rights.

4 MR. CHRISTIE: To your knowledge, has  
5 anyone from the Canadian Human Rights Commission ever  
6 had to ask and answer any questions about the report?

7 MR. GOLDBERG: About the annual  
8 report?

9 MR. CHRISTIE: Yes.

10 MR. GOLDBERG: Yes, certainly.

11 MR. CHRISTIE: To a member of  
12 Parliament and an inquiry?

13 MR. GOLDBERG: Yes, absolutely.

14 MR. CHRISTIE: When does this happen?

15 MR. GOLDBERG: It happens -- the  
16 chief commissioner, other members of the Commission  
17 appear before standing committees periodically and they  
18 are often asked questions relative to the annual  
19 report.

20 MR. CHRISTIE: When was the last  
21 time?

22 MR. GOLDBERG: Several weeks ago.

23 MR. CHRISTIE: Who was asking the  
24 questions?

25 MR. GOLDBERG: That I don't recall.

1 MR. CHRISTIE: Is this a ministerial  
2 committee or is it a committee of Parliament or what is  
3 it?

4 MS. BLIGHT: Mr. Chairman, this is  
5 far, far afield. There's no relevance to the merits or  
6 the constitutional question?

7 THE CHAIRPERSON: It can help  
8 establish a background on the way the operations of the  
9 Commission -- there's no prejudice there, except for  
10 perhaps a little bit take up of time. But I understood  
11 the answer previously, Mr. Christie. It's a standing  
12 committee on justice and human rights, right?

13 MR. GOLDBERG: It's various standing  
14 committees.

15 THE CHAIRPERSON: Various standing  
16 committees.

17 MR. GOLDBERG: The report is tabled  
18 with the Standing Committee on Justice and Human  
19 Rights, but most recently, if I may, the Committee has  
20 appeared before the Standing Committee on Aboriginal  
21 Affairs and Northern Development with regard to  
22 legislation affecting Commission. And as I recall, in  
23 that context at least one member of Parliament had a  
24 copy of the annual report and asked a question relative  
25 to it, as I recall. That's the best of my

1 recollection.

2 MR. CHRISTIE: Did your Commission  
3 staff ever advise or threaten prosecution against ISPs  
4 as a means to remove what you consider offensive  
5 material?

6 MS. BLIGHT: Mr. Chairman, I object  
7 to the use of the word "prosecutions".

8 THE CHAIRPERSON: Well, we've been  
9 down this road at the last --

10 MS. BLIGHT: Or let it be clear that  
11 prosecution involves the police.

12 THE CHAIRPERSON: Yes, right. The  
13 last time around when you weren't present -- you may  
14 have seen it in the transcript -- I clarified the  
15 point, I think it was Mr. Fromm but I may be mistaken,  
16 that complaints are filed in this process. It's not a  
17 prosecution. We reserve that word for criminal cases.

18 However, I understand Mr. Christie  
19 perceives things differently, he indicated in his  
20 earlier discussions. Let no one be concerned about  
21 that. I understand the distinctions in law. Go ahead,  
22 sir.

23 MR. CHRISTIE: Have you ever  
24 participated in a discussion with an ISP in Canada as  
25 to what you thought was an appropriate for them?

1 MR. GOLDBERG: Yes.

2 MR. CHRISTIE: What ISP would that  
3 be?

4 MS. BLIGHT: Mr. Chairman, this  
5 concerns specified public interest of the Commission's  
6 confidential consultations with its various groups and  
7 nongovernmental organizations. I have no objection to  
8 the witness outlining the general nature of those  
9 discussions, but to identify the specific actors would  
10 be breaching a confidentiality to which they -- to  
11 which they expect in their consultations with the  
12 Commission.

13 So to that extent I am objecting  
14 under Section 37 of the Act.

15 MR. CHRISTIE: That's not objection  
16 about a specified public interest. That's an objection  
17 about a privacy interest. This is a public forum.  
18 This is an inquiry in which many private interests  
19 might be disclosed. This doesn't come under Section  
20 37.

21 THE CHAIRPERSON: I gather -- well, I  
22 thought it was preceded with a statement that it was  
23 related to the public interest. Which one?

24 MS. BLIGHT: The confidentiality of  
25 consultations and the privacy of the interest groups.

1 THE CHAIRPERSON: That's a public  
2 interest?

3 MS. BLIGHT: We maintain that it is,  
4 Mr. Chairman.

5 MR. CHRISTIE: You know, now the  
6 position taken is you have no right even to consider  
7 whether the public interest is specified. As soon as  
8 its claimed, it's supposed to be the end of the story  
9 and we're supposed to do whatever in 10 days and the  
10 result is --

11 THE CHAIRPERSON: I have some  
12 difficulty with that. I don't see where the specified  
13 public interest is there. It's not clear to me.

14 MS. BLIGHT: The specified -- well --

15 THE CHAIRPERSON: It's  
16 confidentiality.

17 MS. BLIGHT: Confidentiality and  
18 privacy can be a public interest.

19 THE CHAIRPERSON: It's the Privacy  
20 Act you are invoking. Section 8 enables the Tribunal  
21 to order the disclosure of information. Is that what  
22 you are talking about?

23 MS. BLIGHT: My contention that there  
24 is a specified public interest in protecting the  
25 identity of interest groups who engage in confidential

1           communications and consultations with the Commission.

2                           THE CHAIRPERSON: This is part of  
3 your investigative techniques? Is that what you are  
4 saying?

5                           MR. GOLDBERG: I did not refer to  
6 investigative techniques.

7                           THE CHAIRPERSON: Specified claim  
8 public interest. I can't go around it. There's no  
9 definition of specified public interest in here either.

10                          MR. CHRISTIE: No, but I think it's  
11 up to you in a given case to decide if it's legitimate  
12 or not. I mean, if it wasn't necessary for judicial  
13 officers to make determinations of fact, it would be  
14 impossible to continue with the legal proceedings, and  
15 every question of fact requires a interpretation of the  
16 statute and application of the facts as found.

17                          THE CHAIRPERSON: And it may be an  
18 abuse of use of Section 37.

19                          MR. CHRISTIE: Then you should stop  
20 it.

21                          THE CHAIRPERSON: Am I to stop it or  
22 somebody else?

23                          MR. CHRISTIE: You're the judge here.

24                          THE CHAIRPERSON: I'm not a judge.

25                          MR. CHRISTIE: You are the judicial

1 authority. You have powers to determine constitutional  
2 validity. You have all the power that Parliament can  
3 give you.

4 MS. BLIGHT: I also object to that  
5 question based on the relevance because who -- which  
6 particular ISPs may have been the subject of  
7 discussions with Mr. Goldberg is not relevant to  
8 anything. But in the alternative, we are relying on  
9 Section 37 to protect the identity of the ISP but not  
10 the general content of the discussions.

11 MS. KULASZKA: If I may say so, one  
12 of the major grounds of the constitutional argument is  
13 that these guaranteed rights under the Charter are  
14 being affected behind the scenes in a massive way.

15 The Tribunal decisions are the tip of  
16 the iceberg of what the Commission is doing. And if I  
17 see what is happening here today, Miss Blight is here,  
18 has been given direction to close down any kind of  
19 inquiry into exactly what they are doing. I think it's  
20 a total abuse of Section 37.

21 THE CHAIRPERSON: And it may enable  
22 you to make some significant arguments in final  
23 submissions.

24 Go ahead, Mr. Christie.

25 MR. CHRISTIE: Have you, as a policy

1           advisor, encouraged or become aware of surveillance of  
2           websites by key words?

3                           MR. GOLDBERG:  No.

4                           MR. CHRISTIE:  Have you, as a policy  
5           advisor or in any of your capacities as a member of the  
6           staff or whatever your position is with the Canadian  
7           Human Rights Commission, been aware of programming of  
8           computers or directing others to do so to monitor  
9           websites indiscriminantly for targeted names, acronyms  
10          or key words?

11                          MR. GOLDBERG:  No, I'm not aware of  
12          anything like that.

13                          THE CHAIRPERSON:  We're approaching  
14          over two hours since we've started.  Perhaps it would  
15          be a good time for a break.  We'll try to keep it  
16          short, maybe 15 minutes and we'll come back for a  
17          little bit I guess before the lunch break.

18          --- Upon recessing at 11:20 a.m.

19          --- Upon resuming at 11:35 a.m.

20                          THE CHAIRPERSON:  Mr. Fromm?

21                          MR. FROMM:  I think there was an  
22          issue back at the first of the two-week series of  
23          hearings in February in this case about the presence  
24          inside the room here of security retained by the  
25          Tribunal.  There seemed to be people in the room that

1 violated your protection at that time.

2 THE CHAIRPERSON: I directed they  
3 could not be in the room -- I don't remember.

4 MR. FROMM: I think at that time you  
5 directed that they be outside the room.

6 THE CHAIRPERSON: In fairness, I  
7 don't recall. If you could bring it to my attention in  
8 the transcript.

9 MS. BLIGHT: The comment was made in  
10 the context of your direction that everyone but the  
11 parties themselves not be present during the evidence  
12 of Ms. Rizk and Mr. Steacy.

13 THE CHAIRPERSON: That is what was  
14 being referred to.

15 MR. FROMM: I'm referring to our  
16 first two weeks at Downsvie --

17 THE CHAIRPERSON: Yes.

18 MR. FOTHERGILL: -- Tribunal point  
19 security towards stopping and searching people at the  
20 door, and you expressed the opposite to that.

21 THE CHAIRPERSON: Certainly. Where  
22 did they --

23 MR. FOTHERGILL: I certainly don't  
24 recall any.

25 THE CHAIRPERSON: I don't know. If

1           you point it out fine. Are they disturbing anything?  
2           Are they interfering with the Commission? Are the  
3           people interfering with the Tribunal security people,  
4           to your knowledge, Mr. Fromm?

5                         MR. FROMM: I don't know about  
6           inferring, but I think the optics are that there must  
7           be a threat in the room and, as usual, I think this is  
8           just prejudicial to Marc Lemire.

9                         THE CHAIRPERSON: No, it's not the  
10          case. I remember there were two gentlemen who used to  
11          sit in the back of room and just sit there. I don't  
12          remember them creating any --

13                        MS. BLIGHT: Mr. Chairman, these are  
14          members of the public and you would not be aware they  
15          are security guards, but in fact Mr. Fromm has now  
16          pointed it out to you --

17                        MR. FROMM: Members of the public  
18          have things hanging on their ears?

19                        THE CHAIRPERSON: I happen to see the  
20          gentleman with the thing in his ear. I remember we did  
21          one in Vancouver. Other people were there with little  
22          things in their ear. But I know what they look like.  
23          I don't know -- I don't have a problem unless you have  
24          anything more specific right now and I don't remember  
25          issuing a general ban. So go ahead, Mr. Christie.

1 MR. CHRISTIE: Are you saying that  
2 you never sought legal advice in regard to policy?

3 MR. GOLDBERG: I worked at the  
4 Commission since 1988. Yes, I had advice for the time.

5 MR. CHRISTIE: Are you involved in  
6 the preparation of the compliance manual for  
7 investigations under Section 13(1)?

8 MR. GOLDBERG: No, I'm not.

9 MR. CHRISTIE: Were you at any time  
10 in the past?

11 MR. GOLDBERG: I may have seen the  
12 manual. I may have been asked to review it. I  
13 certainly have not gone into it in detail.

14 MR. CHRISTIE: Do you have a binder  
15 that's marked I think HR-17? R-17?

16 MR. GOLDBERG: Yes, I do.

17 MR. CHRISTIE: Can you turn to tab 9,  
18 please.

19 MS. BLIGHT: May I have a moment, Mr.  
20 Chairman?

21 THE CHAIRPERSON: It's the binder for  
22 all of these witnesses. I ask that you share with Mr.  
23 Fothergill so we can -- I don't want to lose any  
24 precious time.

25 MR. CHRISTIE: This is a memorandum

1 from Alwyn Child of the 28th of March, 1995. It refers  
2 to you as being in charge of an ongoing review of the  
3 approach from time to time of tape messages, right?

4 MR. GOLDBERG: Could I have a moment  
5 to look at this, please?

6 MR. CHRISTIE: I would have thought  
7 you had, but I'll refer to it.

8 THE CHAIRPERSON: Let him look at it.

9 MR. CHRISTIE: Now, you've got that  
10 memo.

11 MR. GOLDBERG: I have no recollection  
12 of receiving it, but I presume I got it, yes.

13 MR. CHRISTIE: It says that a  
14 committee would be formed comprised of those present,  
15 which included you, to review the approach from time to  
16 time to an issue that is of growing concern, which is  
17 referred to as hate messages; is that correct?

18 MR. GOLDBERG: That's what it says.

19 MR. CHRISTIE: Did you do that?

20 MR. GOLDBERG: I have no  
21 recollection. Prior to reading this memo I had no  
22 recollection of whether I actually established a  
23 committee to do that. I certainly do recall that we  
24 had internal discussions starting around that time  
25 about this issue.

1 MR. CHRISTIE: It says:  
2 "The committee discussed a  
3 recent meeting with the National  
4 Capital Freenet at which the  
5 Commission was represented  
6 by" -- -- and I'll just read the  
7 last name --  
8 "Savard, Child and Goldberg."

9 Do you remember that?

10 MR. GOLDBERG: Yes, I do.

11 MR. CHRISTIE: You put pressure on  
12 Capital Freenet to remove certain messages and advise  
13 them if they didn't they would be subject to other  
14 forms of regulation; is that correct?

15 MR. GOLDBERG: No, we did not.

16 MR. CHRISTIE: What was the purpose  
17 of the discussion?

18 MR. GOLDBERG: At this time around  
19 1995 the issue was being raised about possible use of  
20 the Internet to transmit messages which might be hate  
21 messages -- Canadian Human Rights Act, and we decided  
22 that it would be useful for us in developing our  
23 position on that to meet with the Internet service  
24 provider to discuss the issue.

25 MR. CHRISTIE: Well, you did more

1 than discuss the issue. You told them what you wanted  
2 in the way of compliance regulations to be imposed by  
3 them on their users; isn't that right?

4 MR. GOLDBERG: Not that I recall.

5 MS. BLIGHT: Mr. Chairman, this is --

6 THE CHAIRPERSON: Cross-examination.

7 I won't allow it, Mr. Christie. Take a different  
8 approach.

9 MR. CHRISTIE: Do you keep records of  
10 the specific operational meetings regarding specific  
11 cases which occur between the Commission staff and  
12 police and intelligence agencies?

13 MR. GOLDBERG: Do I keep records?

14 MR. CHRISTIE: Well, do you know of  
15 any?

16 MR. GOLDBERG: No, I don't know of  
17 any.

18 MR. CHRISTIE: Do you know if any are  
19 kept?

20 MR. GOLDBERG: No, I do not.

21 MR. CHRISTIE: Do you know of any  
22 such meetings?

23 MR. GOLDBERG: Meetings between?

24 MR. CHRISTIE: Commission staff and  
25 police or intelligence agencies in regard to specific

1 cases?

2 MR. GOLDBERG: No, I'm not aware of  
3 any such meetings.

4 MR. CHRISTIE: Not aware of any such  
5 meetings?

6 MR. GOLDBERG: I personally am not  
7 aware if any such meetings occurred or did not occur.

8 MR. CHRISTIE: Not whether they  
9 occurred or didn't occur, but do you have knowledge of  
10 such meetings that you acquired through your work as  
11 policy advisor?

12 MR. GOLDBERG: No.

13 MR. CHRISTIE: You have no knowledge  
14 of any such meetings?

15 MR. GOLDBERG: Can you repeat the  
16 question, please.

17 MR. CHRISTIE: Do you have any  
18 knowledge of meetings, operational meetings between  
19 police agencies, intelligence agencies and the  
20 Commission staff regarding specific cases?

21 MR. GOLDBERG: I have no specific  
22 knowledge of any such meetings. I don't know whether  
23 meetings of that sort have occurred or have not  
24 occurred.

25 MR. CHRISTIE: So you don't know

1           whether such meetings have occurred or have not  
2           occurred?

3                           MR. GOLDBERG:   That's correct.

4                           MR. CHRISTIE:   Do you know of any  
5           access by Canadian Human Rights staff or employees to  
6           intelligence monitoring systems or police data  
7           collection?

8                           MS. BLIGHT:    I wish to point out, Mr.  
9           Chairman, that the question at this point is simply  
10          whether the witness has knowledge and not what that  
11          knowledge is.  So I'm permitting the question and not  
12          objecting to it on that basis.

13                          THE CHAIRPERSON:  I permit the  
14          questions, you make objections.

15                          MR. CHRISTIE:   Is it really necessary  
16          for my friend to identify what the question is, to tell  
17          us whether she does or doesn't --

18                          MS. BLIGHT:    I'm trying to avoid an  
19          objection.

20                          MR. CHRISTIE:   Then don't make it.

21                          THE CHAIRPERSON:  You know what she's  
22          doing, Mr. Christie.

23                          MR. CHRISTIE:   I understand.  She's  
24          wasting my time actually.

25                          Do you have knowledge of police or

1 intelligence agencies monitoring systems, being  
2 accessible to Canadian Human Rights Commission staff or  
3 employees?

4 THE CHAIRPERSON: I wasn't following.  
5 That's my fault.

6 MR. CHRISTIE: I'll break it down.  
7 Do you know what a police monitoring  
8 system might be, or have you ever heard of it?

9 MR. GOLDBERG: No.

10 MR. CHRISTIE: You don't know what it  
11 is. Is that your position?

12 THE CHAIRPERSON: Can you explain it  
13 to me? Monitoring system?

14 MR. CHRISTIE: Surveillance systems.

15 THE CHAIRPERSON: Wiretaps?

16 MR. CHRISTIE: Wiretaps, data  
17 collection systems, Internet surveillance systems. Are  
18 you aware of anything like that?

19 MR. GOLDBERG: Yes, I'm aware the  
20 police have such systems.

21 MR. CHRISTIE: So do you know if  
22 Canadian Human Rights Commission staff have ever  
23 availed themselves of access to such systems?

24 MR. GOLDBERG: No, I do not.

25 MR. CHRISTIE: You're sure now?

1                   MR. GOLDBERG: I'm under oath. Yes,  
2 I'm sure of it.

3                   MR. CHRISTIE: So you have no  
4 knowledge of Canadian Human Rights Commission staff  
5 ever having access to --

6                   MS. BLIGHT: Mr. Chairman, this is  
7 cross-examination.

8                   THE CHAIRPERSON: It is, but when you  
9 say availing itself of access, do you mean utilizing  
10 information that's been gathered that way or actually  
11 accessing it? Because I take your question meaning  
12 that if it was wiretapping, participate in the  
13 recording of the --

14                   MR. CHRISTIE: No. Access to the  
15 monitoring system or data collection system would be  
16 access to the product of it.

17                   THE CHAIRPERSON: To the product. So  
18 once it's been obtained by the police authorities,  
19 utilizing it.

20                   MR. CHRISTIE: That's what my  
21 question was pointing at.

22                   THE CHAIRPERSON: That's the  
23 question. Are you familiar with having the utilization  
24 information been obtained by police through these  
25 methods?

1                   MR. GOLDBERG: All I'm aware of is  
2                   that in the course of investigation some complaints --  
3                   I'm not even sure which complaints -- investigators  
4                   have had exchanges of information with police officers.  
5                   I did not know the origin of the information that the  
6                   police officers provided.

7                   MR. CHRISTIE: As a policy adviser  
8                   would you not think it appropriate to inform Commission  
9                   investigators of the propriety or otherwise of availing  
10                  themselves of police-acquired information?

11                  MR. GOLDBERG: If the question had  
12                  been brought to my attention I might have provided a  
13                  policy -- policy advice on it. But as far as I recall,  
14                  I was never asked.

15                  MR. CHRISTIE: It was brought to your  
16                  attention because you apparently know about it, right?

17                  MR. GOLDBERG: Well, in the course of  
18                  my work in the Section 13 team various issues are  
19                  discussed, matters are also discussed, Tribunal  
20                  decisions, in transcripts of Tribunals to which I am  
21                  not restricted from reading. So I am aware that there  
22                  have been discussions about this and the police have  
23                  appeared as witnesses before a Human Rights Commission  
24                  Tribunal. But I have no -- that's the extent of my  
25                  knowledge about....

1 MR. CHRISTIE: What political  
2 training, if any, do Commission staff or investigators  
3 ever receive in the concept of freedom of expression?

4 MR. GOLDBERG: Political training? We  
5 don't receive political training.

6 MR. CHRISTIE: Do you have any  
7 training in the concept of freedom of expression?

8 MR. GOLDBERG: I would say no.

9 MR. CHRISTIE: You have lawyers that  
10 are apparently on the staff of the Human Rights  
11 Commission. Do they advise investigators on where  
12 freedom of expression might come into play?

13 MR. GOLDBERG: They advise  
14 investigators how to carry out the mandate of Canadian  
15 Human Rights Commission as mandated by the Parliament  
16 to be determined by the courts.

17 MR. CHRISTIE: Have they ever  
18 published any policy statements on where freedom of  
19 expression might be engaged to assist investigators to  
20 conduct themselves in their investigation?

21 MR. GOLDBERG: I would imagine in the  
22 context of policy -- excuse me, of legal opinions, they  
23 have touched upon that issue. Certainly it's an issue  
24 that's discussed.

25 MR. CHRISTIE: Well, do you know of

1 any policy statements issued by the Commission or with  
2 your assistance to address the issue of freedom of  
3 expression?

4 MR. GOLDBERG: Yes.

5 MR. CHRISTIE: Where were they? When  
6 was the last one issued?

7 MR. GOLDBERG: I would think that the  
8 last one is issued was a speech made by Commissioner  
9 Ryantree (ph) to a conference on hate on the Internet  
10 in September of 2006.

11 MR. CHRISTIE: And did you read it?

12 MR. GOLDBERG: I wrote it.

13 MR. CHRISTIE: You wrote it?

14 MR. GOLDBERG: Yes.

15 MR. CHRISTIE: So you write what the  
16 Commissioner reads?

17 MR. GOLDBERG: Pardon me?

18 MR. CHRISTIE: You right what the  
19 Commissioner reads?

20 MR. GOLDBERG: No. I misspoke  
21 myself. I was the speech writer. The Commissioner  
22 makes his own decision on what he wishes to say or not  
23 say. I look at the instruction of the Commissioner.  
24 So I wrote draft speaking notes and he accepted them or  
25 edited them or did whatever he wanted with them.

1 MR. CHRISTIE: Do you know how many  
2 letters have been sent by the Commission to ISPs?

3 MR. GOLDBERG: No, I do not.

4 MR. CHRISTIE: What search have you  
5 done to determine that question?

6 MR. GOLDBERG: I have done no search  
7 to determine that question.

8 MR. CHRISTIE: Weren't you asked to  
9 conduct a search to see how many letters have been sent  
10 to ISPs?

11 MR. GOLDBERG: Not that --

12 MS. BLIGHT: Mr. Chairman, the  
13 witness did perform a search to identify disclosure  
14 documents, but it is incorrect to say he was asked to  
15 determine the number of letters. The question is an  
16 unfair one.

17 THE CHAIRPERSON: Let's let him  
18 answer it. The affidavit is on the record. He signed  
19 his affidavit. Ms. Kulaszka, can you remind me where  
20 the affidavit is?

21 MS. KULASZKA: Tab 1, page 3.

22 THE CHAIRPERSON: Page 3, right. This  
23 goes to the core of the affidavit, so what exactly is  
24 referred to in the affidavit? I see the problem.  
25 Let's continue.

1 Mr. Christie, go ahead.

2 MR. CHRISTIE: Didn't you do a search  
3 to see how many letters had been sent to ISPs?

4 MR. GOLDBERG: As I recall, the order  
5 of Tribunal was an order to the Commission to produce  
6 documents. I searched and produced the documents which  
7 were available to me and which were relevant to my  
8 work. I had no involvement in sending letters to ISPs,  
9 therefore, I would have no such documents in my  
10 personal control.

11 MR. CHRISTIE: Weren't you asked to  
12 conduct a search in the Commission filings to find out  
13 if there were such documents?

14 MR. GOLDBERG: I believe the  
15 Commissioner was asked to do a search. I didn't  
16 personally do a search for those documents.

17 MR. CHRISTIE: Okay. Paragraph 5 of  
18 your Affidavit of Documents:

19 "In complying with the Tribunal  
20 order of August 16, 2006 I  
21 undertook to search all the  
22 relevant records I have in my  
23 possession. This consisted of  
24 electronic document files which  
25 I have archived."

1 Did do you that search?

2 MR. GOLDBERG: Yes, I did.

3 MR. CHRISTIE: So you are saying that  
4 the words "in my possession" excluded any  
5 responsibility to look further, correct?

6 MR. GOLDBERG: That's correct.

7 MR. CHRISTIE: I see. So you made no  
8 search of the files of the Commission to determine how  
9 many letters had been sent to ISPs?

10 MR. GOLDBERG: No, I didn't.

11 MR. CHRISTIE: Would the Commission  
12 agree to provide access to its e-mail printout list to  
13 reveal when such communications occurred and with whom?

14 MS. BLIGHT: Mr. Chairman, all of the  
15 letters and communications with ISPs have been already  
16 produced to the respondent.

17 MR. CHRISTIE: Are you aware of a  
18 planning memo that was sent?

19 THE CHAIRPERSON: Planning memo?

20 MR. CHRISTIE: In regards to the  
21 enforcement of Section 13(1).

22 MR. GOLDBERG: No, not to my  
23 recollection.

24 MR. CHRISTIE: At tab 2 of the  
25 booklet that's in front of you, there appears to be a

1 form letter. Are you familiar with that?

2 MR. GOLDBERG: I don't recall ever  
3 seeing it before.

4 MR. CHRISTIE: You think that there  
5 could be a form letter from the Commission that you've  
6 never seen before?

7 MR. GOLDBERG: Yes, absolutely.

8 MR. CHRISTIE: You had nothing to do  
9 with drafting such a letter?

10 MR. GOLDBERG: No, do I not.

11 MR. CHRISTIE: Never seen it before?

12 MR. GOLDBERG: I've never seen it  
13 before.

14 MR. CHRISTIE: Would there be someone  
15 else who would be responsible for drafting letters like  
16 that?

17 MR. GOLDBERG: Yes.

18 MR. CHRISTIE: Who would that be?

19 MR. GOLDBERG: The investigation  
20 staff.

21 MR. CHRISTIE: They are -- do they  
22 report to you?

23 MR. GOLDBERG: Nobody reports to me.

24 MR. CHRISTIE: If you turn to page 12  
25 on tab 2 there's a letter that was directed to the

1 president and COE of AOL Canada Inc.

2 THE CHAIRPERSON: I believe the  
3 entire tab was produced. I'm not certain. Miss  
4 Kulaszka, do you remember?

5 MS. KULASZKA: Of tab 12?

6 MR. CHRISTIE: 2.

7 MS. KULASZKA: No, I don't think it  
8 has. Wait a minute. Yes, it has. I've got  
9 "produced". So it should be produced.

10 THE CHAIRPERSON: I'll work on that  
11 basis. Go ahead, we're working on page 12.

12 MR. CHRISTIE: You see where it says,  
13 "To the president and COE of AOL  
14 Canada Inc.".

15 MR. GOLDBERG: Yes.

16 MR. CHRISTIE: It's dated October 6,  
17 2005. Is this consistent with the policy of what you  
18 are aware, the Canadian Human Rights Commission?

19 MR. GOLDBERG: Could you give a  
20 moment to read this, please? Yes, it would appear to  
21 be consistent with the policy.

22 MR. CHRISTIE: And was this a website  
23 located in Canada or was this just directed to AOL  
24 Canada because they are related to AOL North America  
25 On-Line in the United States?

1 MR. GOLDBERG: I don't know.

2 MR. CHRISTIE: Would it be consistent  
3 with Human Rights Commission policy to write this  
4 letter if the website was located in the United States?

5 MR. GOLDBERG: Possibly.

6 MR. CHRISTIE: So I take it from your  
7 answer that your view is the policy of the Commission  
8 enabled you to regulate websites located in other  
9 countries if there's someone in the country that could  
10 be connected to the service provider?

11 MS. BLIGHT: Mr. Chairman, I would  
12 ask that Mr. Christie ask only questions. That was a  
13 statement, simply that he was asking the witness to  
14 agree.

15 THE CHAIRPERSON: I don't think it  
16 relates to the affidavit.

17 MR. CHRISTIE: Well, here's the  
18 situation. If this proceeding is to be restricted  
19 entirely to the wording of the affidavit and not to  
20 concern itself with the conduct of the Commission  
21 vis-a-vis communication with Internet service  
22 providers, which was the subject of your order for the  
23 production of letters communicating with the Internet  
24 service providers, the purpose of that order was to  
25 enable us to acquire information relevant to the

1 constitutional issue.

2 THE CHAIRPERSON: You touched upon it  
3 because this letter appears to be related to what was  
4 discussed in the affidavit.

5 MR. CHRISTIE: I have in front of  
6 me --

7 MS. BLIGHT: May I reply?

8 THE CHAIRPERSON: Hold on.

9 MR. CHRISTIE: -- August 16th order  
10 paragraph 23 says,

11 "On the other hand I accept the  
12 requests in (I), (L) and (M) are  
13 arguably relevant and not  
14 over-reaching or ambiguous.

15 (J). All documents relating to  
16 Commission's relations and  
17 Internet service providers  
18 including attempts to  
19 pressure -- shut down websites  
20 or remove.

21 (L). All documents relating to  
22 meetings networking, consulting  
23 with any group representing --  
24 one of the groups protected from  
25 discrimination under the

1 Canadian Human Rights Act and  
2 any police or governmental  
3 agencies relating to hate on the  
4 Internet;  
5 (M). All documents relating to  
6 educative or publicity  
7 activities of the Commission  
8 with respect to hate."

9 THE CHAIRPERSON: And the affidavit  
10 was in answer to that, it was pursuant to that.

11 MS. BLIGHT: The affidavit was for  
12 the purpose of detailing the steps this particular  
13 witness took in order to recover documents. First of  
14 all --

15 THE CHAIRPERSON: No, the affidavit  
16 wasn't for that, Ms. Blight. The affidavit came out of  
17 the fact the Commission had failed to comply with the  
18 previous disclosure order, then the Commission  
19 addressed it by stating its position and buttressing  
20 that position with three affidavits. That led to the  
21 request for examinations on affidavits. It's all in  
22 the context of complying with the original disclosure.

23 MS. BLIGHT: May I finish my  
24 submission?

25 THE CHAIRPERSON: Go ahead.

1                   MS. BLIGHT: The affidavit was with  
2                   respect to this particular witness's efforts to comply  
3                   with that disclosure order. We do not even know if  
4                   this is the witness who produced this particular  
5                   document.

6                   The witness's earlier answer seemed  
7                   to indicate that the witness had never seen this  
8                   document before, and I would submit that to allow an --  
9                   because there was a disclosure order and an affidavit  
10                  that this witness in respect of the condition  
11                  compliance with that disclosure order, does not open  
12                  the door to allow my friend to cross-examine this  
13                  witness on any document that was disclosed by  
14                  Commission.

15                  THE CHAIRPERSON: It's not any  
16                  document. It's completely related to what the  
17                  affidavit is. Other issues regarding policies and so  
18                  on -- close to it. You don't need to cross-examine. It  
19                  wasn't that difficult a question. It helps advance the  
20                  discussion by putting the proposition to the witness.

21                  You can put it as a proposition to  
22                  witness, Mr. Christie, and we'll avoid these  
23                  unnecessary objections.

24                  MR. CHRISTIE: So does the  
25                  Commission, by this letter and others, take the

1 position that it's communication with a Canadian  
2 subsidiary of an American service provider can be  
3 directed to regulate foreign or American website?

4 MR. GOLDBERG: No, we do not take  
5 that position.

6 MR. CHRISTIE: So, therefore,  
7 although this document is riddled with the number 37,  
8 your information is that as a matter of policy it could  
9 not be directed at any website located outside of  
10 Canada? Is that your position?

11 MR. GOLDBERG: Complaints under  
12 Section 13 are not filed against websites, they are  
13 filed against individuals.

14 MR. CHRISTIE: Well, let's put it  
15 this way: If the communication does not occur on a  
16 Canadian-based website, does the Commission take the  
17 position that it is still relevant if the originator of  
18 the communication is Canadian?

19 MR. GOLDBERG: Yes, it does.

20 MR. CHRISTIE: What if the originator  
21 of the communication on a -- because this letter  
22 relates to message boards. What if the originator of  
23 the communication on the message board is American but  
24 the website is created by a Canadian? Same thing  
25 apply?

1 THE CHAIRPERSON: The website?

2 MR. CHRISTIE: Yes.

3 THE CHAIRPERSON: Message boards.

4 Okay.

5 MR. CHRISTIE: Message board on a  
6 website.

7 THE CHAIRPERSON: The website -- be  
8 created by a Canadian in Canada and that the --

9 MR. CHRISTIE: Website located --

10 THE CHAIRPERSON: In Canada?

11 MR. CHRISTIE: In the United States.

12 THE CHAIRPERSON: Canadian creates a  
13 website, locates it on a service provider located in  
14 the United States, and it contains a message board --  
15 is the message board relevant to this?

16 MR. CHRISTIE: There is a case that  
17 message board --

18 THE CHAIRPERSON: I just want to make  
19 sure what you are proposing. There's three steps,  
20 three components to this. The ISP provider where  
21 there's a big computer somewhere on which the web page,  
22 from which it emanates; the person who creates the web  
23 page and then message boards where people can make  
24 contributions.

25 MR. CHRISTIE: Yes.

1 THE CHAIRPERSON: So how are those  
2 distributed is the question you are posing?

3 MR. CHRISTIE: Yes. I was posing the  
4 question: Does the Commission, to your understanding  
5 of policy, take the position that it has jurisdiction  
6 over messages posted on an American service provider's  
7 website if it is posted by an American message board?

8 THE CHAIRPERSON: There's no Canadian  
9 component in that at all.

10 MR. CHRISTIE: Except the person who  
11 may have created the website in the first place.

12 THE CHAIRPERSON: I wanted to be  
13 clear. A Canadian who has created the website, it's  
14 situated in the United States physically, we can use  
15 the term, but Americans contributed to the message  
16 board. So does the Commission have jurisdiction over  
17 the posting by the American?

18 MR. CHRISTIE: Of that message.

19 THE CHAIRPERSON: Of that message.

20 MR. GOLDBERG: I wouldn't be able to  
21 answer that without further information.

22 MR. CHRISTIE: What would you need a  
23 legal opinion?

24 MR. GOLDBERG: No. I would need to  
25 know whether the person who created the site is also --

1           whether it's possible -- excuse me.  Yes, we would have  
2           jurisdiction.

3                         MR. CHRISTIE:  So you're taking the  
4           position that you have the Commission that a Canadian  
5           is responsible for what an American posts on a website  
6           located in the United States?

7                         MR. GOLDBERG:  Could you repeat the  
8           question?

9                         MR. CHRISTIE:  So you are taking the  
10          position that a Canadian is responsible for what an  
11          American posts on a website located in the United  
12          States?

13                        MR. GOLDBERG:  Yes, with the -- you  
14          said a Canadian created the website by which I take it  
15          to mean that he controls the content of that website.

16                        MR. CHRISTIE:  He doesn't control the  
17          message board.

18                        MR. GOLDBERG:  But he could control  
19          the message board.  Message boards are controllable.

20                        MR. CHRISTIE:  So if Conrad Black has  
21          a newspaper in United States and someone writes a  
22          letter to the editor there, your position is if this  
23          was the Internet you would hold him libel for the  
24          American letter to the editor?

25                        MR. GOLDBERG:  I have no opinion on

1 that.

2 THE CHAIRPERSON: It's a bit  
3 rhetorical.

4 MR. CHRISTIE: Has the Commission  
5 ever analyzed the philosophical significance of  
6 jurisdictional boundaries?

7 MR. GOLDBERG: Certainly they have.

8 MR. CHRISTIE: Have they published  
9 anything about it to limit the jurisdiction to things  
10 done in Canada? Have you ever done that?

11 MR. GOLDBERG: No.

12 MR. CHRISTIE: It's your position  
13 that your jurisdiction extends outside of Canada for  
14 communication, doesn't it?

15 MR. GOLDBERG: Our position is our  
16 jurisdiction runs to the limits mandated to us by  
17 Parliament under the Canadian Human Rights Act.

18 MR. CHRISTIE: You agree with me that  
19 the Canadian Human Rights Act doesn't address the  
20 question of communication in foreign jurisdictions,  
21 does it?

22 MR. GOLDBERG: No.

23 MR. CHRISTIE: What I'm looking at  
24 here is something that counsel for the Commission has  
25 claimed Section 37 exemptions for at least six times,

1 and I want to refer to the second page where --

2 THE CHAIRPERSON: Is that page 13?

3 MR. CHRISTIE: Yes, it is. You  
4 request someone on behalf of the Commission, and  
5 apparently it's so important that we can't know their  
6 name, director of investigations. You request that the  
7 ISP provide 13 answers. What are the questions?

8 MR. GOLDBERG: I don't know.

9 MR. CHRISTIE: Why wouldn't you? If  
10 you are required as a matter of disclosure to produce a  
11 communication with ISP, and ask you look at them so I'm  
12 not --

13 "All documents relating to the  
14 Commission's relations with  
15 Internet service providers  
16 including attempted to  
17 pressurize -- to shut down  
18 websites or remove them"

19 Then why wouldn't it be relevant to  
20 tell us what the 13 questions were?

21 THE CHAIRPERSON: To be fair, I don't  
22 think the word "questions" is there. It says, "your  
23 position regarding the allegations", included but not  
24 limited to the following. Help me, am I looking at the  
25 same document?

1 MR. CHRISTIE: Yes, you are, and you  
2 are correct.

3 THE CHAIRPERSON: I took it in  
4 reading that that there is a complaint, sounds very  
5 similar to a Human Rights complaint, contains a number  
6 of allegations being put.

7 MS. BLIGHT: This is a document that  
8 was generated in the context of the complaint. If you  
9 look at the first page of this document it's very clear  
10 that it was generated in the context of a complaint.  
11 This is not a generic communication.

12 I would also like to point out the  
13 witness is being asked essentially to provide  
14 information for which a Section 37 claim has already  
15 been asserted.

16 MR. CHRISTIE: Section 37 claim has  
17 already been asserted?

18 MS. BLIGHT: I believe there was  
19 certification provided in terms of Section 37 claims  
20 that were made in respect of the documents.

21 MR. CHRISTIE: This document?

22 THE CHAIRPERSON: Being the letter  
23 would have been sent earlier. Is that what you are  
24 saying?

25 MS. BLIGHT: Being the entire

1 disclosure package?

2 THE CHAIRPERSON: Yes, there was a  
3 letter specifically to which I was referring.

4 MR. CHRISTIE: Well, first of all,  
5 Section 37 cannot be claimed for everything. It has to  
6 be specifically claimed and identified for reasons that  
7 the statute at least has made clear.

8 THE CHAIRPERSON: There was a letter  
9 sent at the time. We've been down this road.

10 MR. CHRISTIE: What road we have been  
11 down has now, I think, addressed the question of the  
12 person having made the claim merely repeating it having  
13 made no effort to justify it to a higher court.

14 THE CHAIRPERSON: Look, if it was  
15 invoked when the document was disclosed, I cannot see  
16 why it can't be raised again in the context of the  
17 actual disclosure in front of the hearing.

18 MR. CHRISTIE: Because once it's  
19 disclosed and claimed as a privilege, my position was  
20 they have to then, within 10 days, justify it. And  
21 they didn't. Now they simply say --

22 THE CHAIRPERSON: And it wasn't  
23 raised at the time. It should have been raised at the  
24 time then I would have addressed that. I'm not going  
25 to go back on the way we've proceeded to this date.

1 We've considered anything for which Section 37 was  
2 invoked in the past to have been subject to a 10-day  
3 rule that might, if you will, one way. And I'm not  
4 going to go back on that.

5 I speak about future documents but  
6 this -- there was a Section 37, it's marked as such,  
7 was invoked at the time of its original disclosure back  
8 in whenever it was disclosed.

9 MR. CHRISTIE: Turning to page 15.  
10 This is apparently a letter to National Capital Freenet  
11 and it refers to "our recent meeting". It's signed  
12 apparently by the director general. Did you draft this  
13 letter for the director general?

14 MR. GOLDBERG: I have no recollection  
15 of drafting it, but I may very well have, yes.

16 MR. CHRISTIE: What date was it  
17 issued, because apparently that too was for some reason  
18 considered protected by 37?

19 MR. GOLDBERG: I don't know what date  
20 this memo was written.

21 MR. CHRISTIE: So is it the case  
22 that --

23 MS. BLIGHT: Mr. Chairman, I'm not  
24 sure that the date has been excised. I'm content to  
25 look at the document --

1 THE CHAIRPERSON: It may not have had  
2 a date to begin with.

3 MS. BLIGHT: That's right.

4 THE CHAIRPERSON: There's a 37 at the  
5 top of the page, but it could be the date or it could  
6 be a person's name. It's not clear.

7 MS. BLIGHT: That was the person's  
8 name, Mr. Chairman.

9 MR. CHRISTIE: I don't know how this  
10 person can claim to know what the 37 covers when --  
11 unless she's claiming she put the number there. I  
12 doubt it.

13 THE CHAIRPERSON: Well, she's making  
14 an undertaking that she can get the date to us if it's  
15 available, right?

16 MS. BLIGHT: I'll check the original  
17 expurgated document in order to determine if there was  
18 a date.

19 MR. CHRISTIE: It states at the last  
20 paragraph,

21 "If you would like to discuss  
22 this issue further, please do  
23 not hesitate to contact me or  
24 Harvey Goldberg at any time."

25 So I take it you would be aware of

1 this letter?

2 MR. GOLDBERG: As I said, I do not  
3 have any recollection of this letter. I probably did  
4 write it. It was quite a number of years ago.

5 MR. CHRISTIE: Oh, it was? You now  
6 know how many years ago?

7 MR. GOLDBERG: I just know by the  
8 fact that the logo on the letter has not been used by  
9 the Commission for least 10, 13 years.

10 MR. CHRISTIE: Doesn't this reveal  
11 the procedure of which you are aware that you have a  
12 meeting with the ISP, you lay down the law to them and  
13 explain to them what you wanted as is set out on page 2  
14 of the letter?

15 MR. GOLDBERG: Will you repeat your  
16 question, please.

17 MR. CHRISTIE: Doesn't this set out  
18 the procedure whereby you lay down the law to the  
19 Internet service provider and set out what you want  
20 them to do to comply?

21 MR. GOLDBERG: No, it doesn't.

22 MR. CHRISTIE: And you're sure that  
23 National Capital Freenet didn't question the authority  
24 of you to make demands of them?

25 MR. GOLDBERG: I don't recall.

1 MR. CHRISTIE: I suggest that because  
2 you included reference to John Ross Taylor's case, you  
3 were answering a question about the authority to shut  
4 down these websites or these -- yeah, websites?

5 MR. GOLDBERG: No, I would say that  
6 that's pretty standard in much of our correspondence  
7 with regard to hate cases, that we make reference to  
8 the Superior Court case...

9 MR. CHRISTIE: It says, "As explained  
10 in our meeting." Who would give the explanation?

11 MR. GOLDBERG: I have no recollection  
12 of that.

13 MR. CHRISTIE: Were you involved in  
14 the meeting?

15 MR. GOLDBERG: On the basis of this  
16 letter apparently I was, yes.

17 MR. CHRISTIE: Have you met with so  
18 many Internet service providers you can't remember this  
19 one?

20 MR. GOLDBERG: I can say that I  
21 couldn't remember. I do remember National Capital  
22 Freenet.

23 MR. CHRISTIE: You do then?

24 MR. GOLDBERG: Yes.

25 MR. CHRISTIE: So was it explained at

1 your meeting why you wanted them to shut down the  
2 websites?

3 MR. GOLDBERG: I don't believe we  
4 asked them to shut down any websites.

5 MR. CHRISTIE: Well, did they, as a  
6 result of this letter, do what you wanted them to do,  
7 which is set out in page 3 -- page 2 tab 3, item 3.

8 MR. GOLDBERG: First of all, I might  
9 point out that the preambulatory paragraph says,  
10 "In summary, Commission proposed  
11 the following that the  
12 procedures could be followed."

13 He didn't say they should be followed  
14 or that they must be followed. We said they could be  
15 followed, and I have no recollection of whether or not  
16 they were followed.

17 MR. CHRISTIE: You have no  
18 recollection of whether they did what you suggested?

19 MR. GOLDBERG: That's correct.

20 MR. CHRISTIE: So were they an Ottawa  
21 Internet service provider?

22 MR. GOLDBERG: I wouldn't actually  
23 call them an Internet service provider. They were and  
24 are a Freenet, which is a nonprofit system which  
25 provided internet service.

1 MR. CHRISTIE: They would be  
2 particularly dangerous because they wouldn't be in a  
3 position to control the content; is that correct?

4 MR. GOLDBERG: I take it that's a  
5 rhetorical question.

6 MR. CHRISTIE: Isn't that what you  
7 thought?

8 MR. GOLDBERG: No, it is not what I  
9 thought.

10 MR. CHRISTIE: Wasn't this letter a  
11 threat of prosecution if they didn't remove the  
12 messages?

13 MR. GOLDBERG: No, it was not.

14 MR. CHRISTIE: Turning to tab 3, this  
15 appears to be a form letter. Are you familiar with  
16 this?

17 MR. GOLDBERG: Yes.

18 MR. CHRISTIE: Did you have a part in  
19 drafting it?

20 MR. GOLDBERG: Yes.

21 MR. CHRISTIE: It says, "Dear Police  
22 and Justice Colleagues." When was it sent?

23 MR. GOLDBERG: It would have been  
24 sent approximately September of 2006.

25 MR. CHRISTIE: This document

1 indicates,

2 "We want to bring together a  
3 small group of police and  
4 Commission staff to share  
5 knowledge on investigative  
6 techniques."

7 Did such a group get created?

8 MR. GOLDBERG: No group was created.

9 The meeting was held.

10 MR. CHRISTIE: Are there regular  
11 meetings for the same purpose?

12 MR. GOLDBERG: No.

13 MR. CHRISTIE: Has there been a  
14 subsequent meeting?

15 MR. GOLDBERG: No.

16 MR. CHRISTIE: When was the last  
17 meeting?

18 MR. GOLDBERG: This was the last  
19 meeting, in October of 2006.

20 MR. CHRISTIE: Was it in conjunction  
21 with a larger conference?

22 MR. GOLDBERG: No, it is not.

23 MR. CHRISTIE: Was your desire to --  
24 says here,

25 "...discuss cooperation between

1 organizations and possibly to  
2 begin to build a national  
3 network of --"

4 THE CHAIRPERSON: Where are you  
5 reading from, sir?

6 MR. CHRISTIE: Reading from the first  
7 page of the document, "Dear Police and Justice  
8 Colleagues." And I'm reading from the third paragraph.

9 THE CHAIRPERSON: Third full --  
10 "several police officers"?

11 MR. CHRISTIE: Yes.

12 "Several police officers who  
13 attended the conference  
14 suggested it would be beneficial  
15 to bring together a small group  
16 of police and Commission staff  
17 to share knowledge on  
18 investigative techniques,  
19 discuss cooperation between  
20 organizations and possibly begin  
21 to build a national network of  
22 hate on the Internet  
23 investigative bodies."

24 Did you type those words?

25 MR. GOLDBERG: Yes.

1 MR. CHRISTIE: And did this body get  
2 created?

3 MR. GOLDBERG: Not really, no.

4 MR. CHRISTIE: Well, what do you  
5 mean, "not really"?

6 MR. GOLDBERG: It was -- we had the  
7 meeting and we decided to keep in touch, but we haven't  
8 done anything further.

9 MR. CHRISTIE: What do you mean,  
10 "done anything further"? Do you have an e-mail list?

11 MR. GOLDBERG: I have many e-mail  
12 lists.

13 MR. CHRISTIE: How about this body?  
14 Did you have an e-mail list of people who attended the  
15 meeting with whom you exchange e-mails from time to  
16 time?

17 MR. GOLDBERG: No.

18 MR. CHRISTIE: Do you have an e-mail  
19 list of those people?

20 MR. GOLDBERG: I have an e-mail list  
21 on which some of these people would be included, yes.

22 MR. CHRISTIE: This meeting was  
23 October 16th and 17th, 2006; is that right?

24 MR. GOLDBERG: Does it say that in --  
25 yes, that's correct.

1                   MR. CHRISTIE: Mr. Chairman, I would  
2 like to ask that you give consideration to 43(L) of  
3 your August 16th, 2006 ruling that,

4                   "All documents relating to  
5 meetings, networking and  
6 consultation with any group  
7 representing one of the groups  
8 protected from discrimination  
9 under the Canadian Human Rights  
10 Act and any police or  
11 governmental agencies related to  
12 hate on the Internet be  
13 disclosed."

14                   And I would like, therefore, to ask  
15 for the e-mail list to be disclosed.

16                   THE CHAIRPERSON: The actual e-mail  
17 list or the participants.

18                   MR. CHRISTIE: Of course it's the  
19 participants I'm interested in. And I don't see  
20 actually any reference to Section 37 claimed on this  
21 page, so there is no reason why, or any reason claimed  
22 for or refusal to fill in the services who attended or  
23 were asked to send representatives.

24                   THE CHAIRPERSON: Yes, ma'am?

25                   MS. BLIGHT: Mr. Chairman, I believe,

1           although I wasn't here, that this document was part of  
2           the initial set of documents that were disclosed and  
3           that the editing that was done was not done as  
4           precisely as those in previous or in the subsequent  
5           package of disclosure.

6                           I do believe, however, that the cover  
7           letter indicated that information had been expunged  
8           based on specified public interest.

9                           In this particular case, the identity  
10          of the police forces has been -- that were invited to  
11          the conference has been removed based on specified  
12          public interest under Section 37 of the Canada Evidence  
13          Act being the expectation of confidentiality with  
14          outside organizations in terms of their confidential  
15          communications with the Human Rights Commission as well  
16          as law enforcement itself.

17                           There has been some contact lists  
18          that have been produced, though expunged, to remove the  
19          identity of the persons on the contact list, but I can  
20          assure you, Mr. Chairman, every effort has been made to  
21          fully comply with your order.

22                           Mr. Goldberg testified that he  
23          doesn't have a specific e-mail list pertaining to the  
24          people who were invited or attended at this meeting,  
25          but that would be found -- some of them would be found

1 in his ordinary e-mail list. So there is no particular  
2 document of which disclosure is being requested in  
3 terms of that.

4 MR. CHRISTIE: Did I just hear I'm  
5 not specifically asking for disclosure of any document.  
6 I was.

7 THE CHAIRPERSON: Which document are  
8 you speaking of?

9 MR. CHRISTIE: The list of names of  
10 people who were invited to attend, the e-mail list  
11 generated as a result used by this witness to  
12 communicate.

13 THE CHAIRPERSON: Minus the actual  
14 e-mail addresses. I've already ruled numerous times  
15 those be treated as confidential as a phone number.

16 MS. BLIGHT: Mr. Chairman, with  
17 respect to the list of forces that have been invited  
18 there's already been a Section 37 objection made with  
19 respect to that.

20 With respect to this e-mail list, the  
21 witness's evidence was -- he said, "I have one on which  
22 some of these people would be included."

23 THE CHAIRPERSON: The question can be  
24 rephrased. Would you be able to provide a list of the  
25 participants at this conference? If that was the

1 question as opposed to an actual existing list.

2 MS. BLIGHT: The witness most  
3 certainly would be able to provide that list of people,  
4 but the Commission has instructed me to claim a  
5 specified public interest objection under Section 37 of  
6 the Canada Evidence Act.

7 The names of the individuals, in any  
8 event, are not important or relevant. The fact is, and  
9 no one is hiding this, that they were representatives  
10 of a number of different police forces at the meeting.  
11 So to say who they were and what the forces they  
12 represented, don't pertain particularly to the  
13 constitutional issue.

14 THE CHAIRPERSON: Section 37 is being  
15 invoked.

16 MR. CHRISTIE: Does the Commission,  
17 to your knowledge, have powers of search and seizure?

18 MR. GOLDBERG: Yes.

19 MR. CHRISTIE: Has it ever obtained a  
20 warrant to get information under Section 13(1)?

21 MR. GOLDBERG: I do not know.

22 MR. CHRISTIE: Do you know if it  
23 needs a warrant to obtain information from private  
24 sources?

25 MR. GOLDBERG: I'd have to check the

1 Canadian Human Rights Act. I believe so.

2 MR. CHRISTIE: Would it be consistent  
3 with the good policy of the Canada Human Rights  
4 Commission to orchestrate the laying of criminal  
5 charges, allow the police to obtain -- to get  
6 computers, lay complaints under the Human Rights Act,  
7 receive the information from the police department, who  
8 then drop the charges of the criminal nature under  
9 which the original search warrant and computer was  
10 obtained? Would that be consistent with a good policy  
11 of the Commission?

12 MR. GOLDBERG: In that completely  
13 hypothetical situation, I don't think it would be  
14 consistent with Commission policy.

15 MR. CHRISTIE: It would be an abuse  
16 of the powers of the Commission, would it?

17 MR. GOLDBERG: I'm really not  
18 qualified to comment on whether that --

19 MR. CHRISTIE: Would you feel  
20 comfortable with that process?

21 MR. GOLDBERG: No, I would not.

22 MR. CHRISTIE: Would you feel  
23 comfortable with the process that denied me access to  
24 the factual knowledge that might verify that process  
25 had actually occurred?

1 MR. GOLDBERG: Could you --

2 MR. CHRISTIE: Would you feel  
3 comfortable with denying anyone like me in my  
4 information access to the knowledge of the factual  
5 basis for that exact procedure?

6 MS. BLIGHT: Mr. Chairman, the  
7 witness is being asked whether he agrees with a  
8 position that Commission is taking in this matter, and  
9 it's not pertinent, nor is the --

10 MR. CHRISTIE: This is a significant  
11 policy officer of the Commission. If he takes the  
12 position that abuses of this kind should be examined  
13 and explored, and if they are advised corrected, that  
14 would show one state of the mind of a significant  
15 policy officer of the Commission.

16 If he took another view, it might  
17 show a different state of mind. And it's the state of  
18 mind of those in administration of this very powerful  
19 law that I seek to demonstrate is of some concern.

20 THE CHAIRPERSON: Always mindful that  
21 I'm not acting in review of the conduct of the Canadian  
22 Human Rights Commission.

23 MR. CHRISTIE: But are exempt that  
24 consequences of the powers they have. And the  
25 consequences of the powers they have are administered

1 by real human beings, and this is one of them.

2 THE CHAIRPERSON: I'll allow the  
3 question. He's managed to answer the other two.

4 MR. CHRISTIE: Would you feel  
5 comfortable denying a person who might be the victim of  
6 such a practice information about it?

7 MR. GOLDBERG: I'm not sure of the  
8 question.

9 THE CHAIRPERSON: That's part of the  
10 question.

11 MR. CHRISTIE: I don't think it's  
12 really too hard to solve. Let me put it this way sir:  
13 If I at any time say something you don't understand,  
14 please stop me.

15 If I could give you a situation where  
16 a person was the target of a potential human rights  
17 complaint and the investigating officer under the Human  
18 Rights Commission powers communicated with the police,  
19 advised them to fabricate a phoney criminal charge,  
20 then to get a search warrant, then to seize the  
21 person's computer, then to get access to that computer  
22 to assist the verification of the Human Rights  
23 complaint, would you think it appropriate to deny  
24 access to the knowledge of that practice to the very  
25 person who had been the victim of it?

1 MR. GOLDBERG: I would think they  
2 should have the right to add information subject to due  
3 process, law and statutes.

4 MR. CHRISTIE: In the memo -- it's  
5 not signed but you drafted it, I take it?

6 MR. GOLDBERG: Which memo?

7 MR. CHRISTIE: The one we are talking  
8 about, tab 3 in the book in front of you.

9 THE CHAIRPERSON: Tab 3, page 1.

10 MR. CHRISTIE: Page 1, page 2, the  
11 whole --

12 MR. GOLDBERG: Yes.

13 MR. CHRISTIE: You drafted that?

14 MR. GOLDBERG: Yes, I did.

15 MR. CHRISTIE: You are referred to as  
16 "team leader proactive initiatives"?

17 MR. GOLDBERG: That's correct.

18 MR. CHRISTIE: What's that mean?

19 THE CHAIRPERSON: May I interrupt?  
20 Given that he's identified it, we should have it  
21 produced then.

22 MR. CHRISTIE: All right.

23 MR. LEMIRE: Can we produce the whole  
24 tab?

25 THE CHAIRPERSON: I've been told the

1 witness is responsible for its entire creation. These  
2 were added to the memo, the remaining pages.

3 MR. GOLDBERG: No, these are  
4 unrelated.

5 THE CHAIRPERSON: Unrelated, so let's  
6 limit ourselves. Can you be specific, please, on what  
7 you've drafted?

8 MR. GOLDBERG: I drafted pages 1, and  
9 2.

10 THE CHAIRPERSON: There's one that  
11 follows that, has your signature at the bottom. I  
12 don't know if Mr. Christie wants to produce page 3.

13 MR. CHRISTIE: I'm going to get  
14 there, hopefully.

15 THE CHAIRPERSON: Would you look at  
16 it?

17 MR. CHRISTIE: Would you take a look  
18 and see if you acknowledge writing document tab 2, page  
19 3 which has your signature allegedly attached?

20 MR. GOLDBERG: Yes.

21 THE CHAIRPERSON: Produced.

22 MR. CHRISTIE: Let's deal with those.

23 Apparently the second page reads:

24 "Latest techniques and  
25 technology for investigating

1 hate on the Internet."

2 Those are your words typed by you,  
3 correct?

4 MR. GOLDBERG: Correct.

5 MR. CHRISTIE: What do they mean?

6 MS. BLIGHT: Mr. Chairman, I'm  
7 standing to rise to object to any specific -- to  
8 information being illicitated about any specific  
9 investigation techniques, and again the basis for the  
10 objection Section 37 of the Canada Evidence Act and the  
11 investigative techniques, specified public interest.

12 THE CHAIRPERSON: Thank you. The  
13 actual statement was where exactly, sir?

14 MR. CHRISTIE: Bullet 2 on page 2,  
15 "Latest techniques and  
16 technology for investigating  
17 hate on the Internet."

18 So what was the purpose of that  
19 sentence? To outline, I suggest, the nature of the  
20 discussion you were going to have with various police  
21 agencies, correct?

22 MR. GOLDBERG: That's correct.

23 MR. CHRISTIE: So you would exchange  
24 information on the latest techniques and technology for  
25 investigating hate on the Internet with various police

1 agencies, correct?

2 MR. GOLDBERG: Correct.

3 MR. CHRISTIE: And they would include  
4 surveillance techniques that you, yourself under the  
5 Human Rights Act would never have available to you?

6 MR. GOLDBERG: I would have -- I do  
7 not know that.

8 MR. CHRISTIE: Well, you were at the  
9 meeting and other techniques were discussed that were  
10 not available to the Human Rights Commission?

11 MR. GOLDBERG: Not that I recall.

12 MR. CHRISTIE: Is the Human Rights  
13 Commission entitled to tap telephones?

14 MR. GOLDBERG: No, they are not.

15 MR. CHRISTIE: Were some of those  
16 police agencies that you were sharing the latest  
17 investigative techniques with to your knowledge enabled  
18 to tap telephones?

19 MR. GOLDBERG: I understand under  
20 Canadian law police forces can tap telephones, yes.

21 MR. CHRISTIE: How about some of  
22 those who were in attendance at that meeting?

23 MR. GOLDBERG: They were police  
24 services within Canada, so I presume that have that  
25 authority.

1 MR. CHRISTIE: And other surveillance  
2 techniques the police have that are not available to  
3 you or discussed, I assume. I'm not asking you what  
4 they were.

5 MR. GOLDBERG: Not that I recall, no.

6 MR. CHRISTIE: Well, did you keep  
7 minutes of the meeting?

8 MR. GOLDBERG: No.

9 MR. CHRISTIE: Was it recorded in any  
10 way?

11 MR. GOLDBERG: It was not recorded in  
12 any way.

13 MR. CHRISTIE: Then it says:

14 "Possibilities for mutual  
15 assistance between organizations  
16 to investigate hate on the  
17 Internet and related cases."

18 What did you mean by "related cases"?

19 MR. GOLDBERG: Which?

20 MR. CHRISTIE: One down. We did 2,  
21 now we're doing 3. And it's one line down. It says,

22 "Possibilities for mutual  
23 assistance between organizations  
24 to investigate hate on the  
25 Internet and related cases."

1                   My question was, what do you mean by  
2           "related cases"?

3                   MR. GOLDBERG: I presumed that would  
4           refer to Criminal Code proceedings under provisions of  
5           the Criminal Code relating to hate.

6                   MR. CHRISTIE: Would it necessarily  
7           relate to hate?

8                   MR. GOLDBERG: Yes. We don't have  
9           any interest other than with regard to the transmission  
10          of hate messages.

11                  MR. CHRISTIE: So this is the process  
12          of crossover between Human Rights Act and the Criminal  
13          Code?

14                  MR. GOLDBERG: Yes, that's correct.

15                  MR. CHRISTIE: And are you familiar  
16          with the Barr case?

17                  MR. GOLDBERG: I know the name, I'm  
18          not familiar with the details.

19                  MR. CHRISTIE: Are you familiar  
20          with -- okay, is it a legitimate technique that you, as  
21          policy advisor, would approve of that police officers  
22          should fabricate phoney names like State and create  
23          sensational postings on websites inviting others to  
24          reply in a similar vein and consistent with the policy  
25          of the Canadian Human Rights Commission?

1 MR. GOLDBERG: Again, the Canadian  
2 Human Rights Commission would have policies on contact  
3 with police forces.

4 MR. CHRISTIE: Exactly. You have no  
5 control nor are you responsible for the conduct of  
6 police forces; is that right?

7 MR. GOLDBERG: That's correct.

8 THE CHAIRPERSON: Mr. Christie, it's  
9 1:04. Maybe we could break for lunch.

10 MR. CHRISTIE: I'm sorry, yes.

11 THE CHAIRPERSON: I don't mind you  
12 continuing one or two questions but we should break at  
13 some point.

14 MR. CHRISTIE: I know now is as good  
15 as any other time.

16 MS. BLIGHT: We'll break. It will  
17 give us an hour and a half. Come back at 2:30. Okay.

18 --- Upon recessing at 1:04 p.m.

19 --- Upon re-commencing at 2:30 p.m.

20 THE CHAIRPERSON: Yes, Ms. Blight?

21 MS. BLIGHT: With respect to the  
22 letters sent by the Canadian Human Rights Commission to  
23 National Capital Freenet, which is document behind tab  
24 2 that has been produced, I had undertaken this morning  
25 to check the unedited document in order to determine

1           whether there was a date.  There was no date on the  
2           letter but I can advise --

3                         THE CHAIRPERSON:  It's at page -- can  
4           you remind me of the page, please?

5                         MS. BLIGHT:  15.

6                         THE CHAIRPERSON:  There was no date.

7                         MS. BLIGHT:  There was no date, but I  
8           can advise my friend that based on the additional  
9           documentation that's been produced, we can advise that  
10          the date the meeting took place was February 16th,  
11          1995.  So I can't determine the date on the letter, but  
12          I can determine the date of the meeting.

13                        THE CHAIRPERSON:  February 16th?

14                        MS. BLIGHT:  1995.

15                        THE CHAIRPERSON:  Thank you.  Mr.  
16          Christie?

17                        MR. CHRISTIE:  In regard to tab 2,  
18          page 3, this appears to be a letter to  
19          security@mci.com.  Do you see the article I'm referring  
20          to?

21                        MR. GOLDBERG:  I'm sorry, which tab  
22          are you?

23                        MR. CHRISTIE:  Tab 2, page 3.

24                        MR. GOLDBERG:  Yes.

25                        MR. CHRISTIE:  Are you aware of the

1 nature of that letter?

2 MR. GOLDBERG: I would have to take a  
3 look at it. I have no recollection of that e-mail.

4 MR. CHRISTIE: Well, you can  
5 understand what the letter says, I take it?

6 MR. GOLDBERG: Yes, I can.

7 MR. CHRISTIE: It's directed to UUNET  
8 Technologies. Is that in the United States?

9 MR. GOLDBERG: I don't know.

10 MR. CHRISTIE: Would it be contrary  
11 to the policy of the Commission if it was?

12 MR. GOLDBERG: Not necessarily, no.

13 MR. CHRISTIE: So do you take it to  
14 be the position of the Commission that they have  
15 authority to ask American websites to review materials  
16 contained on their website?

17 MR. GOLDBERG: In certain  
18 circumstances, yes.

19 MR. CHRISTIE: Well, what about the  
20 circumstances?

21 MR. GOLDBERG: What circumstances?

22 MR. CHRISTIE: Are they the  
23 circumstances set out in the letter which alleges that  
24 there's something on the website that shouldn't be  
25 there?

1                   MR. GOLDBERG: Well, first of all, on  
2 my reading of this letter it does not ask that any  
3 material be removed. It asked that the company review  
4 the material contained on the above-noted website, it  
5 is hoped that you will give appropriate consideration  
6 to this matter and take whatever action, if any, you  
7 deem appropriate.

8                   MR. CHRISTIE: And it asks the person  
9 or persons to contact the undersigned, whose name I  
10 gather is obliterated. Who would be the manager of  
11 in-take services? Would that be the person responsible  
12 to receive complaints?

13                   MR. GOLDBERG: Yes.

14                   MR. CHRISTIE: So the manager of  
15 in-take services asks to be called if there is any  
16 questions; is that right?

17                   MR. GOLDBERG: That's what  
18 understanding.

19                   MR. CHRISTIE: So what was the policy  
20 about people who called? What were they to be told  
21 were the appropriate actions?

22                   MR. GOLDBERG: I have no knowledge of  
23 that.

24                   MR. CHRISTIE: You mean there's no  
25 policy whatsoever?

1 MR. GOLDBERG: I didn't say there was  
2 no policy.

3 MR. CHRISTIE: Why would you not be  
4 aware of a policy if there was one?

5 MR. GOLDBERG: I am involved in  
6 policy. I'm not involved in investigations. I do not  
7 investigate Section 13 complaints and I'm not familiar  
8 with the investigative policies or procedures.

9 MR. CHRISTIE: Are you the head of  
10 the hate team, as you referred to it yourself?

11 MR. GOLDBERG: I've never testified  
12 that I was head of a hate team.

13 MR. CHRISTIE: Do you refer to  
14 yourself as involved in a hate team?

15 MR. GOLDBERG: I refer to myself as  
16 being a member of the Section 13 team, yes. I may have  
17 said hate team --

18 MR. CHRISTIE: Do you remember that?

19 MR. GOLDBERG: -- hate team Section  
20 13 team, yes.

21 MR. CHRISTIE: Because there's nobody  
22 else more involved in it than you are?

23 MR. GOLDBERG: That's not correct.

24 MR. CHRISTIE: So you have no idea  
25 what answers might have been given to persons who

1           phoned under instructions as to what would be the  
2           appropriate actions to take?

3                       MR. GOLDBERG: I am involved in  
4           policy issues, I am not involved in investigation of  
5           Section 13 complaints except as a member of the Section  
6           13 team. I do not carry out investigations. I do not  
7           write policies with regard to investigations. I do not  
8           review correspondence involving correspondence of this  
9           type.

10                      MR. CHRISTIE: Do you remember my  
11           question?

12                      MR. GOLDBERG: No.

13                      MR. CHRISTIE: So you are saying you  
14           know of no policy pertaining to what was supposed to be  
15           said to people who called receiving --

16                      MR. GOLDBERG: Yes, that was what I  
17           was answering. I know of no policy.

18                      MR. CHRISTIE: You know of no policy?

19                      MR. GOLDBERG: That's correct.

20                      MR. CHRISTIE: So to the best of your  
21           knowledge, it's entirely discretionary up to the  
22           manager of in-take services what he tells someone in  
23           response to a letter like this?

24                      MR. GOLDBERG: I did not say that. I  
25           said I'm aware of no policy.

1 MR. CHRISTIE: Would it be contrary  
2 to policy of which you are aware to tell them, "Take it  
3 down"?

4 MR. GOLDBERG: I'm not aware of any  
5 policy that would do that.

6 MR. CHRISTIE: The next letter is to  
7 MCI, page 5. This is a somewhat a more ominous letter  
8 because it advises by opening the letter they have  
9 automatically acknowledged receipt, in the second  
10 paragraph, right.

11 MR. GOLDBERG: Yes.

12 MR. CHRISTIE: So when they have  
13 opened this it's been acknowledged and communication  
14 has been made to the origin of this letter to the  
15 effect that the person to whom it was directed has  
16 opened it; is that correct?

17 MR. GOLDBERG: That's what it says.

18 MR. CHRISTIE: You are not familiar  
19 with this letter either, I suppose?

20 MR. GOLDBERG: No, I'm not.

21 MR. CHRISTIE: Is MCI a Canadian or  
22 foreign service provider?

23 MR. GOLDBERG: I -- MCI is an  
24 American company. I don't know whether it has a  
25 Canadian operation or not.

1 MR. CHRISTIE: Well, would you know  
2 how to communicate with MCI?

3 MR. GOLDBERG: I presume if I went to  
4 the MCI website there would be a means of communicating  
5 with them.

6 MR. CHRISTIE: Was it a policy that  
7 the Commission should write letters to ask American web  
8 providers to take down messages, or censor messages?

9 MR. GOLDBERG: There is no such  
10 policy.

11 MR. CHRISTIE: Well, is this document  
12 at page 6 of tab 2 something out of the ordinary which  
13 appears to be directed to Administrative Services  
14 Moniker Online Services, Pompano Beach Florida.

15 Is that something contrary to the  
16 policy of Canadian Human Rights Commission?

17 MR. GOLDBERG: I would have to read  
18 the letter, if I may. (Witness reads document). Could  
19 you repeat your question, please.

20 MR. CHRISTIE: Is this something that  
21 you find out of the ordinary?

22 MR. GOLDBERG: No.

23 THE CHAIRPERSON: Sorry?

24 MR. GOLDBERG: No, I do not find it  
25 out of the ordinary.

1 MR. CHRISTIE: And it seeks the  
2 cooperation of the foreign web service provider right.

3 MR. GOLDBERG: I don't believe it  
4 seeks their cooperation.

5 MR. CHRISTIE: You don't. Turn to  
6 page 2 where it says,

7 "Given the nature of the  
8 material in the above website we  
9 are seeking your cooperation."

10 Do you still maintain it doesn't  
11 appear to be seeking their cooperation?

12 MR. GOLDBERG: Okay. I'm sorry, yes,  
13 that's what the letter says.

14 MR. CHRISTIE: Is that not what it  
15 effectively seeks to do?

16 MR. GOLDBERG: If I had drafted the  
17 letter I don't know if I would have used the word  
18 cooperation. I don't think it's really what the intent  
19 of the Commission was in sending this letter.

20 MR. CHRISTIE: As policy advisor to  
21 the Commission, have you ever drafted any policy  
22 statement which would indicate that it should not be  
23 the intent of anyone communicating with the foreign web  
24 providers to seek their cooperation?

25 MR. GOLDBERG: No, I have not.

1 MR. CHRISTIE: Well, do you know if  
2 they did what they were asked to do, namely cooperate?

3 MR. GOLDBERG: No, I did not.

4 MR. CHRISTIE: Did you ever care to  
5 inquire as to whether some of your investigators were  
6 writing letters like this?

7 MR. GOLDBERG: I was aware in a  
8 general sense that that is what....

9 MR. CHRISTIE: It doesn't trouble you  
10 and you never bothered to correct them?

11 MR. GOLDBERG: It doesn't trouble me  
12 that we're asking corporate Internet providers to be  
13 aware of the laws of Canada and as good corporate  
14 citizens to abide by them if they see fit to do so.

15 MR. CHRISTIE: Doesn't mention  
16 anything about being good corporate citizens and  
17 seeking cooperation, does it?

18 MR. GOLDBERG: No, but that's the  
19 underlying notion of this letter.

20 MR. CHRISTIE: Were you ever in a  
21 position to advise any of the hate team or the Section  
22 13(1) team that perhaps they should restrict their  
23 activities to Canadian web providers?

24 MR. GOLDBERG: No, I never have been  
25 in that position.

1 MR. CHRISTIE: Page 8 of the same tab  
2 refers to Verio, Inc., in Englewood (sic), California.  
3 Who is the director who's supposed to have signed this  
4 letter?

5 MR. GOLDBERG: It would appear from  
6 the letter it would be the director of the  
7 investigation branch.

8 MR. CHRISTIE: Do you know if they  
9 contacted the investigator -- the director of the  
10 investigation branch?

11 MR. GOLDBERG: No, I do not.

12 MR. CHRISTIE: Do you know what he  
13 would be advised to have said to them if they did?

14 MR. GOLDBERG: No, I don't have any  
15 direct knowledge of what he or she would be advised to  
16 have said.

17 MR. CHRISTIE: Do you know if any of  
18 these foreign web providers would have taken down the  
19 items that were referred to by the Commission  
20 investigators?

21 MR. GOLDBERG: I have no specific  
22 knowledge of that, no.

23 MR. CHRISTIE: In regard to the next  
24 one, page 9, this indicates it's a letter to Bell  
25 Canada on Bay Street. It invites them to a meeting, I

1 think; is that correct?

2 MR. GOLDBERG: I would have to read  
3 the letter. (Witness reads document). I think your  
4 question is does it invite them to attend a meeting?

5 THE CHAIRPERSON: Page 9, sir?

6 MR. CHRISTIE: That's correct. Were  
7 they asked to make an initial response to the  
8 complaint?

9 MR. GOLDBERG: That's what the letter  
10 said.

11 MR. CHRISTIE: Why would they be  
12 required to make a response to the complaint when the  
13 Section 13(3) specifically exempts anyone who is merely  
14 a carrier, shall we say?

15 MR. GOLDBERG: I don't know what the  
16 circumstances of this complaint are.

17 MR. CHRISTIE: Let me suggest to you  
18 the reason is that the Commission desires to make sure  
19 that the power to censor exists even before a hearing  
20 and without a hearing, that's why, isn't it?

21 MR. GOLDBERG: I don't believe that's  
22 a question.

23 MR. CHRISTIE: I think it's a  
24 question. I haven't heard an objection so what part of  
25 it do you not understand?

1 THE CHAIRPERSON: Do you agree with  
2 the proposition?

3 MR. GOLDBERG: No, I do not agree  
4 with the proposition.

5 MR. CHRISTIE: Why would they be  
6 required to give a response at all if you were aware of  
7 13(3)?

8 MR. GOLDBERG: It is possible --  
9 subsection (3) deals with telecommunications providers.  
10 It's possible a complaint could have concerned, and  
11 this is just speculation -- it could have concerned  
12 Bell Canada as a content provider of information on  
13 Internet and not as a telecommunications undertaking.

14 MR. CHRISTIE: You seriously contend  
15 that Bell Canada may have been purveying discriminatory  
16 information that originated with them?

17 MR. GOLDBERG: That is not what I  
18 said. I said I speculate that that could be a possible  
19 explanation. I have no knowledge what the facts are  
20 behind this case.

21 MR. CHRISTIE: The letter also  
22 states,

23 "Please be advised you are  
24 required to preserve any  
25 material related to the

1 complaint, including information  
2 in electronic format, until the  
3 final disposition of the  
4 matter."

5 Can you refer me to the authority in  
6 the Act that makes it within the power of the  
7 Commission to require that?

8 MR. GOLDBERG: No, I cannot.

9 MR. CHRISTIE: Is it possible that  
10 the senior complaints analyst would be known to you at  
11 the time? The date, I gather, is also Section 37.

12 MR. GOLDBERG: It's possible, yes.

13 MR. CHRISTIE: Who might it be, do  
14 you know?

15 MR. GOLDBERG: I have no idea without  
16 knowing. There are, I think, about 14 investigators.

17 MR. CHRISTIE: How many senior  
18 complaints analysts are there?

19 MR. GOLDBERG: I don't know.

20 MR. CHRISTIE: What does senior  
21 usually mean?

22 MR. GOLDBERG: More than junior.

23 MR. CHRISTIE: Doesn't it mean the  
24 oldest?

25 MR. GOLDBERG: No, it doesn't mean

1 the oldest.

2 MR. CHRISTIE: So are you aware of  
3 whether there was compliance with the preservation of  
4 the items in question?

5 MR. GOLDBERG: No, I do not.

6 MR. CHRISTIE: What was the date of  
7 this letter?

8 MR. GOLDBERG: I have no idea.

9 MR. CHRISTIE: I would ask you to  
10 tell me somehow because it seems to me your counsel  
11 probably knows the date?

12 MR. GOLDBERG: I don't know the date,  
13 so I can't you tell you the date.

14 MR. CHRISTIE: It's claimed --  
15 scribbled note on Section 37 on my copy, and I'm asking  
16 for at least the date to be clarified unless there is  
17 some public interest reason to the contrary.

18 THE CHAIRPERSON: Would the date be  
19 available?

20 MS. BLIGHT: I will see if I can find  
21 the document and see if it contains a date.

22 THE CHAIRPERSON: I notice there's a  
23 similar document earlier on also did not have a date,  
24 but some do.

25 MR. CHRISTIE: The public interest,

1 it appears, fluctuates from time to time.

2 Moving onto tab 2, page 10. This is  
3 another letter to Bell Canada. I assume it's a  
4 different date but that, too, is obliterated with  
5 privilege. Or should I say, checked into some public  
6 national security realm or something.

7 Does this require the organization in  
8 question to appoint a representative to speak for them  
9 and to submit to an interview?

10 MR. GOLDBERG: It requests that they  
11 appoint a representative. I don't know about the  
12 interview.

13 MR. CHRISTIE: Well, clearly --

14 MR. GOLDBERG: Excuse me, it says,  
15 "A person will contact you  
16 shortly."

17 MR. CHRISTIE: Well, clearly the Bell  
18 Canada Ontario main office in the north tower on Bay  
19 Street is unlikely to be the origin of the subject  
20 matter of the complaint. Would you agree?

21 MR. GOLDBERG: I don't know.

22 MR. CHRISTIE: Well, I'm putting it  
23 to you -- you tell me. Is Bell Canada, from your  
24 knowledge of the policies of the Human Rights  
25 Commission, likely to be the person against whom the

1 complaint is made, or would it more likely they are the  
2 service provider?

3 MR. GOLDBERG: Under the Canadian  
4 Human Rights Act the complaint can be made against  
5 anybody. The Commission has no administrative  
6 prerogative in refusing the complaint.

7 MR. CHRISTIE: Would you think it  
8 appropriate for the Human Rights Commission to seek to  
9 censor material before a hearing?

10 MR. GOLDBERG: Yes, I would.

11 MR. CHRISTIE: So you would say it  
12 should be appropriate for the Commission to have the  
13 power to receive a complaint and execute the  
14 elimination of the alleged offending words before here?

15 MR. GOLDBERG: No, I wouldn't say  
16 that.

17 MR. CHRISTIE: What's the difference  
18 between that statement and the one I asked you about  
19 previously? I'm missing something. Help me out here.

20 MR. GOLDBERG: I would say that all  
21 the Commission is asking any respondent to do is to  
22 comply with the provisions of the Canadian Human Rights  
23 Act. It's a law of Canada. They may choose to comply  
24 with it without the need for the Commission to take  
25 enforcement actions, if that is what they choose to do.

1 MR. CHRISTIE: How would they know  
2 whether it complies or doesn't comply?

3 MR. GOLDBERG: I presume they have  
4 legal counsel that can advise them on that.

5 MR. CHRISTIE: So you assume that  
6 somehow or other legal counsel can determine whether a  
7 message offends or doesn't offend Section 13(1)?

8 MR. GOLDBERG: Yes, the rules have  
9 been set out by the Supreme Court of Canada in the  
10 Taylor decision, and that is what the Commission uses  
11 to determine whether there has been a contravention of  
12 Section 13, and I presume that the qualified lawyer  
13 could make -- have a legal opinion on that as well.

14 MR. CHRISTIE: And of course it would  
15 also be your knowledge, I take it, that a qualified  
16 lawyer would know what would be the least inconvenient  
17 route to take?

18 MR. GOLDBERG: I have no --

19 MR. CHRISTIE: Never crossed your  
20 mind. So if it's possible to determine the breach of  
21 Section 13(1) by a legal opinion, maybe -- would it be  
22 your view then as a matter of policy that hearings  
23 really shouldn't be necessary?

24 MR. GOLDBERG: I would quote the  
25 provision of the Act which says that,

1 "the Commission shall, so far as  
2 practicable consistent with the  
3 application of Part 3 try by  
4 persuasion, publicity or any  
5 other means that it considers  
6 appropriate to discourage and  
7 reduce discriminatory practices  
8 referred to in section 5 to  
9 14.1."

10 That's section 27 page....

11 MR. CHRISTIE: So by any means or any  
12 other means that it considers appropriate would be --  
13 basically threats that if they don't comply they could  
14 be involved in a complaint?

15 MR. GOLDBERG: No.

16 MR. CHRISTIE: Wouldn't that be  
17 appropriate, by any means?

18 MR. GOLDBERG: No.

19 MR. CHRISTIE: Why wouldn't you want  
20 to do that?

21 MR. GOLDBERG: Because surely when  
22 Parliament passed this law they didn't mandate the  
23 Commission to do something that was inappropriate or  
24 improper or inconsistent with Canadian legal principles  
25 and threatening organizations would not be consistent

1 with the overall purpose of the Canadian Human Rights  
2 Act.

3 MR. CHRISTIE: Wouldn't you see the  
4 requirements set out in the letters I've referred to  
5 you as implied threats?

6 MR. GOLDBERG: No, I don't.

7 MR. CHRISTIE: Why should any of  
8 these -- well, let's turn to the next one, 11. Can we  
9 have the benefit of knowing who this was, the president  
10 of COV. I assume it's a Canadian corporation of some  
11 sort?

12 MR. GOLDBERG: I have no knowledge.

13 MR. CHRISTIE: I'm going to ask the  
14 question and the objection will rise and I'll ask for a  
15 ruling. Who is this COE directed at Box 9 Station O  
16 Scarborough Ontario.

17 MS. BLIGHT: The objection here is  
18 presented under Section 37 of the Canada Evidence Act  
19 as a result of the specified public interest of  
20 protection of the privacy and personal security. In  
21 addition, Mr. Chairman, it's not relevant to know who  
22 the individual is. We know we are talking about a  
23 president and CEO.

24 THE CHAIRPERSON: I think where the  
25 question was going, to be fair, I don't think you're

1           that concerned with the individual, Mr. Christie, as  
2           the organization. Am I correct in understanding your  
3           question?

4                         MR. CHRISTIE: We had the benefit of  
5           the organization's name previously. And the other  
6           thing that's possible is that we might even actually be  
7           allowed to contact these organizations and ask them if  
8           they felt threatened, whether it was a matter of  
9           convenience just to do as they were told. But that's a  
10          step further.

11                        My question simply is, and one upon  
12          which I'm seeking a ruling: Okay, who is the president  
13          or -- not who is the president, but what organization  
14          was addressed by this letter?

15                        THE CHAIRPERSON: That doesn't seem  
16          to be what has been expunged from here. Is it possible  
17          to get that information? It would be consistent with  
18          the previous ones.

19                        MS. BLIGHT: All I can advise you of  
20          is whether the name of the organization appears on the  
21          document at this point.

22                        MR. CHRISTIE: Well, no, because if  
23          the Chair directs my learned friend to reveal the name  
24          of the corporation, that's not all she can do. She has  
25          to abide by the ruling. And I want to ask about the

1 date as well.

2 THE CHAIRPERSON: It seems odd we  
3 have a letter that's addressed -- would have been  
4 addressed to Mr. X, president and CEO of what?

5 MS. BLIGHT: It may be odd, but if  
6 that's what the document says, that's what the document  
7 says and it's been produced pursuant to a --

8 THE CHAIRPERSON: The disclosure  
9 requirement is that of documentary disclosure, so you  
10 are not supposed to create documents or provide  
11 additional information, just provide the documents.

12 You've deleted, or the organization  
13 has deleted the name of the individual to whom it was  
14 sent under Section 37. If the Commission can't help us  
15 by telling us which organization this was, then it  
16 can't help us.

17 MS. BLIGHT: And I will check the  
18 document in order to see if that can be determined  
19 based on the document in it's unexpunged form.

20 THE CHAIRPERSON: Maybe someone can  
21 do a reverse lookup of Station O Scarborough, Ontario

22 MR. CHRISTIE: Unfortunately, we  
23 don't have access to post office boxes.

24 Page 12 of this same tab. We dealt  
25 with that. I was of a mind to ask, if I may, for the

1 13 allegations to determine if the Commission is  
2 complaining about things that would appear to be within  
3 the scope of the Act.

4 It would not in any way identify as  
5 some secret investigative technique, it would not  
6 identify the perpetrator, if any, of such acts of  
7 discrimination. And it would seem, with all due  
8 respect, that it has no public interest objection.

9 Equally to the 17 articles, or 17  
10 pages that are theoretically attached, which I am in no  
11 way convinced we have received. You'll notice on page  
12 3 it says, "Attached (17)", which I haven't got a 37  
13 attached to it.

14 THE CHAIRPERSON: Could you inquire  
15 into both of those things?

16 MS. BLIGHT: We've already placed on  
17 record a Section 37 objection with respect to these  
18 grounds. Now we're getting into the allegations made  
19 in specific complaint files that may or may not have  
20 ever been referred anywhere. So it had been my  
21 understanding, based on my review of the ruling so far  
22 in this hearing, that in information from specific  
23 compliant files, which have not been admitted as part  
24 of this record.

25 To the extent that the matter has

1           been to Tribunal, then we would obviously have whatever  
2           information is on record in the Tribunal's decision or  
3           in its files.

4                         THE CHAIRPERSON:   There's no way for  
5           us to know whether it a case that's been referred or  
6           not.  As far as I know, this is 13 allegations of the  
7           complaint that I've heard.

8                         MR. CHRISTIE:   What I do know, if I  
9           may, Mr. Chair, is the president of AOL Canada was  
10          advised about this, asked to take appropriate action  
11          and we are simply asking what it was they were required  
12          to give a response to by November 1st, 2005 in the  
13          nature of allegations.

14                        THE CHAIRPERSON:   And you are  
15          saying -- see, just in the interest of moving things  
16          along, nobody wants to know the exact material that may  
17          be there but I think the question that's being asked  
18          is, well, these allegations were the nature of what.  
19          I've seen enough allegations in my time here with the  
20          Tribunal that you can take out portions of it, it's not  
21          a sense of what we're talking about; that messages that  
22          offended Section 13 of this nature, that related to  
23          grounds of let's say raise or religion were found on  
24          blank web page without putting the 'www' in there, for  
25          instance.

1                   That's what's being asked for, a more  
2                   judicious editing of the text take place. It's a  
3                   request being put to you. That's how I'm going to put  
4                   it, because Section 37 has been invoked, but in the  
5                   interest of advancing the discussion, if that's  
6                   possible for you to do this you could do it.

7                   MS. BLIGHT: I'll seek instructions.

8                   THE CHAIRPERSON: Thank you. Go  
9                   ahead, sir. If you could get a reply of those  
10                  instructions by Wednesday when we're done...

11                  MR. CHRISTIE: Tab 3 page 2. We  
12                  were, before lunch, discussing the meaning of the words  
13                  you wrote here, under the third bullet,

14                               "Possibilities for mutual  
15                               assistance between organizations  
16                               to investigate hate on the  
17                               Internet and related cases."

18                  You identified related cases to mean  
19                  Section 319(2), correct?

20                  MR. GOLDBERG: Yes.

21                  MR. CHRISTIE:

22                               "The interplay between the  
23                               Criminal Code and Canadian Human  
24                               Rights Act and how to use them  
25                               effectively."

1                   Those are your words?

2                   MR. GOLDBERG: Yes.

3                   MR. CHRISTIE: What do they mean?

4                   MR. GOLDBERG: Seems pretty clear to  
5 me. There are legal provisions under Federal statutes  
6 dealing with hate on the Internet. One is Section 13  
7 of the Canadian Human Rights Act, the other are the  
8 sections of the Criminal Code that deal with the  
9 promotion of hate.

10                   There is, I wouldn't say, an overlap  
11 between the two, but there are certainly is an  
12 interplay between the two and that was what we wanted  
13 to discuss, how our mandate and the mandate of the  
14 police under the Criminal Code, the differences between  
15 them, et cetera.

16                   MR. CHRISTIE: The Act provides no  
17 reference to coordination with the Criminal Code, does  
18 it?

19                   MR. GOLDBERG: If I may refer to  
20 Section 27 again. Section 27(C) says:

21                   "The Commission shall maintain  
22 close liaison with similar  
23 bodies or authorities in the  
24 provinces in order to foster  
25 common policies and practices

1 and to avoid conflicts  
2 respecting the handling of  
3 complaints in cases of  
4 overlapping jurisdiction."

5 MR. CHRISTIE: So you assume that the  
6 provinces are responsible for the Criminal Code?

7 MR. GOLDBERG: Provinces are  
8 responsible for the administration of justice.

9 MR. CHRISTIE: At the time this was  
10 written, which was when, I gather you have no  
11 recollection?

12 MR. GOLDBERG: The time which was  
13 written?

14 THE CHAIRPERSON: I think we have  
15 evidence on that; it was September 2006, I believe.

16 MR. CHRISTIE: This meeting between  
17 yourself and a number of unidentified police  
18 organizations, was it the fall of 2006.

19 MR. GOLDBERG: It says in the letter  
20 October 16th and 17th, 2006. So although I don't know  
21 exactly what date, I would presume it was within weeks  
22 or at the most a couple months preceding that meeting.

23 MR. CHRISTIE: 2006 or 2005?

24 MR. GOLDBERG: 2006.

25 MR. CHRISTIE: Well, your letter,

1 which is on the next page, says December 23rd, 2005.

2 MR. GOLDBERG: That's referring to  
3 another event.

4 MR. CHRISTIE: There was a previous  
5 meeting?

6 MR. GOLDBERG: Yes, there was.

7 MR. CHRISTIE: Who was that with?

8 MR. GOLDBERG: That was a conference  
9 we held on Canadian Human Rights Act and Section 13.

10 MR. CHRISTIE: Were police  
11 organizations involved with that?

12 MR. GOLDBERG: Some police officers  
13 were present.

14 MR. CHRISTIE: Would they be members  
15 of the RCMP or organized crime units or were they  
16 members of CSIS?

17 MR. GOLDBERG: CSIS was invited, some  
18 individual police officers were invited, yes.

19 MR. CHRISTIE: So did CSIS attend?

20 MR. GOLDBERG: I don't recall.

21 MR. CHRISTIE: Did you not keep a  
22 list of the names of those who attended?

23 MR. GOLDBERG: Yes, we did.

24 MR. CHRISTIE: You would have had a  
25 list of those names available to you?

1 MR. GOLDBERG: Yes, I would.

2 MR. CHRISTIE: Could you provide that  
3 list, please?

4 MR. GOLDBERG: I believe it's been  
5 produced.

6 MR. CHRISTIE: Where is it.

7 MS. BLIGHT: Mr. Chairman, it's been  
8 produced with the identifiers, the identifying  
9 information removed with respect to the individuals and  
10 their organizations that they represented and that --

11 THE CHAIRPERSON: Can you perhaps at  
12 some point --

13 MS. BLIGHT: -- information was  
14 removed based on Section 37.

15 THE CHAIRPERSON: Can you indicate at  
16 some point where in the disclosure it is?

17 MS. BLIGHT: My disclosure package  
18 has been reorganized, so-to-speak, so I can't -- I  
19 couldn't advise the respondent or Mr. Christie as to  
20 where to find it in the documentation.

21 MR. GOLDBERG: If I can be of  
22 assistance. As best I can recall, what was disclosed  
23 was a list of people that were invited to the  
24 conference. I don't know if there was a list of actual  
25 people that attended the conference.

1 MR. CHRISTIE: Were there any foreign  
2 security services invited?

3 MR. GOLDBERG: No.

4 MR. CHRISTIE: Were advocacy groups  
5 like Alan Dutton or David Lethbridge or CAIRS or other  
6 advocacy groups invited?

7 MR. GOLDBERG: No.

8 MR. CHRISTIE: How many people  
9 attended?

10 MR. GOLDBERG: I believe there was  
11 around 50 -- between 50 and 60.

12 MR. CHRISTIE: 50 and 60?

13 MR. GOLDBERG: Yes.

14 MR. CHRISTIE: And you have a list of  
15 the names?

16 MR. GOLDBERG: I have a list of the  
17 people who were invited. I don't recall having a  
18 list -- I don't recall that we took attendance. I know  
19 we have a list of people that indicated who would be  
20 attending but -- excuse me.

21 There was a registration process and  
22 we did obviously, when people came they identified  
23 themselves. But that was -- the registration process  
24 was carried out by the partner that organized this  
25 conference with us, which was the Association for

1 Canadian Studies.

2 MR. CHRISTIE: Well, did you publish  
3 any articles in the Association for Canadian Studies?

4 MR. GOLDBERG: You're holding it.

5 MR. CHRISTIE: And what was generated  
6 by this conference that generated this study?

7 MR. GOLDBERG: We invited people who  
8 participated in the conference who wished to make -- to  
9 provide written versions of their presentations to the  
10 conference which were then published.

11 MR. CHRISTIE: Turning to page 4,  
12 there's a word on the top, "Briefing note" then issue,  
13 "Hate on the Internet".

14 MR. GOLDBERG: I'm sorry, turning to  
15 page 4.

16 MR. CHRISTIE: Page 4.

17 THE CHAIRPERSON: Of tab 3.

18 MR. CHRISTIE: Following page 3, page  
19 4. Says "Hate on the Internet". Whose briefing note  
20 is that. "

21 MR. GOLDBERG: I do not know.

22 MR. CHRISTIE: And was it a blank  
23 page?

24 MR. GOLDBERG: (No response).

25 MR. CHRISTIE: Have you read it?

1 MR. GOLDBERG: I presume it was not a  
2 blank page.

3 MS. BLIGHT: Mr. Chairman, I'm  
4 advised that the material that's been removed from this  
5 particular document was out of scope vis-a-vis the  
6 disclosure order and that the material left in was the  
7 material that was within the scope.

8 MR. CHRISTIE: Well, with the  
9 greatest respect, I don't know that it is open to the  
10 Commission to decide what is in scope. Anything that  
11 says "issue", "Hate on the Internet" and is a briefing  
12 note, may very well be in the scope, it may very well  
13 be relevant.

14 I submit unless there's some public  
15 interest privilege that supposedly demonstrably  
16 justifiable, I reject the suggestion it's open to  
17 Commission at their whim to say this is not in scope.

18 THE CHAIRPERSON: I don't see any  
19 mention of any privilege being claimed on this  
20 document. And you're challenging -- given the  
21 information that appears on document itself, you are  
22 challenging whether it is indeed not arguably relevant  
23 to the issues of this case, the standard by which we  
24 require disclosure.

25 MR. CHRISTIE: Right. And the order

1 was, was all documents relating to, et cetera, and  
2 we've gone over it before --

3 THE CHAIRPERSON: Don't bother  
4 reading it again. It's okay. Can we look at it? You  
5 can show it to me, if you like, and I'll determine if  
6 it's relevant to the issues of this case.

7 MS. BLIGHT: That would be  
8 satisfactory. I'll pull it out.

9 THE CHAIRPERSON: That's a standard  
10 procedure of dealing with issues of relevance for the  
11 purposes of disclosure. Do you have objection to that,  
12 sir?

13 MR. CHRISTIE: Yes, I do. I'll tell  
14 you why. It's only within the knowledge of the party  
15 making a constitutional challenge how they wish to  
16 argue it. And I agree with the proposition that what  
17 is demonstrably justifiable in a free and democratic  
18 society is extremely nebulous, but I hope to argue that  
19 the existence of various very friendly fixed ideas on  
20 what is hate on the Internet would tend to indicate the  
21 dangers of a police state when the administration of  
22 that Act is in the hands of people are very firmly  
23 fixed views.

24 I need to be able to look at what  
25 they call hate on the Internet to decide if they're

1 really got this concrete mind, we'll call it.

2 THE CHAIRPERSON: I'm very mindful of  
3 the argument being made. As you know, I've allowed all  
4 of you to advance it to the fullest extent.

5 Let me look at it first and then if  
6 it's in any way nebulous in my mind, I'll take the next  
7 step, if needed, in terms of whether this document  
8 clearly falls outside the scope of the broad argument.

9 MS. BLIGHT: Mr. Chairman, this  
10 document was produced in response to your disclosure  
11 order which requires disclosure of very specific  
12 categories of document. You did not order disclosure  
13 of anything arguably possibly relevant.

14 THE CHAIRPERSON: Rule 6 requires us  
15 to disclose everything that's arguably relevant to the  
16 case.

17 MS. BLIGHT: But most of this  
18 production was made in response to your very specific  
19 order. Now, I will show you the document after the  
20 break, but that is our position, with respect.

21 THE CHAIRPERSON: What we did was we  
22 clarified what arguable relevance was. We elaborated  
23 on Rule 6 through my order. That's what went on. It  
24 was still a function of the general obligation to  
25 disclose under the Act, under our rules I should say.

1 And we can get back to it after.

2 MR. CHRISTIE: Mr. Goldberg, do you  
3 have any policy statement or criterion for defining  
4 what is a hate message that to advise your  
5 investigators of?

6 MR. GOLDBERG: Yes.

7 MR. CHRISTIE: Is it published  
8 somewhere?

9 MR. GOLDBERG: Yes, the Supreme Court  
10 published it in the Taylor decision.

11 MR. CHRISTIE: So, once again, it's  
12 supposed to be found within Mr. Justice Dixon's words.  
13 That's where we look?

14 MR. GOLDBERG: Certainly we have  
15 received legal advice that expand -- I shouldn't say  
16 expand upon, but interpret the Court's decision but  
17 generally -- not generally.

18 The Commission, in determining  
19 whether a message constitutes hate under Section 13 is  
20 governed by the statute, by the jurisprudence of the  
21 Canadian Human Rights Tribunal, and by the  
22 jurisprudence of the higher courts. There is no other  
23 considerations the Commission takes into account.

24 MR. CHRISTIE: Turning to page 5 it  
25 says -- and again we have two bullets -- why we should

1 have two bullets and not more, I don't know. But it  
2 says, "Discussions have begun with Internet service  
3 providers and other stakeholders". Who wrote that?

4 MR. GOLDBERG: I don't know.

5 MR. CHRISTIE: Would it be something  
6 you did in your policy function?

7 MR. GOLDBERG: It may have been, yes.

8 MR. CHRISTIE: It says:

9 "The Commission has developed a  
10 working relationship with the  
11 Media Awareness Network, whose  
12 excellent educational work  
13 prepares Canadian youth to be  
14 web aware."

15 Who is the Media Awareness Network?

16 MR. GOLDBERG: The Media Awareness  
17 Network is an organization located in Ottawa which is  
18 funded by the major Canadian broadcasters and has a  
19 mandate, as that bullet says, to educate children about  
20 the media and make them aware of the media.

21 MR. CHRISTIE: Do they have some  
22 jurisdiction over the Internet?

23 MR. GOLDBERG: They don't have  
24 jurisdiction over anything. They are a nonprofit,  
25 non-governmental organization.

1 MR. CHRISTIE: You said it's funded  
2 by broadcasters?

3 MR. GOLDBERG: That's correct.

4 MR. CHRISTIE: Would they are  
5 interested in stifling the Internet so people listen to  
6 the radio and Internet for their own source of news?

7 MR. GOLDBERG: I have no idea what  
8 their position would be.

9 MR. CHRISTIE: Well, did it cross  
10 your mind that they would have a vested interest in  
11 limiting access to the Internet because it's an  
12 alternative source of information?

13 MR. GOLDBERG: No, did it not cross  
14 my mind.

15 MR. CHRISTIE: When this bullet  
16 refers to other stakeholders, do you mean other groups  
17 like Canadian Jewish Congress and B'nai Brith?

18 MR. GOLDBERG: Among others, yes.

19 MR. CHRISTIE: What others?

20 MR. GOLDBERG: Any group that  
21 represents people who have been or may be the subject  
22 of hate messages.

23 MR. CHRISTIE: Well, how would you  
24 know who they were before any messages were issued?

25 MR. GOLDBERG: Based on the cases

1           that have been received over the years and the Tribunal  
2           decisions that have been made, we know that their hate  
3           messages directed among a variety of groups that  
4           fall -- that are related to the prohibited grounds  
5           under the Canadian Human Rights Act.

6                       MR. CHRISTIE:  So is this memo, or  
7           whatever it is, and I'm going to ask, if I could,  
8           please, for the Commission to reveal the remainder of  
9           this and I guess admit to your decision as to whether  
10          it's within your order.  I think it's only fair to find  
11          out what else it has to say about what clearly relates  
12          to the Internet and stakeholders.

13                      May I ask that that be considered as  
14          well?

15                      THE CHAIRPERSON:  I gather it's the  
16          continuation of the previous page?

17                      MR. CHRISTIE:  It appears that way.

18                      THE CHAIRPERSON:  Yes.  So I'm  
19          expecting the entire document.

20                      MR. CHRISTIE:  Thank you.  I really  
21          can't do much more than look at two bullets at the  
22          moment.

23                      When you say "discussions have began  
24          with Internet service providers", would there be any  
25          record as a matter of policy kept of these discussions

1 and what was said to these Internet service providers?

2 MR. GOLDBERG: Yes.

3 MR. CHRISTIE: Sorry?

4 MR. GOLDBERG: Yes.

5 MR. CHRISTIE: Where would that  
6 report be kept?

7 MR. GOLDBERG: In Commission's files.

8 MR. CHRISTIE: Have you done the  
9 search that was requested to see what in the  
10 Commission's files record those discussions of Internet  
11 service providers?

12 MR. GOLDBERG: Yes, I did.

13 MR. CHRISTIE: And have you provided  
14 all the information that's available about content of  
15 those discussions?

16 MR. GOLDBERG: To the best of my  
17 knowledge, I provided all the information that I was  
18 able to -- that was under my control.

19 MR. CHRISTIE: Well, would you have  
20 had access to the archives and the files of the  
21 Commission to determine whether there really was this  
22 300 files of discussions with Internet service  
23 providers?

24 MR. GOLDBERG: As I think I explained  
25 before, I was advised by Commission legal counsel to --

1 I was given -- well, I was given the order of the chair  
2 of the Tribunal, I was advised to search all the files  
3 which I may have created or which I would have copies  
4 of, and that is what I did.

5 MR. CHRISTIE: So you restricted  
6 yourself to what you may have created or what you may  
7 have had copies of?

8 MR. GOLDBERG: That's correct.

9 MS. BLIGHT: Mr. Chairman, I just  
10 wanted to be clear that the Commission as a whole has  
11 responded to the disclosure and Mr. Goldberg is now  
12 describing the part that he, as an individual, played.

13 THE CHAIRPERSON: Yes, I'm familiar  
14 with that part.

15 MR. CHRISTIE: Who else was required  
16 to make a search, to your knowledge?

17 MR. GOLDBERG: Mr. Steacy and the  
18 Commission in general.

19 MR. CHRISTIE: Do you have archives  
20 that go back before 2001?

21 MR. GOLDBERG: Electronic archives,  
22 yes, I do.

23 MR. CHRISTIE: Did you search those  
24 electronic archives before 2001?

25 MR. GOLDBERG: I certainly did.

1                   MR. CHRISTIE: That's the ones over  
2                   which you had control, but does the Commission have  
3                   archives greater than your own? Because, after all,  
4                   these communications with Internet service providers  
5                   apparently do not originate with you; is that correct.

6                   MR. GOLDBERG: That's correct.

7                   MR. CHRISTIE: They originate with  
8                   investigators?

9                   MR. GOLDBERG: Correct.

10                  MR. CHRISTIE: And it's my submission  
11                  that the Commission would have archives that go back  
12                  before 2001 in which investigators would communicate  
13                  with Internet service providers. Did you make  
14                  inquiries about that?

15                  MR. GOLDBERG: No, I did not.

16                  MR. CHRISTIE: The next item on this  
17                  tab 3 is a letter allegedly written by Mary Gusella,  
18                  who was Commissioner I take it. And my first question  
19                  is what year was this letter? Says, "Signed June  
20                  22nd".

21                  THE CHAIRPERSON: Where? Where does  
22                  it say, "Signed June 22nd"?

23                  MR. CHRISTIE: Right in the top,  
24                  security box.

25                  MR. GOLDBERG: All I can say is Mr.

1 Cotler was Minister of Justice for only 18 months. I  
2 can't remember the exact period when he was minister.  
3 It was prior to the previous election so sometime in  
4 the 12 months or so prior to the previous election.

5 THE CHAIRPERSON: So probably 2005  
6 then?

7 MR. GOLDBERG: Yes.

8 MR. CHRISTIE: In the second page,  
9 first paragraph, there's a statement:

10 "As part of Commission's ongoing  
11 change process the Commission is  
12 introducing special measures to  
13 ensure that Section 13  
14 complaints are dealt with  
15 efficiently and effectively."

16 What were the special measures?

17 MR. GOLDBERG: At this time, which  
18 would have been 2004/2005, the Commission -- the  
19 reference to the change process is the Commission was  
20 re-engineering how we did our complaints work to ensure  
21 that it was efficient, effective and timely -- timely  
22 and accurate.

23 In the process of doing that, one of  
24 the issues identified was that the investigation of  
25 Section 13 complaints sometimes took longer than we

1 would like to see them take. So we had introduced  
2 measures to try and do that in a more efficient way.

3 MR. CHRISTIE: And the second  
4 paragraph talks about Tip line. What is that?

5 THE CHAIRPERSON: I'm sorry, I wasn't  
6 following. Tip line? Second paragraph.

7 MR. GOLDBERG: That was a proposal  
8 made by the Government of Canada in a document called  
9 "A Canada for All Canada's Action Plan Against Racism."

10 MR. CHRISTIE: So was the suggestion  
11 being made that tips to the police would be also given  
12 to the Commission?

13 MR. GOLDBERG: I'm not aware of what  
14 the intent of the tip line was. The Commission was  
15 never consulted on it.

16 MR. CHRISTIE: They wanted to be,  
17 apparently. It says,

18 "It is therefore critically  
19 important that design and  
20 implementation of the proposed  
21 tip line be carried out in  
22 consultation with the Commission  
23 in order to ensure that the tips  
24 submitted by concerned citizens  
25 are pursued appropriately."

1 Does that mean by the Commission?

2 MR. GOLDBERG: Not necessarily.

3 MR. CHRISTIE: Obviously it does,  
4 because the previous part of the paragraph says they  
5 would go to the police.

6 So if the Commission needs to be  
7 involved it would only be logical that that's the  
8 result of the need for the Commission to receive the  
9 information from the tip line, isn't it?

10 MR. GOLDBERG: No, I don't agree.

11 MR. CHRISTIE: What do you derive  
12 from that request to Mr. Cotler, that he consider it,  
13 "...critically important that  
14 the design and implementation of  
15 the proposed tip line be carried  
16 out in consultation with the  
17 Commission in order to ensure  
18 that tips submitted by concerned  
19 citizens are pursued  
20 appropriately"?

21 MR. GOLDBERG: Some tips might go to  
22 police, some tips might go to the Commission.

23 MR. CHRISTIE: So was the Commission  
24 asking to be informed of tips?

25 MR. GOLDBERG: The Commission was

1 asking if the government were to proceed with  
2 establishing a tip line with regard to the hate on the  
3 Internet, which they said they were going to do in this  
4 document which they issued, without ever prior -- any  
5 prior discussion or consultation with the Commission,  
6 who didn't know anything about this tip line until the  
7 government published this document.

8 The Chief Commissioner was writing to  
9 the Minister of Justice saying if the government  
10 proceeds with establishing this tip line, the  
11 Commission would, of course, want to be involved in  
12 whatever the government decides to do.

13 MR. CHRISTIE: And that tips could be  
14 pursued by the Commission. Is that what it means?

15 MR. GOLDBERG: What it means is if  
16 the government chose to proceed with this proposal,  
17 which the Commission had not made any comment on, had  
18 not been asked about, that the Commission would want --  
19 because it impacted on its mandate, the Commission  
20 would want to be in discussion with the Department of  
21 Justice on how this tip line operate.

22 MR. CHRISTIE: Why, except to be  
23 involved in taking complaints?

24 MR. GOLDBERG: I really can't answer  
25 that because we did not know, and in fact we still do

1 not know, what the exact intention of the proposed tip  
2 line was.

3 MR. CHRISTIE: Well, didn't you write  
4 this letter for the Commission?

5 MR. GOLDBERG: Yes, I did.

6 MR. CHRISTIE: So I'm asking the very  
7 person who wrote it what it means and you're, I  
8 suggest, telling me, you?

9 MR. GOLDBERG: What I wrote is:  
10 "It is therefore critically  
11 important that the design and  
12 implementation of the proposed  
13 tip line be carried out in  
14 consultation with the  
15 Commission."

16 That's because we had no idea what  
17 the decision or implementation of the tip line  
18 involved.

19 MR. CHRISTIE: But the next --

20 THE CHAIRPERSON: I'm going to  
21 intervene. The next line says,  
22 "...in order to ensure that tips  
23 submitted by concerned citizens  
24 are pursued appropriately."

25 MR. GOLDBERG: Yes, but that could

1           involve being pursued appropriately by Internet service  
2           providers, by the police or by the Commission. I'm not  
3           saying the Commission didn't -- the government proposed  
4           a tip line with regard to hate on the Internet. Yes,  
5           the Commission assumed that if that were to go forward  
6           that some of that information might be brought to the  
7           Commission.

8                           THE CHAIRPERSON: It's only logical,  
9           isn't it? If information raises issues that warrants a  
10          complaint being filed pursuant to the mandate of the  
11          Commission --

12                          MR. GOLDBERG: I didn't mean to be  
13          misleading. I'm just trying to make the point at the  
14          time this letter was written we didn't know anything  
15          about what the government's intention was with regard  
16          to the tip line.

17                          They simply -- it was simply a  
18          one-sentence statement in a multi-page government  
19          policy and we were really seeking the opportunity to  
20          discuss with them what they were proposing.

21                          MR. CHRISTIE: So really what I would  
22          like to get at, sir, it doesn't trouble you in the  
23          slightest that the Canadian Human Rights Commission  
24          should avail itself of anonymous tip lines, does it?

25                          MR. GOLDBERG: I don't see anywhere

1 where it says it's an anonymous tip lines.

2 MR. CHRISTIE: What are tip lines?  
3 Aren't they usually anonymous?

4 MR. GOLDBERG: I don't know.

5 MR. CHRISTIE: And I suggest you  
6 wanted tips to increase the number of complaints  
7 because then you wouldn't have to have people like Mr.  
8 Warman go out and stir them up?

9 MR. GOLDBERG: I'll reiterate what I  
10 already have testified to; the Commission did not  
11 propose that there be tip line. The Commission had no  
12 knowledge of the proposal that there be a tip line  
13 until the government proposed it.

14 MR. CHRISTIE: This letter was  
15 written because you were a little bit annoyed that they  
16 didn't involve you in the process?

17 MR. GOLDBERG: That's correct.

18 MR. CHRISTIE: Now, in the next  
19 paragraph you say,

20 "Recently the Commission hosted  
21 an inter-departmental briefing  
22 at which officials from various  
23 departments were present."

24 What was that? Was that the police  
25 meeting or another meeting?

1 MR. GOLDBERG: That was another  
2 meeting.

3 MR. CHRISTIE: "...including  
4 representatives from your department." That's the  
5 Department of Justice?

6 MR. GOLDBERG: That's correct.

7 MR. CHRISTIE: "Canadian Heritage,  
8 the RCMP, Industry Canada, Public Security." What does  
9 that mean? Does that mean CSIS?

10 MR. GOLDBERG: No, that means the  
11 Department of Public Security and Emergency  
12 Preparedness Canada.

13 MR. CHRISTIE: I see. So this is  
14 another meeting, of which at least I was not yet aware.  
15 When was this?

16 MR. GOLDBERG: I believe this was in  
17 the fall of 2004.

18 MR. CHRISTIE: Well, it couldn't be,  
19 could it, because you said Mr. Justice Cotler -- Mr.  
20 Irwin Cotler was not a minister for more than 18 months  
21 and he ceased to be a minister, as far as I'm aware, in  
22 December of 2005. Well, was it within that 15 months  
23 or --

24 MR. GOLDBERG: I don't recall.

25 MR. CHRISTIE: This meeting was then

1 to coordinate the activities of the Commission with a  
2 number of other ministries; is that correct?

3 MR. GOLDBERG: If I can just read the  
4 paragraph, please. No, it didn't.

5 MR. CHRISTIE: It seems to imply this  
6 must have been in the spring, because you say, "We're  
7 tentatively planning for next fall a small conference  
8 on hate on the Internet".

9 MR. GOLDBERG: You seem to be  
10 correct, so it would have been in the spring of 2005.

11 MR. CHRISTIE: The next line is a  
12 mystery to me, because it says,

13 "I've enclosed for your  
14 information copies of the deck  
15 presented to the  
16 inter-departmental meeting."

17 What is a "deck"?

18 THE CHAIRPERSON: Ah, that  
19 demonstrates you haven't stayed enough in Ottawa to  
20 know. It is a Power Point presentation. Am I correct?

21 MR. GOLDBERG: That is correct.

22 THE CHAIRPERSON: Well known in the  
23 milieu of Ottawa. Does that help you in understanding  
24 the sentence?

25 MR. CHRISTIE: Yes, I guess it does.

1                   The question that arises in my mind,  
2 then, is why were you sending this information to the  
3 Honourable Minister of Justice Cotler?

4                   MR. GOLDBERG: For his information.

5                   MR. CHRISTIE: So the Commission, you  
6 affirm, is to be independent but all these coordinating  
7 meetings exchange information; am I right?

8                   MR. GOLDBERG: No.

9                   MR. CHRISTIE: Were there any minutes  
10 or memoranda of this conference you mentioned?

11                   MR. GOLDBERG: I don't recall that  
12 there were any minutes. I may have...

13                   MR. CHRISTIE: We know there was a  
14 deck. Was a ship attached.

15                   THE CHAIRPERSON: Was what attached?

16                   MR. CHRISTIE: Ship. Deck, ship.  
17 Titanic.

18                   THE CHAIRPERSON: I think more in  
19 terms of Las Vegas, that kind of deck.

20                   MR. CHRISTIE: Was the deck something  
21 you kept, sent a copy to Mr. Cotler. I assume you had  
22 a copy of the deck?

23                   MR. GOLDBERG: I presume so.

24                   MR. CHRISTIE: And it would have been  
25 a deck of the contents of your presentation to these

1 various departments?

2 MR. GOLDBERG: That's correct.

3 MR. CHRISTIE: So it would, in fact,  
4 probably be documents that were networking in  
5 consultation with groups representing other government  
6 agencies, right.

7 MR. GOLDBERG: I'm not sure of that.

8 MR. CHRISTIE: Well, let's go slowly.  
9 Government agencies. Would the RCMP be a government  
10 agency?

11 MR. GOLDBERG: Yeah.

12 MR. CHRISTIE: Industry Canada, a  
13 government agency?

14 MR. GOLDBERG: They are all  
15 government agencies, yes.

16 MR. CHRISTIE: So all the people with  
17 whom you were networking on that occasion and for whom  
18 you made the presentation were government agencies; am  
19 I right?

20 MR. GOLDBERG: I would not  
21 characterize the meeting as networking. It was a  
22 briefing.

23 MR. CHRISTIE: A briefing, yes. But  
24 I take it you didn't think it necessary when you heard  
25 that you were to comply with the order to produce the

1 material that you gave to those other government  
2 agencies at the briefing?

3 MS. BLIGHT: Mr. Chairman, this has  
4 proceeded as a cross-examination for sometime now. You  
5 indicated earlier that you didn't want me to rise on  
6 those points. But to suggest that these materials have  
7 not been disclosed is simply false. The deck has been  
8 produced.

9 THE CHAIRPERSON: The deck has been  
10 produced?

11 MS. BLIGHT: Of course it has.

12 MR. CHRISTIE: Please identify what  
13 we're referring to then for those of us who aren't  
14 quite fluent in Ottawa vernacular.

15 THE CHAIRPERSON: It's a Power Point  
16 presentation. Perhaps Mr. Lemire could recognize what  
17 a Power Point sheet looks like.

18 MR. CHRISTIE: I should hope that it  
19 wouldn't be too hard just to correct our poor, humble  
20 ignorance by saying it's there, or there, or wherever.

21 THE CHAIRPERSON: I'm a little  
22 troubled by -- I understand you --

23 MS. BLIGHT: I can't go through my  
24 friend's materials, but there are several Power Point  
25 presentations that have been produced.

1 THE CHAIRPERSON: Each party is  
2 responsible for their own disclosure. I know the  
3 Commission, when they disclose, they have a table of  
4 contents. I could find it somewhere in here in my  
5 material. I never look at the actual documents  
6 themselves. Those aren't given to us pursuant to our  
7 rules. Somebody knows where they are?

8 MR. CHRISTIE: If you could turn to  
9 tab 11, sir.

10 THE CHAIRPERSON: Maybe we found it.

11 MR. CHRISTIE: Maybe we found it.  
12 This refers to Section 13, Combatting Hate on the  
13 Internet. May 30th, 2005. Is that contents of the  
14 Power Point presentation?

15 MR. GOLDBERG: It may be. There's a  
16 generic presentation that we use as the basis for many  
17 presentations we do.

18 MR. CHRISTIE: The problem I have  
19 with that is it seems to have a letter written by  
20 someone called the Right Honourable Stephen Harper,  
21 September 11th, 2006, so it would not very likely be  
22 generated in 2005, at least in that tab.

23 MS. BLIGHT: Could we have a  
24 reference, please?

25 MR. CHRISTIE: Tab 11. At least I

1 refer a tab.

2 THE CHAIRPERSON: Hold on. Let me  
3 look at it. I think this is -- I think I'm looking at  
4 two different documents. The placing of one tab would  
5 have been done by Ms. Kulaszka.

6 MS. KULASZKA: We were disclosed  
7 various, numerous what appeared to be Power Point  
8 presentations.

9 THE CHAIRPERSON: Typically --

10 MS. KULASZKA: Some of them were in a  
11 little deck so they were three and three and three and  
12 three and maybe that's -- so we've produced at tab  
13 11 -- first two pages are part of one of those what  
14 seemed to be some sort of presentation.

15 THE CHAIRPERSON: Only the first two  
16 pages appear to be emanating from Power Point.

17 MS. KULASZKA: That's what we're  
18 going to use. So they did disclose something like  
19 that. I didn't know what it was.

20 THE CHAIRPERSON: It appears to me  
21 that the subsequent papers are unrelated, although they  
22 in the same tab.

23 MS. KULASZKA: Yes, they are. That's  
24 just a portion of some sort of presentation.

25 THE CHAIRPERSON: A year-and-a-half

1 later.

2 MR. CHRISTIE: Yes, so --

3 MS. KULASZKA: Probably that's not  
4 the one he's talking about.

5 MR. CHRISTIE: That's the problem. I  
6 was hopeful we would at least find out what one he was  
7 talking about.

8 THE CHAIRPERSON: It's unfortunate  
9 the word "deck" only circulates one geographic area. I  
10 only learned of the word in the last three, four years.

11 MR. CHRISTIE: I'll move on then to  
12 tab 4, please, Mr. Goldberg, this document seems to be  
13 700 words generated by somebody. It's got your name at  
14 the bottom, January 31st, 2002. Would it be possible  
15 that you generated the document.

16 MR. GOLDBERG: Yes, I wrote it.

17 MR. CHRISTIE: And it indicates  
18 something I take it that you were quite sincere in  
19 writing this. Would you agree? It wasn't comic. This  
20 was sincere writing on your part?

21 MR. GOLDBERG: Yes.

22 MR. CHRISTIE: This attacks the  
23 subject of the Zundel decision, or addresses it I  
24 should say. I want to ask you to look at the second  
25 paragraph and you say,

1 "Today, according to groups that  
2 monitor the Internet, there are  
3 hundreds of Internet sites  
4 devoted to white racial  
5 superiority, homophobia,  
6 anti-immigration and a variety  
7 of other supremacist  
8 ideologies."

9 What is "white racial superiority"?

10 MR. GOLDBERG: Groups that believe  
11 that North America or Canada should be preserved for  
12 people of so-called white race.

13 MR. CHRISTIE: And homophobia?

14 MR. GOLDBERG: People who are afraid  
15 of people who are gays or lesbians.

16 MR. CHRISTIE: And anti-immigration,  
17 what would you say that was?

18 MR. GOLDBERG: Those people that are  
19 opposed to immigration.

20 MR. CHRISTIE: So is it the mandate  
21 of the Canadian Human Rights Commission to prevent  
22 those ideologies?

23 MR. GOLDBERG: I would point out it's  
24 the mandate of the Canadian Human Rights Commission  
25 under 27(H), to,

1                    "...as far as practical,  
2                    consistent with the application  
3                    of part 3, try by persuasion,  
4                    publicity or any other means  
5                    that it considers appropriate to  
6                    discourage and reduce  
7                    discriminatory practices  
8                    referred to in Section 5 to  
9                    14(1) of the Canadian Human  
10                    Rights Act."

11                    MR. CHRISTIE: Do you know the  
12                    difference between an ideology and a practice?

13                    MR. GOLDBERG: Yes.

14                    MR. CHRISTIE: Are aren't these  
15                    ideologies that you're talking about?

16                    MR. GOLDBERG: I would say they are  
17                    both.

18                    MR. CHRISTIE: Well, homophobia is an  
19                    ideology and you referred to it as such, didn't you?

20                    MR. GOLDBERG: Well, actually it's  
21                    referring to Internet sites devoted to those  
22                    ideologies.

23                    MR. CHRISTIE: Yes, but is it the  
24                    mandate of the Canadian Human Rights Act, or your  
25                    Commission as you see it, to eliminate those ideologies

1 or just acts of discrimination or advocacy of hatred  
2 against members of identifiable groups?

3 MR. GOLDBERG: Our mandate is as set  
4 out in Section 13 of the Canadian Human Rights Act with  
5 regard to hate messages.

6 MR. CHRISTIE: It's quite clear,  
7 isn't it, in your view at least, from what we can read  
8 the elimination of sites devoted to these ideologies  
9 should be a priority of the Commission, right?

10 MR. GOLDBERG: Could you refer me to  
11 where --

12 MR. CHRISTIE: I'll refer you to the  
13 entire paragraph,

14 "Unfortunately, he is not  
15 alone --" -- that's Mr.  
16 Zundel --  
17 "-- in finding the Internet an  
18 effective way of promoting  
19 enmity. Today, according to  
20 groups that monitor the  
21 Internet, there are hundreds of  
22 Internet sites devoted to white  
23 racial superiority," -- et  
24 cetera.

25 Wouldn't it be obvious that that was

1           your intention, to indicate these are unfortunate sites  
2           and should be eliminated when you lump them together  
3           with Zundel sites which was being prosecuted at the  
4           time?

5                           THE CHAIRPERSON:   Just a second, I  
6           have an objection.

7                           MS. BLIGHT:   Mr. Chairman, you did  
8           earlier make some distinction between cross-examination  
9           on the affidavit referring to documents produced and  
10          cross-examination and questioning on Mr. Goldberg's  
11          role in terms of a policy adviser.  I would submit to  
12          you that we are now in the domain of policy and that  
13          the questioning as it has been with leading questions  
14          is some unfair to the witness.

15                          MR. CHRISTIE:  If we can go back to  
16          the affidavit, Mr. Goldberg states --

17                          THE CHAIRPERSON:  That's at page 7?

18                          MR. CHRISTIE:  Tab 1, second  
19          affidavit.

20                          THE CHAIRPERSON:  Page 3.

21                          MR. CHRISTIE:  He says he's employed  
22          in the position of team leader, strategic initiatives  
23          at the Human Rights Commission, and as such have  
24          knowledge of matters -- knowledge of facts to which I  
25          hereinafter depose.

1                   Now, I'm inquiring as to what his  
2                   job, why he wrote this, whether it's part of his  
3                   mandate to eliminate ideology. I think I'm inquiring  
4                   as to what he really does, and I think it's relevant,  
5                   if I'm not mistaken, because we argued, and I thought  
6                   successfully, that the state of inter-connectedness,  
7                   and the stated bias, if any, of the Commission on  
8                   matters perhaps beyond the scope their jurisdiction,  
9                   would be relevant to consider in relation to --

10                   THE CHAIRPERSON: Relevance is not  
11                   the objection. It's that your questions have taken the  
12                   form of a cross-examination. I think it might be  
13                   pushing it to say on that basis you can be free to do  
14                   so. But you can ask all your questions, you know how  
15                   to do that. Open-ended, it a little open-ended.

16                   MR. CHRISTIE: Why did you generate  
17                   this 700 words?

18                   MR. GOLDBERG: I presume because I  
19                   wanted to propose it as a possible --

20                   MR. CHRISTIE: So where did you send  
21                   it for consideration as a --

22                   MR. GOLDBERG: To my director,  
23                   presumably, at the time. I don't recall, but I presume  
24                   that's what I did.

25                   MR. CHRISTIE: You are listed as

1 "Harvey Goldberg, Policy and International Program  
2 Branch". What's the International Program Branch?

3 MR. GOLDBERG: It's a branch -- it  
4 was a branch of the Commission that dealt with  
5 international programs.

6 MR. CHRISTIE: What international  
7 programs are we talking about?

8 MR. GOLDBERG: Cooperation between  
9 national human rights institutions.

10 MR. CHRISTIE: Cooperation with the  
11 United States?

12 MR. GOLDBERG: United States doesn't  
13 have a national human rights institution, so no.

14 MR. CHRISTIE: And apparently the  
15 Commission has claimed Section 37 of the Canadian  
16 Evidence Act for what is underneath January 31st, 2002.  
17 Why I don't know. But in view of the fact that it may  
18 very well be relevant, I would at least ask, you could  
19 have a look at that, sir, and make your judgment on  
20 whether this is a necessary matter of public interest.

21 THE CHAIRPERSON: At the bottom?

22 MR. CHRISTIE: Yes. Says "37 CEA". I  
23 don't understand why there's reference to -- this is  
24 sort of distribution list and if it was contrary to  
25 what the minister said, then I realize there are always

1 claims of public interest possible, but at least I  
2 could hear what the specific reason might be.

3 THE CHAIRPERSON: Can you re-visit  
4 that?

5 MS. BLIGHT: This is simply contact  
6 information, such as phone and fax and other details of  
7 how to contact Mr. Goldberg.

8 THE CHAIRPERSON: Mr. Goldberg?

9 MS. BLIGHT: Yes.

10 MR. CHRISTIE: I'm not interested in  
11 that.

12 Had the decision of the Tribunal of  
13 Pense and Evans been made by the time you generated  
14 this document at 12:16 p.m. on the 31st of January  
15 2002?

16 MR. GOLDBERG: Yes.

17 MR. CHRISTIE: And you state:

18 "If a website is shut down today  
19 it can pop up tomorrow coming  
20 from the other side of the  
21 world."

22 Is that still true?

23 MR. GOLDBERG: Yes.

24 MR. CHRISTIE: It's quite obvious  
25 that websites can be created and operated in an

1 anonymous fashion, can they?

2 MR. GOLDBERG: Yes.

3 MR. CHRISTIE: And they are  
4 interactive? People can respond to materials posted  
5 there if there's a message board, at least?

6 MR. GOLDBERG: Yes.

7 MR. CHRISTIE: Is the Zundel site  
8 still active, to your knowledge?

9 MR. GOLDBERG: Yes.

10 MR. CHRISTIE: So notwithstanding the  
11 Human Rights Commission's order of compensation and to  
12 shut than the site, it's still operating even though  
13 Mr. Zundel is still in jail?

14 MR. GOLDBERG: Yes.

15 MR. CHRISTIE: Does that concern you  
16 in terms of the effectiveness of the legislation you  
17 seek to enforce?

18 MR. GOLDBERG: Yes.

19 MR. CHRISTIE: I guess I won't pursue  
20 it in some aggressive manner.

21 The Supreme Court -- on a number of  
22 occasions you write -- has made it abundantly clear  
23 that,

24 "One's person's freedom of  
25 speech ends where it comes into

1 collision with another person's  
2 right to be protected from the  
3 pernicious harm that results  
4 from hate."

5 So you don't there actually  
6 distinguish between personal hate and hate of a racial  
7 nature. Did you mean to make that distinction?

8 MR. GOLDBERG: That is the  
9 distinction, yes.

10 MR. CHRISTIE: Isn't it a little too  
11 broad to make the statement you make there?

12 MR. GOLDBERG: I was writing a  
13 newspaper article, not a legal brief.

14 MR. CHRISTIE: I thought even for  
15 education of poor united people whom might not be  
16 legally trained, you would still say you could hate  
17 someone personally, I guess. Would you agree.

18 MR. GOLDBERG: Absolutely.

19 MR. CHRISTIE: But not on the basis  
20 of race, religion, ethic, sex, sexual orientation,  
21 mental, physical disability or marital status, right.

22 MR. GOLDBERG: No, you can hate  
23 people on all those grounds.

24 MR. CHRISTIE: Can you?

25 MR. GOLDBERG: Yes, you can.

1 MR. CHRISTIE: You can't say it,  
2 though?

3 MR. GOLDBERG: You can't --

4 MR. CHRISTIE: -- on the Internet?

5 MR. GOLDBERG: -- be legally  
6 transmitted by means of a telephonic communication  
7 service under the jurisdiction of the Parliament of  
8 Canada.

9 MR. CHRISTIE: Or on the Internet?

10 MR. GOLDBERG: Or on the Internet.

11 MR. CHRISTIE: Even if you only post  
12 it once?

13 MR. GOLDBERG: That I don't know.

14 MR. CHRISTIE: Well, you have to do  
15 it repeatedly?

16 MR. GOLDBERG: Yes, you're correct.  
17 The Act says repeatedly.

18 MR. CHRISTIE: With a single posting,  
19 which remains available on even a foreign website,  
20 would qualify, wouldn't it?

21 MR. GOLDBERG: That would be a matter  
22 of interpretation as to what constitutes repeatedly.

23 THE CHAIRPERSON: Let's leave that  
24 for final submissions.

25 MR. CHRISTIE: Thank you.

1 THE CHAIRPERSON: It's coming to 4  
2 o'clock. Perhaps it's a good time for a quick break.  
3 Maybe we'll go for a bit longer after that. Does  
4 anyone have any restrictions on time.

5 I can't be here tomorrow. My friend  
6 will carry on. I just have to be in Vancouver tomorrow  
7 morning.

8 THE CHAIRPERSON: How much more do  
9 you have?

10 MR. CHRISTIE: At least another hour.

11

12 --- Discussion off the record

13 THE CHAIRPERSON: Let's take a break  
14 for 15 minutes when.

15 --- Upon recessing at 4:00 p.m.

16 --- Upon re-commencing at 4:15 p.m.

17 MR. CHRISTIE: So did you ever manage  
18 to get this opinion piece published?

19 MR. GOLDBERG: Not to my  
20 recollection.

21 MR. CHRISTIE: Was it submitted for  
22 consideration by some other authority within the  
23 Commission?

24 MR. GOLDBERG: I don't recall.

25 MR. CHRISTIE: Would you have issued

1 it for publication to a number of media outlets?

2 MR. GOLDBERG: I don't recall.

3 MR. CHRISTIE: Was it part of your  
4 mandate as policy and international program branch  
5 manager, or whatever, to publish your opinion to the  
6 world at large?

7 MR. GOLDBERG: It would not have been  
8 published under my name, no.

9 MR. CHRISTIE: I see. It would have  
10 been published on behalf of the Commission?

11 MR. GOLDBERG: That's correct.

12 MR. CHRISTIE: I have a question  
13 arising out of this opinion piece, and that is: Have  
14 you addressed, in your opinion, the question of truth?  
15 Can truth be hate? Did you ever address that?

16 MR. GOLDBERG: No.

17 MR. CHRISTIE: Let me ask you another  
18 question. What's the largest mass murder in Canadian  
19 history?

20 MR. GOLDBERG: I believe it's the  
21 probably Ecole Polytechnique.

22 MR. CHRISTIE: Have you heard of the  
23 Air India bombing?

24 MR. GOLDBERG: You are correct. That  
25 is the largest mass murder in Canadian history.

1                   MR. CHRISTIE: This is something  
2 hypothetical for someone who is administering the  
3 policy of the Department of -- sorry, the Commission.  
4 If one was to say the largest mass murder in Canadian  
5 history was committed by Sikhs in the name of their  
6 religion, would you take the view, then, that that  
7 would expose them to hatred or contempt on the basis of  
8 their religion?

9                   MR. GOLDBERG: Would expose who to  
10 hatred on the basis of their religion.

11                  MR. CHRISTIE: Who do you thing?  
12 Obviously Sikhs.

13                  MR. GOLDBERG: No, I would not take  
14 that position.

15                  MR. CHRISTIE: Why not? Accuses  
16 Sikhs as Sikhs of participating in the largest mass  
17 murder in Canadian history. Why wouldn't you think  
18 that that would expose them to hatred or contempt by  
19 virtue of their religion?

20                  MR. GOLDBERG: Because I don't  
21 believe that it does. I believe it's aimed at the  
22 perpetrators of the Act.

23                  MR. CHRISTIE: The Act was done in  
24 the name of the religion.

25                  MR. GOLDBERG: The Act may have been

1 done in the name of the religion. That doesn't mean  
2 the religion supports the Act that was done.

3 MR. CHRISTIE: But if it's alleged  
4 that this Act was done by Sikhs as Sikhs because of  
5 their religion, wouldn't you say that this was done by  
6 Sikhs? How would you like to have someone say that  
7 such and such an evil deed was done by Jews? Wouldn't  
8 that expose Jews to that hatred or contempt because of  
9 their religion?

10 MR. GOLDBERG: Not necessarily, no.

11 MR. CHRISTIE: So if it was true it  
12 wouldn't be hate then, is that it.

13 MS. BLIGHT: Mr. Chairman, this is  
14 once again proceeding by way of very directed  
15 questioning, and we're really trying to illicit here  
16 the views of the witness as to the policy issues  
17 underlying the code. It's simply not fair to be  
18 cross-examining.

19 Cross-examination is a particular  
20 form of questioning that is designed for particular  
21 purposes, and I would submit to you that in terms of  
22 this witness and this context, it is not appropriate  
23 nor is it necessary.

24 MR. CHRISTIE: Well, I can only say  
25 it's seems highly relevant that someone who writes an

1 opinion piece exposes --

2 THE CHAIRPERSON: She's not saying  
3 it's not relevant.

4 MR. CHRISTIE: She's saying I  
5 shouldn't be allowed to cross-examine.

6 THE CHAIRPERSON: Not cross-examine  
7 in the manner you've been following.

8 MR. CHRISTIE: I've move on.

9 THE CHAIRPERSON: But, you know, I'm  
10 not born yesterday. Obviously this person is not of  
11 the same interest as the questioner and there will be,  
12 to some extent, a certain defensive or opposite point  
13 of view. One would expect that, given the context of  
14 the discussion.

15 I'm going to allow a little bit of --  
16 I'm not talking about undermining his credibility  
17 but --

18 MS. BLIGHT: Mr. Chairman, I would  
19 just ask you to keep in mind that this is a public  
20 hearing and that what is said in this hearing is very  
21 extensively reproduced outside of this hearing room.

22 MR. CHRISTIE: Nothing I've said is  
23 inappropriate or improper, and if it is --

24 THE CHAIRPERSON: I think that last  
25 statement is fair.

1 MS. BLIGHT: No, but the form of the  
2 questioning is unfair to the witness and does not allow  
3 the witness to fairly expose the policy positions of  
4 the Commission.

5 THE CHAIRPERSON: I would like the  
6 witness to be able to express himself without question.  
7 So if in the sense of cross-examination meaning  
8 interrupting the answers, please bring that to my  
9 attention. I want all the answer to be exposed.  
10 However, the area being explored by Mr. Christie is an  
11 area that is relevant to the case. Go ahead, Mr.  
12 Christie.

13 MR. CHRISTIE: Sir, how is truth  
14 taken into consideration by the Commission in the  
15 assessment of hate?

16 MR. GOLDBERG: In my understanding of  
17 the law and the jurisprudence, truth is near an  
18 irrelevant factor.

19 MR. CHRISTIE: So truth is irrelevant  
20 to your consideration of any statement under Section  
21 13(1), correct.

22 MR. GOLDBERG: The consideration  
23 that's irrelevant and that we refer to Section 13, it  
24 says,

25 "It is a discriminatory practice

1                   for a person, group of  
2                   persons," -- et cetera --  
3                   "in whole or in part," -- et  
4                   cetera --  
5                   "to expose a person or persons  
6                   to hatred or contempt for the  
7                   reason of the fact that that  
8                   person or those persons are  
9                   identifiable on the basis of  
10                  prohibitive ground of  
11                  discrimination."

12                 MR. CHRISTIE: But that doesn't  
13                 address my question. I think, sir, you will agree, I  
14                 hope, that your Commission and yourself view the  
15                 jurisprudence as helping you to interpret that section.

16                 MR. GOLDBERG: That's correct.

17                 MS. BLIGHT: I would like to point  
18                 out the witness was interrupted.

19                 THE CHAIRPERSON: I'm not sure it was  
20                 the case, but let's avoid overlap then we won't have  
21                 any ambiguity.

22                 MR. CHRISTIE: Would you agree that  
23                 in being guided by the jurisprudence you were quite  
24                 correct to say that so far the jurisprudence has  
25                 indicated that truth is irrelevant to the consideration

1 of Section 13(1).

2 MR. GOLDBERG: Yes.

3 MR. CHRISTIE: Now, you do say in  
4 your opinion piece that,

5 "So for the Commission our  
6 course is clear," -- and this is  
7 the last paragraph --,  
8 "with new tools in hand we will  
9 continue to battle the high road  
10 of hate wherever it raises its  
11 head in Canada."

12 Now, what does it mean "in Canada"?

13 MR. GOLDBERG: This is in the draft?  
14 Where is that?

15 MR. CHRISTIE: Very last words  
16 actually, just above your signature, or your name, "in  
17 Canada". "Raises its head in Canada". Did you mean --

18 MR. GOLDBERG: You're on the second  
19 page.

20 MR. CHRISTIE: Yes, sir. Very last  
21 words?

22 MR. GOLDBERG: Yes. Yes, what's your  
23 question?

24 MR. CHRISTIE: Do you mean to imply  
25 that you don't concern yourself with anywhere that it

1 raises its head outside Canada?

2 MR. GOLDBERG: The Commission's  
3 mandate -- Commission has jurisdiction over matters  
4 within the jurisdiction of the Parliament of Canada. So  
5 that restricts us to Canada, yes.

6 MR. CHRISTIE: Well, if you become  
7 aware in your analysis of policy whether the Commission  
8 has taken action against websites that are located  
9 beyond the jurisdiction of the Parliament of Canada?

10 MR. GOLDBERG: Only if the website  
11 has a connection to Canada.

12 MR. CHRISTIE: A connection to  
13 Canada. Like what?

14 MR. GOLDBERG: Either the material on  
15 the website is being produced by somebody who is in  
16 Canada or a Canadian is causing the website to exist.

17 MR. CHRISTIE: Causing the website to  
18 exist. Okay. Thank you. Now, I turn the page, and  
19 this appears also to be originating with yourself, sir.  
20 It's got your name on the bottom, January 10th, 2007.

21 MR. GOLDBERG: That's correct.

22 MR. CHRISTIE: And people  
23 organization --

24 MR. GOLDBERG: Just for the benefit  
25 of the Tribunal, I would like to clarify. I believe

1           that that -- a date was -- there's a function in the  
2           word processing program that automatically updates the  
3           date. I don't believe that's the date that this  
4           document was actually -- the original was actually  
5           created. That must be the date it was last printed.

6                         MR. CHRISTIE: Okay, fine. What it  
7           deals with is people organizations who contact re hate  
8           crimes. Why were you generating this document?

9                         MR. GOLDBERG: As a list of people  
10          and organizations to contact.

11                        MR. CHRISTIE: Regarding hate crimes?

12                        MR. GOLDBERG: I'm surprised that I  
13          used that terminology. It should have said 'hate  
14          activity' or 'Section 13 of the Human Rights Commission  
15          Act'.

16                        MR. CHRISTIE: Sometimes we choose  
17          the wrong word, but it is your word, I take it?

18                        MR. GOLDBERG: Yes.

19                        MR. CHRISTIE: Now, we've got 37, 37,  
20          37, 37, 37, 37, and it looks like six times as far as I  
21          can count. Right at the bottom is another one.

22                                 Do you know what the names were? Were  
23          they organizations or were they individuals that were  
24          interspersed where those 37s are?

25                                 THE CHAIRPERSON: Miss Blight?

1 MS. BLIGHT: My understanding, Mr.  
2 Chairman, is that the Section 37 objection that is  
3 outlined here pertains to the identity of individuals  
4 primarily.

5 THE CHAIRPERSON: So I can better  
6 understand, where I see it says Heritage Canada,  
7 beneath that would be the name of an individual at  
8 Heritage Canada?

9 MS. BLIGHT: Yes, being contact  
10 information.

11 THE CHAIRPERSON: Contact  
12 information, including names.

13 MS. BLIGHT: Including the name of  
14 the individual.

15 THE CHAIRPERSON: But there are no  
16 organizations akin to what we see here, underneath  
17 these headings?

18 MS. BLIGHT: I would have to check  
19 with respect to the second.

20 THE CHAIRPERSON: Number 2 is blank.

21 MR. CHRISTIE: Was Richard Warman one  
22 of the people you sent this to?

23 MR. GOLDBERG: This was not sent to  
24 nobody.

25 MR. CHRISTIE: Is Richard Warman's

1 name on the contact list?

2 MR. GOLDBERG: No.

3 MR. CHRISTIE: Do you know who he is?

4 MR. GOLDBERG: Yes, I know who

5 Richard Warman is.

6 MR. CHRISTIE: Work with him?

7 MR. GOLDBERG: He was an employee of

8 the Commission and I knew him when he was at the

9 Commission, yes.

10 MR. CHRISTIE: See, what we have here

11 is three, B'nai Brith, I take it, that's a Jewish

12 organization?

13 MR. GOLDBERG: Yes, it is.

14 MR. CHRISTIE: The Simon Wiesenthal

15 Centre. Is that a Jewish organization?

16 MR. GOLDBERG: Yes, it is.

17 MR. CHRISTIE: And the Canadian

18 Jewish Congress. Is that a Jewish organization?

19 MR. GOLDBERG: Yes.

20 MR. CHRISTIE: Do you identify

21 yourself as a Jewish person?

22 MS. BLIGHT: Mr. Chairman, I object

23 to this simply on the basis of relevance. Totally and

24 completely irrelevant.

25 MR. CHRISTIE: If this was inquiry

1           into the constitutional validity of a law forbidding  
2           denial of abortion, it would be highly appropriate to  
3           ask if all of the enforcers of that law could approach  
4           it with the attitude of, for example, a Catholic who  
5           would be under their normal affiliation contrary to  
6           that and in favor of the law. It would be in contrary  
7           to that because that was their bias. It's not unusual  
8           to have bias. It's not even wrong to have bias.

9                           But it might be a factor to determine  
10           whether such people should normally have the power to  
11           enforce law against a variety of other people. And I'm  
12           sure that if I was acting for Henry Morgentaler and I  
13           was appearing before a bunch of people who were  
14           Catholic, I would be quite entitled to raise the  
15           question of whether they were biased.

16                           THE CHAIRPERSON: I don't know if I  
17           accept your notion that a person should be barred from  
18           engaging in any type of that decision-making role on  
19           the basis of their ethnic or religious origin -- ethnic  
20           origin or religious background. However, it may be  
21           relevant for the purpose of this discussion here in the  
22           sense that three of these organizations are Jewish  
23           organizations.

24                           I'll leave it for final arguments,  
25           but I don't have difficulty with you asking if this

1 person identifies with Jewish religion.

2 MR. CHRISTIE: There's nothing wrong  
3 with that. Do you identify yourself with the Jewish  
4 people, for instance?

5 MR. GOLDBERG: Yes.

6 MR. CHRISTIE: And would it be  
7 correct to say that some of the people for the  
8 government agencies might likewise identify from your  
9 own knowledge?

10 MR. GOLDBERG: Could you repeat that  
11 question, please.

12 MR. CHRISTIE: From your knowledge,  
13 are you familiar with the people who, for instance,  
14 appeared for and spoke for Heritage Canada, Canadian  
15 Association of Internet Providers, Media Awareness  
16 Network, and number 7 is likewise obliterated, EGALE.  
17 Would it be correct to say some of these, maybe most of  
18 them, likely identify with the Jewish people?

19 MR. GOLDBERG: No.

20 MR. CHRISTIE: You would be familiar  
21 with these people?

22 MR. GOLDBERG: Yes.

23 MR. CHRISTIE: And the Canadian  
24 Association of Internet Service Providers, would be  
25 circulating some sort of memos to them about hate on

1 the Internet?

2 MR. GOLDBERG: Memos, no.

3 MR. CHRISTIE: Letters?

4 MR. GOLDBERG: Perhaps.

5 MR. CHRISTIE: Well, I can't  
6 understand, if you can explain to me why, otherwise,  
7 you would have their name on this list of contact  
8 persons?

9 MR. GOLDBERG: As I explained before,  
10 part of mandate of the Commission is to promote --  
11 excuse me, I would like to quote it again.

12 MR. CHRISTIE: I've heard you quote  
13 it and it's understand -- it's 27(H), is it?

14 MR. GOLDBERG: That's correct. In  
15 furtherance of that, the Commission meets with many  
16 groups with regard to many different issues, not just  
17 hate on the Internet and --

18 MR. CHRISTIE: Can you wait for my  
19 question.

20 MS. BLIGHT: The witness was  
21 answering.

22 THE CHAIRPERSON: The witness was  
23 answering.

24 MS. BLIGHT: The question was, why  
25 would you include a bunch of these people behind your

1 memo. That was the question.

2 THE CHAIRPERSON: Specifically, I  
3 think the Canadian Association of Internet Service  
4 Providers.

5 MR. CHRISTIE: That's correct.  
6 That's the specific one you referred to.

7 THE CHAIRPERSON: Let's start all  
8 over. Why is the Canadian Association of Internet  
9 Service Providers included in your list?

10 MR. CHRISTIE: Thank you.

11 THE CHAIRPERSON: Mr. Goldberg?

12 MR. GOLDBERG: Because of Section  
13 27(H),

14 "That the Commission shall, so  
15 far as practical and consistent  
16 by persuasion, publicity and  
17 other means that it considers  
18 appropriate to discourage and  
19 reduce discriminatory  
20 practices."

21 MR. CHRISTIE: Would intimidation be  
22 "any other means"?

23 MR. GOLDBERG: I've already testified  
24 to that.

25 MR. CHRISTIE: Well, why wouldn't it

1 be "any another means"?

2 MR. GOLDBERG: Because it was not the  
3 intention of Parliament or the Canadian Human Rights  
4 Commission should intimidate anybody. The Commission's  
5 mandate comes from Parliament, from the Statute, and  
6 we, to the best of our abilities, try to operationalize  
7 the mandate given to us by the Parliament of Canada.

8 MR. CHRISTIE: When you write letters  
9 to the Canadian Association of Internet Service  
10 Providers, do you ask them to put filters on their  
11 various websites?

12 MR. GOLDBERG: No, we do not.

13 MR. CHRISTIE: Do you discuss filters  
14 with them?

15 MR. GOLDBERG: It may have been  
16 discussed.

17 MR. CHRISTIE: What's a filter?

18 MR. GOLDBERG: Well, there's -- from  
19 my layperson's understanding, there's various  
20 technological means by which you can identify messages  
21 that contain certain key words and, therefore, restrict  
22 access to them.

23 MR. CHRISTIE: So what is your  
24 purpose in contacting the Canadian Association of  
25 Internet Service Providers under section 27(H)? What

1 are you trying to persuade them to do?

2 MR. GOLDBERG: We're not -- Internet  
3 Service Providers generally have -- I would say  
4 generally universally I would think, have acceptable  
5 use policies; they have an industry association called  
6 the Canadian Association of Internet Service Providers.

7 The association has policies and  
8 guidelines with regard to the safe and responsible use  
9 of the Internet. Almost all acceptable use policies,  
10 which are really terms of the contract between an  
11 Internet service provider and a user of the Internet,  
12 provide that their Internet services shall be used only  
13 for purposes that are consistent with the laws of  
14 Canada and that they will not transmit material that is  
15 illegal.

16 MR. CHRISTIE: Do you have the  
17 authority under the Act to interpret what is an  
18 unlawful message?

19 MR. GOLDBERG: No, we do not.

20 MR. CHRISTIE: You do advise Internet  
21 Service Providers that you think is an unlawful message  
22 and you invite them to take "appropriate action"; is  
23 that correct?

24 MR. GOLDBERG: No, that's not  
25 correct.

1 MR. CHRISTIE: Under Media Awareness  
2 Network, what is that?

3 MR. GOLDBERG: I testified to that  
4 already.

5 MR. CHRISTIE: I don't recall it. Can  
6 you remind me? What is it?

7 THE CHAIRPERSON: I remember the  
8 answer, sir. You don't remember the answer?

9 MR. CHRISTIE: I can't remember.  
10 Media Awareness Network. Who is it?

11 THE CHAIRPERSON: It's a bunch of --  
12 it's the media network. Is that what that is?

13 MR. GOLDBERG: It's an organization  
14 which is funded by the major broadcasters and  
15 telecommunications in Canada to promote media awareness  
16 in the educational system for children.

17 MR. CHRISTIE: And who is EGALÉ?

18 MR. GOLDBERG: Equality for Gays and  
19 Lesbians Everywhere.

20 MR. CHRISTIE: So you call these  
21 stakeholders?

22 MR. GOLDBERG: Yes.

23 MR. CHRISTIE: Turning to page 5 in  
24 tab 4, there's an e-mail to you regarding an article in  
25 the Gazette of September 20th, 2006, or at least the

1 e-mail is. Did you receive that e-mail?

2 MR. GOLDBERG: Yes.

3 MR. CHRISTIE: What's the HOTI  
4 conference?

5 MR. GOLDBERG: That was a conference  
6 that was being sponsored by B'nai Brith Canada. The  
7 acronym refers to hate on the Internet.

8 THE CHAIRPERSON: It's HOTI  
9 Conference.

10 MR. CHRISTIE: So it's HOTI  
11 conference?

12 MR. GOLDBERG: HOTI.

13 MR. CHRISTIE: "You'll be getting a  
14 call from someone at the CRTC." What's that?

15 MR. GOLDBERG: The Canadian Radio,  
16 Television and Telecommunications Commission.

17 MR. CHRISTIE: So you participate in  
18 some way with them in an enforcement role?

19 MR. GOLDBERG: No.

20 MR. CHRISTIE: Were interested in  
21 advising them of an enforcement role, they might play.

22 MR. GOLDBERG: No. We were  
23 interested in discussing with them possible overlaps in  
24 our jurisdiction -- in jurisdictions with regard to  
25 information contained on the Internet.

1 MR. CHRISTIE: So who was it was  
2 writing to you to suggest the involvement of the CRTC  
3 when they said, "Especially when there's a chance they  
4 may have an enforcement role"?

5 Who was that? Was it a member of  
6 your Commission?

7 MR. GOLDBERG: Just one second while  
8 I read this, please. From the fact that half way  
9 through the page it says, "Canadian Association of  
10 Internet Service Providers". I presume this e-mail was  
11 from somebody from the Canadian Association of Internet  
12 Providers.

13 MR. CHRISTIE: Would that be another  
14 person who shares your concerns? Obviously.

15 MR. GOLDBERG: I don't have any  
16 personal concerns. These are concerns of Canadian  
17 Human Rights Commission.

18 MR. CHRISTIE: Did you write the  
19 e-mail that precedes it on the 6th of September to  
20 someone who wrote an article in the Montreal Gazette?

21 MR. GOLDBERG: Yes, I did.

22 MR. CHRISTIE: And that article is  
23 written by CAIP, Canadian Association of Internet  
24 Service Providers?

25 MR. GOLDBERG: Yes.

1 MR. CHRISTIE: So you basically got  
2 CAIP on board, I guess. Is that a fair statement?

3 MR. GOLDBERG: No.

4 MR. CHRISTIE: They do what you ask  
5 them in regard to controlling the Internet, right.

6 MR. GOLDBERG: No, that's not  
7 correct.

8 MR. CHRISTIE: Well, the next page of  
9 this on page 6 deals with your letter to them,  
10 "CAIP members are planning to  
11 start a working group with  
12 Canadian Human Rights Commission  
13 staffers this fall to look at  
14 faster ways to deal with  
15 complaints about hate speech  
16 sites."

17 Can you explain to me what that might  
18 mean?

19 MR. GOLDBERG: I believe -- I believe  
20 as I testified earlier in the day, we did have -- the  
21 Commission did consult with Canadian Association of  
22 Internet Service Providers with regard to their  
23 acceptable use policies and their complaints  
24 procedures.

25 The Commission has an overall policy

1 of encouraging anybody, any organization which might be  
2 the subject of a human rights claim to try and resolve  
3 that matter without filing formal a complaint with the  
4 Canadian Human Rights Commission. This applies to all  
5 types of discrimination.

6 And Canadian Association of Internet  
7 Service Providers, as I recall, expressed interest in  
8 looking at what possibilities there might be for  
9 putting into place their own complaint systems  
10 enhancing the complaints systems they now have.

11 MR. CHRISTIE: So you take Section  
12 27(H) to mean not only do you have the right to  
13 persuade a person who originates messages, but anyone  
14 who might be an instrument of the communication as  
15 well?

16 MR. GOLDBERG: The Commission is a  
17 statutory body established by Parliament under the  
18 Canadian Human Rights Act. We at the Commission  
19 believes it is consistent with its mandate to talk to  
20 anybody in the Canadian public institution or  
21 individual about furthering the aims of the Canadian  
22 Human Rights Act.

23 MR. CHRISTIE: Would that include  
24 pressuring them to block access to sites even before a  
25 hearing?

1 MR. GOLDBERG: We do not pressure  
2 anybody to block sites.

3 MR. CHRISTIE: Would you encourage  
4 them as part of your mandate under 27(H) to block  
5 access to websites that you thought offended without a  
6 hearing?

7 MR. GOLDBERG: No, we would not.

8 MR. CHRISTIE: You wouldn't. What  
9 about the next sentence?

10 "CAIP members are developing the  
11 technical means to block  
12 websites efficiently and quickly  
13 to respond to court orders."

14 You said they should have the means  
15 within a year. Who's "he"? Is that Paul Copeland. I  
16 don't know.

17 MR. CHRISTIE: Do you know Paul  
18 Copeland?

19 MR. GOLDBERG: Yes, I do.

20 MR. CHRISTIE: Is he involved with  
21 CAIP?

22 MR. GOLDBERG: Yes, he is.

23 MR. CHRISTIE: Did he publish the  
24 article in the Montreal Gazette?

25 MR. GOLDBERG: I believe he did.

1 MR. CHRISTIE: Yes. Another person  
2 who strongly identifies with the Jewish people, right?

3 MR. GOLDBERG: I have no idea  
4 whatsoever whether he identifies with the Jewish  
5 people.

6 MR. CHRISTIE: And, Mr. Goldberg,  
7 would it be correct to say that you wrote to somebody  
8 on behalf of the Canadian Human Rights Commission to  
9 thank them for their positive comments in The National  
10 Post article to the responsibility of IPs -- I guess he  
11 means ISPs, right -- to deal with hateful material.  
12 That's page 7, the next item.

13 THE CHAIRPERSON: Is this all one  
14 e-mail?

15 MR. CHRISTIE: No, there are a series  
16 of different ones, I think.

17 THE CHAIRPERSON: You should identify  
18 them and produced. They have not been produced yet, I  
19 don't think.

20 MS. KULASZKA: We should produce the  
21 last tab as well. We've gone through the whole thing,  
22 tab 4.

23 THE CHAIRPERSON: We are at tab 4,  
24 are we not?

25 MS. KULASZKA: I mean tab 3. I don't

1 know if the whole tab has been produced. I would like  
2 to ask the whole tab to be produced. We've gone all  
3 the way through it.

4 THE REGISTRAR: We had produced 1, 2,  
5 3.

6 THE CHAIRPERSON: Tab 3 is fully  
7 produced and as for tab 4, we've now reached page --  
8 we've gone through until page 6, so to this point they  
9 are all produced. 1 to 6 at this point.

10 MR. CHRISTIE: I'm looking now at  
11 page 7 and it's an e-mail to you from somebody of May  
12 24th, 2006. And you're the Harvey Goldberg who  
13 received this e-mail; is that correct?

14 MR. GOLDBERG: That's correct.

15 MR. CHRISTIE: This is written by  
16 someone who had written an article May 10th, 2006 in  
17 The National Post; is that correct?

18 MR. GOLDBERG: It appears to be the  
19 case, yes.

20 MR. CHRISTIE: Well, you must have  
21 known that because you wrote to thank them.

22 MR. GOLDBERG: Yes.

23 MR. CHRISTIE: And you would know who  
24 it was?

25 MR. GOLDBERG: Yes.

1 MR. CHRISTIE: Well --

2 MR. GOLDBERG: To be perfectly  
3 honest, I don't recall precisely who it was, but I do  
4 recall this correspondence.

5 MR. CHRISTIE: Is it the case that  
6 there's so many articles in The National Post in 2006  
7 that you can't recall who this might be?

8 MR. GOLDBERG: No, it's the case that  
9 I don't have a perfect memory and I don't recall who  
10 wrote that material.

11 MR. CHRISTIE: Was it someone from  
12 the Canadian Association of Internet Providers, a  
13 division of CATAAlliance?

14 MR. GOLDBERG: Yes, it would appear  
15 to be.

16 MR. CHRISTIE: So they are a part of  
17 your enforcement process. Is that a fair statement?

18 MR. GOLDBERG: No, that the would not  
19 be a fair statement.

20 MR. CHRISTIE: Are they an  
21 independent body?

22 MR. GOLDBERG: Yes, they are an  
23 independent body.

24 MR. CHRISTIE: Are they an  
25 independent body that has taken a position of

1 cooperation with you?

2 MR. GOLDBERG: Yes.

3 MR. CHRISTIE: And are you, then, the  
4 skilled informant who advises them what Internet sites  
5 are offensive?

6 MR. GOLDBERG: No, I'm not, and  
7 neither is the Commission.

8 MR. CHRISTIE: Do you advise them  
9 when you think they should take a look at sites?

10 MR. GOLDBERG: I do not, no.

11 MR. CHRISTIE: Does someone on behalf  
12 of the Commission?

13 MR. GOLDBERG: Not that I'm aware of.

14 MR. CHRISTIE: Well, in your writing  
15 to them, you write on May 24th, 2006,

16 "On behalf of CHRC I want to  
17 thank you for your positive  
18 comments in The National Post  
19 article with regard to the  
20 responsibilities of IPs to deal  
21 with hateful material on the  
22 net. You made it very clear  
23 that the IPs appreciate the  
24 problem, know the law, are  
25 willing to cooperate with

1 authorities even if the problem  
2 is small, any hate is too much.  
3 Bravo! I don't think the  
4 Commission could have said it  
5 better ourselves."

6 Would that be your sincere statement  
7 at the time?

8 MR. GOLDBERG: Yes, it was.

9 MR. CHRISTIE: So this independent  
10 body says what the Commission wanted it to say and  
11 couldn't have said it better themselves, right.

12 MR. GOLDBERG: In that situation,  
13 yes.

14 MR. CHRISTIE: And it was about  
15 enforcing the Human Rights Act?

16 MR. GOLDBERG: I don't recall the  
17 details of the article.

18 MR. CHRISTIE: You didn't have a  
19 copy?

20 MR. GOLDBERG: I'm sure I did have a  
21 copy.

22 MR. CHRISTIE: Were you having  
23 ongoing discussions with CAIP?

24 MR. GOLDBERG: Periodic  
25 communications with them, yes.

1 MR. CHRISTIE: You say,  
2 "Over the next few weeks we want  
3 to flesh out a few ideas which  
4 we could use on the basis for  
5 further discussions with you.  
6 In specific looking at," -- and  
7 then number 1 --  
8 "the notice and notice model we  
9 discussed at our last meeting."

10 What was that?

11 MR. GOLDBERG: That was something  
12 that they brought to our attention in the context of  
13 copyright law and they made us aware that there are  
14 provisions under U.S. legislation and under -- and  
15 there was the proposed legislation in Canada whereby if  
16 a -- it was a way of trying to avoid litigation over  
17 copyright issues by providing that if somebody felt  
18 they are copywriting material that was posted on the  
19 Internet had been infringed upon, they could inform the  
20 Internet service provider that they believe that their  
21 copyright had been infringed upon.

22 And then the Internet service  
23 provider would inform the person who was their customer  
24 who was posting that material, that they had received a  
25 notice from the person who claimed to hold the

1 copyright and that they might want to take this into  
2 consideration.

3 MR. CHRISTIE: What's that got to do  
4 with the Human Rights Act?

5 MR. GOLDBERG: As I recall, the  
6 Canadian Association of Internet Service Providers was  
7 raising the idea for discussion of whether it might be  
8 possible or useful or consistent with the law to have a  
9 similar system with regard to hate on the Internet.

10 MR. CHRISTIE: How did they say this  
11 notice and notice model would work?

12 MR. GOLDBERG: Just as I explained.

13 MR. CHRISTIE: I'm sorry, I don't  
14 understand how -- the notice of copyright usually comes  
15 from a copyright holder to --

16 MR. GOLDBERG: I'm sorry, I can  
17 explain further.

18 MR. CHRISTIE: That would be helpful.

19 MR. GOLDBERG: They suggested that as  
20 a possible -- that there could possibly be a similar  
21 system with regard to hate on the Internet and that  
22 within the context of the internal complaint system, if  
23 somebody felt that material on the Internet contravened  
24 either the Criminal Code or the Canadian Human Rights  
25 Act, that the Internet Service Provider could be

1 notified of that by the Commission or others and that  
2 the Internet Service Provider would then advise the  
3 customer that there was this concern, and that's what  
4 it would amount to.

5 MR. CHRISTIE: Was there no  
6 discussion of what would occur if the customer disputed  
7 the -- shall we say suggestion or notice?

8 MR. GOLDBERG: The discussions about  
9 this proposal never went further. It was discussed at  
10 one meeting in a very preliminary way.

11 MR. CHRISTIE: Would not that have  
12 been written down as to what the notice -- and notice  
13 model was?

14 MR. GOLDBERG: No, it wasn't.

15 MR. CHRISTIE: The third point seems  
16 to be the possibility of CAIP and the Commission  
17 developing an MOU. Is that Memorandum of  
18 Understanding?

19 MR. GOLDBERG: That's correct.

20 MR. CHRISTIE: And have you developed  
21 a Memorandum of Understanding?

22 MR. GOLDBERG: No, we have not.

23 MR. CHRISTIE: Is there a system of  
24 understanding?

25 MR. GOLDBERG: No, there is not.

1 MR. CHRISTIE: Now, on the next page  
2 which is numbered page 8, we see the first line reads,  
3 "Convene another making so we can continue our  
4 discussions." What is a "making"?

5 MR. GOLDBERG: It should be meeting.

6 MR. CHRISTIE: Who received copies of  
7 this?

8 MR. GOLDBERG: I don't recall.

9 MS. BLIGHT: Mr. Chairman, as you may  
10 have noticed from the document there's a list which has  
11 been expunged based on Section 37 of the Act in order  
12 to protect the identity of the person that's  
13 consulting -- with the Commission and personal privacy  
14 and security.

15 MR. CHRISTIE: Well, with the  
16 greatest of respect, public interest is not, first of  
17 all, personal privacy and security, and there's no  
18 insecurity from having your name revealed as a  
19 recipient of a document. And the public interest is  
20 not served in any way by a claim that is merely an  
21 obstruction of information pertinent to who's receiving  
22 communications on behalf of or for the Canadian  
23 Association of Internet Providers.

24 THE CHAIRPERSON: Fine, but invoke  
25 37.

1 MS. BLIGHT: That's, of course, in  
2 addition to our ongoing objection as to relevance.

3 THE CHAIRPERSON: That's for the last  
4 day. But, look, is it just personal information there?  
5 Is it just personal information?

6 MS. BLIGHT: It's identifying the  
7 individuals, yes.

8 THE CHAIRPERSON: So it's got names  
9 of individuals?

10 MS. BLIGHT: Yes.

11 THE CHAIRPERSON: No organizations?

12 MS. BLIGHT: I can't recall. I will  
13 see if I can check that.

14 MR. CHRISTIE: The next item is dated  
15 December 23rd and appears to be written by you. It's  
16 tab 4, page 9. And who wrote this published article.

17 THE CHAIRPERSON: Let's produce the  
18 previous e-mail.

19 MR. CHRISTIE: Could we?

20 THE CHAIRPERSON: Yes.

21 MR. CHRISTIE: Sir, I'm asking you  
22 about the letter of December 23rd, 2005. You are  
23 writing on behalf of CHRC and ACS. What's that?

24 MR. GOLDBERG: The Association for  
25 Canadian Studies.

1 MR. CHRISTIE: Are you involved with  
2 the Association for Canadian Studies?

3 MR. GOLDBERG: I was in the  
4 organization the lead conference we held in December  
5 2005.

6 MR. CHRISTIE: Sorry, I couldn't  
7 quite hear you.

8 MR. GOLDBERG: I was involved with  
9 the Association for Canadian Studies in organizing the  
10 conference that we held in December of 2005.

11 MR. CHRISTIE: Was the person making  
12 the presentation to whom you addressed this  
13 congratulatory letter an ISP?

14 MR. GOLDBERG: I don't think the  
15 person was an ISP, but I think he probably represented  
16 an ISP.

17 MR. CHRISTIE: So they were actually  
18 at your conference presenting what they were doing  
19 through somebody, whose name we aren't allowed to know,  
20 to deal with "hate and other offensive content on the  
21 Internet". Is that the gist of the letter?

22 MR. GOLDBERG: Yes.

23 MR. CHRISTIE: You thanked them  
24 for -- him, her, or whoever -- and their industry  
25 colleagues from meeting with someone, and you. Was

1 that someone from the Commission?

2 MR. GOLDBERG: Yes.

3 MR. CHRISTIE: Was it personal  
4 superior to you or the Commissioner or themselves?

5 MR. GOLDBERG: It was a person  
6 superior to me.

7 MR. CHRISTIE: So probably the  
8 Commissioner?

9 MR. GOLDBERG: No.

10 MR. CHRISTIE: Someone, unidentified,  
11 claiming Section 37 protection, and I thought the  
12 meeting was very productive, "The Commission  
13 appreciates the constructive and collaborative  
14 approach."

15 So would you agree with me that  
16 indicates the type of approach CAIP has taken to your  
17 concerns?

18 MR. GOLDBERG: Yes.

19 MR. CHRISTIE: Did the person write  
20 an article for your magazine, Canadian Studies?

21 MR. GOLDBERG: No, they did not.

22 MR. CHRISTIE: There's another letter  
23 that follows, September 23rd, I guess it's of 2004.  
24 You're contacting the same organization. Was it the  
25 same person you were contacting?

1 MR. GOLDBERG: September 23rd.

2 MR. CHRISTIE: 27th. September 23rd,  
3 2005. The next letter on page 10 is September 27th,  
4 2004.

5 THE CHAIRPERSON: Let's produce the  
6 first letter.

7 MR. CHRISTIE: Could it be produced  
8 then?

9 THE CHAIRPERSON: Yes. So there was  
10 a following letter at page 10?

11 MR. CHRISTIE: Yes, it could be  
12 produced.

13 THE CHAIRPERSON: Yes.

14 MR. CHRISTIE: You wrote that.

15 MR. GOLDBERG: Could I just read it,  
16 please? Yes, I wrote it.

17 THE CHAIRPERSON: So it's produced.

18 MR. CHRISTIE: Were you enlisting  
19 CAIP in the role of law enforcement?

20 MR. GOLDBERG: No.

21 MR. CHRISTIE: Why did you write the  
22 words,

23 "I know CAIP is committed to  
24 ensuring that lawful and  
25 offensive content on the

1 Internet is controlled in  
2 accordance with -- laws and  
3 acceptable use policies."

4 Would that be enlisting them as law  
5 enforcement?

6 MR. GOLDBERG: No.

7 MR. CHRISTIE:

8 "I'm, therefore, confident that  
9 the Commission and CAIP can  
10 build a fruitful partnership."

11 You wrote that?

12 MR. GOLDBERG: Yes.

13 MR. CHRISTIE: Now, are there other  
14 service providers in Canada that are not members of  
15 CAIP?

16 MR. GOLDBERG: Yes.

17 MR. CHRISTIE: And have you contacted  
18 them?

19 MR. GOLDBERG: Yes.

20 MR. CHRISTIE: Individually?

21 MR. GOLDBERG: We have a meeting. In  
22 fact, I believe the meeting referred to -- there was a  
23 meeting held in December of 2005 at which there were  
24 representatives of Canadian Association of Internet  
25 Providers as well as other Internet providers that were

1 not members of the Canadian Association of Internet  
2 Providers?

3 MR. CHRISTIE: Have you run into  
4 internet providers who are not cooperating with you?

5 MR. GOLDBERG: Yes.

6 MR. CHRISTIE: Where would --

7 MR. GOLDBERG: Well, I would say -- I  
8 have -- the only contacts I have had is with the  
9 Canadian Association of Internet Providers whom I've  
10 met -- representatives I met with have been individuals  
11 that represent members of the Canadian Association of  
12 Internet Providers, and I would say those people in  
13 organizations have been cooperative.

14 If you mean in other areas of  
15 Commission's operations, for example, investigation, I  
16 don't have any knowledge of whether or not they've been  
17 cooperative.

18 MR. CHRISTIE: Does CAIP have a  
19 policy of which you approve?

20 MR. GOLDBERG: CAIP has policies  
21 which -- we have never approved a policy of CAIP's. I  
22 believe, if I recall correctly, and this is -- my  
23 recollection may be faulty but I believe they have -- a  
24 model acceptable use policy and in that policy they  
25 have wording to the effect that members of their

1 organization should have acceptable use policies which  
2 make it as a condition of service that the customers  
3 abide by the laws of Canada.

4 MR. CHRISTIE: And did you assist  
5 them in drafting that policy?

6 MR. GOLDBERG: No, I did not.

7 MR. CHRISTIE: You never at any time,  
8 nor did you to your knowledge, nor did the Commission  
9 to your knowledge, assist in the formation of the  
10 policy for CAIP regarding Section 13 of the Canadian  
11 Human Rights Act?

12 MR. GOLDBERG: To the best of my  
13 knowledge, we never assisted in the development of any  
14 such policy.

15 MR. CHRISTIE: So what were you doing  
16 all these communications with CAIP for?

17 MR. GOLDBERG: Let me refer again to  
18 Section 27 of the Canadian Human Rights Act,  
19 "The Commission shall, so far as  
20 is practical be consistent with  
21 the application of Part 3, try  
22 by persuasion, publicity or any  
23 other means that it considers  
24 appropriate to discourage and  
25 reduce discriminatory

1 practices."

2 MR. CHRISTIE: So it's part of the  
3 process of discouraging discriminatory practice that  
4 you involve yourself with CAIP so that their policies  
5 are conducive to Section 27 subsection (H); is that  
6 right?

7 MR. GOLDBERG: Yes.

8 MR. CHRISTIE: Wouldn't that be part  
9 of the persuasive process?

10 MR. GOLDBERG: I guess you could call  
11 it persuasion, yes.

12 MR. CHRISTIE: There's a reference to  
13 a proposed project in this letter, quote,

14 "I'll be working on the  
15 development of the proposed  
16 project over the next little  
17 while."

18 Do you recall what that was?

19 MR. GOLDBERG: Yes, I do.

20 MR. CHRISTIE: And did you?

21 MR. GOLDBERG: Yes, I did.

22 MR. CHRISTIE: What was it?

23 MR. GOLDBERG: The project was  
24 actually in September of 2004 I -- that is when the  
25 Proactive Initiatives Unit, which is now called

1 Strategic Initiatives, began.

2 The purpose of Strategic Initiatives  
3 was to identify the important issues to the Commission,  
4 and carry out special projects with regard to those  
5 issues. One among many issues that I was assigned to  
6 take a leadership position on was with regard to  
7 Commission strategy on Section 13.

8 MR. CHRISTIE: So the proposed  
9 project was to enlist the support and activity of CAIP  
10 with Section 13 enforcement; is that right?

11 MR. GOLDBERG: No.

12 MR. CHRISTIE: Well, you were the  
13 proactive initiative team leader?

14 MR. GOLDBERG: Yes.

15 MR. CHRISTIE: And was the proactive  
16 initiative to involve CAIP?

17 MR. GOLDBERG: That was a small part  
18 of it, yes.

19 MR. CHRISTIE: As far as this small  
20 part this letter is directed to, what else was there?

21 MR. GOLDBERG: What else was what?

22 MR. CHRISTIE: Other than the letter  
23 you speak about, "I will be working on development of  
24 the proposed project over the next little while", who  
25 other than CAIP was involved in the project?

1                   MR. GOLDBERG: It would take me quite  
2 a while to explain what the whole strategy was, but it  
3 involved many -- well, some of the stakeholders that  
4 were identified previously, other government  
5 departments, people within the Commission looking at  
6 how we investigated hate on the Internet cases, people  
7 within our communications branch with regard to how we  
8 communicated what the mandate of Commission was, et  
9 cetera.

10                   MR. CHRISTIE: You were going to  
11 arrange a convenient date for these people to whom you  
12 were writing to meet with others. Did you do that?

13                   MR. GOLDBERG: Which part of the  
14 letter are you referring to.

15                   MR. CHRISTIE: Well, the third  
16 paragraph, the one I just referred to a moment ago.

17                   MR. GOLDBERG: Yes, there were  
18 subsequent meetings.

19                   MR. CHRISTIE: Now, there was a  
20 development of a model protocol referred to. Do you  
21 see that in the last paragraph?

22                   MR. GOLDBERG: Yes.

23                   MR. CHRISTIE:

24                   "As we discussed, an initial  
25 goal of our collaboration might

1 be to develop a model protocol  
2 on how CAIP and its ITAC members  
3 would proceed when the  
4 Commission or others inform an  
5 ISP or content provider of  
6 possible violations of Section  
7 13 of the Canadian Human Rights  
8 Act."

9 You wrote that?

10 MR. GOLDBERG: Yes.

11 MR. CHRISTIE: Did you develop a  
12 policy model?

13 MR. GOLDBERG: No.

14 MR. CHRISTIE: I suggest that --  
15 we'll get to that. Did you make a letter at a  
16 subsequent point explaining to CAIP how there would be  
17 three steps in dealing with complaints that one of the  
18 members might I have provided service for?

19 MR. GOLDBERG: Could you repeat the  
20 question?

21 MR. CHRISTIE: I'm suggesting perhaps  
22 there's a letter you wrote that would explain a model  
23 of procedure when complaints were made about one of  
24 these websites that CAIP members provided service for?

25 MR. GOLDBERG: No, I never wrote such

1 a letter.

2 MR. CHRISTIE: You didn't? Okay.

3 MR. GOLDBERG: Not to the best my  
4 recollection.

5 MR. CHRISTIE: So what steps was CAIP  
6 to take with possible violations of Section 13? Would  
7 that have included removal of the website?

8 MR. GOLDBERG: I have no idea. The  
9 letter says an initial goal of the collaboration might  
10 be to develop a model protocol. That never occurred.

11 MR. CHRISTIE: You sure?

12 MR. GOLDBERG: Yes, I'm sure.

13 MR. CHRISTIE: Meeting with  
14 representatives of ISPs is page 11. And this seems to  
15 have been a collection of many ISPs. What is CCTA?

16 MR. GOLDBERG: I don't recall.

17 MR. CHRISTIE: Going onto page 12 on  
18 the same tab, we have an e-mail exchange between B'nai  
19 Brith --

20 THE CHAIRPERSON: What do we do with  
21 page 11?

22 MR. CHRISTIE: I don't recall we did  
23 very much except I asked him what was CCTA.

24 THE CHAIRPERSON: So we don't want it  
25 produced?

1 MR. CHRISTIE: Perhaps I should.

2 Would you agree with me, sir, you  
3 generated that list?

4 MR. GOLDBERG: Yes.

5 MR. CHRISTIE: And this was a list of  
6 ISPs that you wanted to communicate with about some  
7 sort of procedure, was it?

8 MR. GOLDBERG: No.

9 MR. CHRISTIE: You just -- was it a  
10 list of thank you letters to be sent or what was the  
11 purpose of the list?

12 MR. GOLDBERG: Says at the top,  
13 "Meeting with representatives of ISPs".

14 MR. CHRISTIE: Would you --

15 MR. GOLDBERG: People that were going  
16 to attend a meeting, as I recall.

17 MR. CHRISTIE: Would it be  
18 consistent, then, also with 27(H) that the meeting  
19 would be called?

20 MR. GOLDBERG: 27.

21 THE CHAIRPERSON: Of the Act.

22 MR. GOLDBERG: Yes.

23 MR. CHRISTIE: Everything you were  
24 doing with the ISPs was in furtherance of the  
25 activities of the Commission under 27(H); is that

1 correct?

2 MR. GOLDBERG: I don't know if it all  
3 was in furtherance of 27(H), but all activities of the  
4 Commission are carried out in furtherance of Canadian  
5 Human Rights Act.

6 MR. CHRISTIE: There seems to have  
7 been a committee established when we look at page 12.

8 THE CHAIRPERSON: Produced.

9 MR. CHRISTIE: If we could produce  
10 11.

11 We see page 12 a reference to a  
12 committee conference call. Do you have any knowledge  
13 of what that committee was?

14 MR. GOLDBERG: Yes.

15 MR. CHRISTIE: What was it?

16 MR. GOLDBERG: B'nai Brith Canada was  
17 organizing a conference in regard to hate on the  
18 Internet.

19 MR. CHRISTIE: And was the Commission  
20 involved in that conference?

21 MR. GOLDBERG: Yes, we were.

22 MR. CHRISTIE: Was this conference to  
23 be opened to the public?

24 MR. GOLDBERG: I don't know what -- I  
25 don't know if it was open to the public or not.

1 MR. CHRISTIE: What were the members  
2 of the committee?

3 MR. GOLDBERG: The members of the  
4 committee were the people invited by B'nai Brith to  
5 advise them on the conference. There was various  
6 judges, professors, human rights advocates, et cetera.

7 MR. CHRISTIE: What was the purpose  
8 of the conference?

9 MR. GOLDBERG: As I recall, the  
10 purpose of the conference was discuss hate on the  
11 Internet.

12 MR. CHRISTIE: Are you a B'nai Brith  
13 member?

14 MR. GOLDBERG: I'm not a B'nai Brith  
15 member.

16 MR. CHRISTIE: And was the B'nai  
17 Brith organizing the conference for the Canadian Human  
18 Rights Commission?

19 MR. GOLDBERG: No, it was not.

20 MR. CHRISTIE: Did the Commission  
21 have an input into the format of the conference.

22 MR. GOLDBERG: As a member of the  
23 advisory committee I had some input into the format of  
24 the conference.

25 MR. CHRISTIE: And I'm asking for the

1 explanation of the specific public interest that is to  
2 be covered by the type of information that is marked  
3 as -- I think I can see where -- I think I can see  
4 seven claims of Section 37.

5 THE CHAIRPERSON: Yes, that's right.

6 MR. GOLDBERG: There's eight  
7 actually.

8 MR. CHRISTIE: Can the Commission  
9 please advise what the claim is related to?

10 MS. BLIGHT: Mr. Chairman, these are  
11 all personal identifiers. So the specific public  
12 interest claim is with respect to the confidentiality  
13 of the communications with stakeholders with respect to  
14 personal privacy and with respect to personal security.  
15 There are also some dial-in numbers to which -- privacy  
16 concern only.

17 THE CHAIRPERSON: It's a bit  
18 heavy-handed to invoke Section 37 for the Bell Canada  
19 dial-in number for a conference call, isn't it?

20 MS. BLIGHT: In that respect, the  
21 claim is certainly only one of privacy, possibility of  
22 identifying who these people are. I don't believe it  
23 goes beyond that. But in any event, this is all in  
24 addition to the general objection that none of it is  
25 relevant.

1 THE CHAIRPERSON: And there I may go  
2 with you, but the 37 -- anyways...

3 MR. CHRISTIE: What is the  
4 relationship between B'nai Brith Canada and Canadian  
5 Human Rights Commission.

6 MR. GOLDBERG: There is no  
7 relationship.

8 MR. CHRISTIE: Seriously, none?

9 MR. GOLDBERG: Other than that it's a  
10 nongovernmental organization which is interested in  
11 some of the activities of the Commission. We have the  
12 same relationship, if you want to call it that, with  
13 them as we do with any other organization that's  
14 interested in aspects of our mandate.

15 MR. CHRISTIE: Could we produce that  
16 page?

17 THE CHAIRPERSON: Yes.

18 MR. CHRISTIE: Moving to page 14.  
19 Were you requesting a meeting with CJC to discuss hate  
20 on the Internet?

21 MR. GOLDBERG: Yes.

22 MR. CHRISTIE: What other groups, if  
23 any, that you can recall, did you contact? Did you  
24 contact Canadian Civil Liberties Association to discuss  
25 hate on the Internet?

1 MR. GOLDBERG: What other  
2 organizations did I contact? I contacted the Canadian  
3 Arab Federation, I met with the Muslim Council of  
4 Canada, I met with Canadian -- we've met with the  
5 Council on American-Islamic relations, CARCAM (ph).  
6 Yes, those are the ones that I recall. We meet with any  
7 organization that is interested in meeting with us.

8 MR. CHRISTIE: Did you seek a meeting  
9 with the Canadian Civil Liberties Association?

10 MR. GOLDBERG: No, we did not.

11 MR. CHRISTIE: What part, to your  
12 mind, does freedom of expression play in Section 13(1).

13 MR. GOLDBERG: It plays the part as  
14 defined by is Supreme Court of Canada in the Taylor  
15 decision.

16 MR. CHRISTIE: So to the extent there  
17 is any clarity to that question, you tell us that's  
18 where we should look?

19 MR. GOLDBERG: Absolutely. That's a  
20 definitive law in Canada on Section 13.

21 MR. CHRISTIE: Is there any reference  
22 to request to meet with the Canadian Arab Federation or  
23 any other group other than CJC which was mentioned on  
24 page 14?

25 MR. GOLDBERG: Repeat the question.

1 MR. CHRISTIE: You see, we have this  
2 document, right, page 14. It's written by you, from  
3 rather -- to you from someone at the "cjc.ca". I take  
4 that to be Canadian Jewish Congress Canada, although it  
5 claims under 37. They forgot to lock out the last part  
6 so I figured it out.

7 MS. BLIGHT: That was quite  
8 intentional, Mr. Chairman, in order that the  
9 organization be --

10 MR. CHRISTIE: I'm really grateful to  
11 hear that.

12 Was it requested of any -- do you  
13 have a document relating to any other organization such  
14 as you mentioned, Canadian Arab Federation? Muslims  
15 Canada or something.

16 MS. BLIGHT: Mr. Chairman, there are  
17 numerous references to those other organizations in the  
18 disclosure that --

19 MR. CHRISTIE: We'll proceed then.

20 THE CHAIRPERSON: You may want to  
21 draw my attention to it. Once you understand, perhaps  
22 because this is your first day -- the Tribunal does not  
23 receive the exhibits themselves. We might have the  
24 table of contents or the index that would have  
25 accompanied disclosure.

1                   So if you want me at some point to  
2                   acquire knowledge of those documents we just  
3                   referenced, you have to put it in front of me.

4                   MS. BLIGHT: I'm just pointing that  
5                   out for Mr. Christie who is cross-examining this  
6                   witness effectively on the Commission's disclosure.

7                   THE CHAIRPERSON: What they have done  
8                   is that they have brought out documents that seem to  
9                   have a certain type of group in front of me. If you  
10                  are suggesting there may be other groups that have also  
11                  been contacted by Mr. Goldberg, I have no way of  
12                  knowing. It is perfectly within their discretion not  
13                  to put it in front of me. If you want to put it in  
14                  front of me, go ahead. Don't expect -- they are making  
15                  their case.

16                  MS. BLIGHT: The witness was asked a  
17                  question, is there any document relating to contacts  
18                  with the -- for example, the Canadian Arab Federation.

19                  THE CHAIRPERSON: And the witness  
20                  doesn't have it in his possession. Perhaps Commission  
21                  counsel does, and I'm saying --

22                  MS. BLIGHT: The witness has been  
23                  given a book he has no input in preparing. So it would  
24                  be difficult for him to answer that --

25                  MR. CHRISTIE: He may not be able --

1 THE CHAIRPERSON: Isn't a form of  
2 cross-examination, I understand.

3 MS. BLIGHT: I'm merely pointing out  
4 there has been disclosure and that my friend has had  
5 access to it.

6 MR. CHRISTIE: Moving on. Mr.  
7 Goldberg, could you tell me why you asked to meet with  
8 the CJC on the morning of June 30th to talk about hate  
9 on the Internet?

10 THE CHAIRPERSON: That's page 15?

11 MR. CHRISTIE: 14.

12 MR. GOLDBERG: To fulfill the  
13 Commission's mandate pursuant to 27(H).

14 MR. CHRISTIE: Do you have any notes  
15 of the discussion.

16 MR. GOLDBERG: I believe there is a  
17 document that has been disclosed which is a memo from  
18 me to other people in the Commission discussing --  
19 informing them that I had had a meeting with the  
20 Canadian Jewish Congress along with the number of other  
21 groups I met with.

22 MR. CHRISTIE: And this next  
23 document, 15, appears to be --

24 THE CHAIRPERSON: 14? I'm assuming  
25 you are asking it be produced?

1 MR. CHRISTIE: Yes, please. Maybe as  
2 a final question on that, did do you recall what you  
3 discussed with them?

4 MR. GOLDBERG: This would have  
5 been -- I don't recall specifically what was discussed  
6 at that meeting.

7 MR. CHRISTIE: The next document is  
8 15 in the series. It's dated March 15th, 2006.  
9 Pictures from consultations in Toronto. Pictures of  
10 whom?

11 MR. GOLDBERG: People I met with.

12 MR. CHRISTIE: They would be people  
13 you consulted with in Toronto, I take it?

14 MR. GOLDBERG: That's what it says.

15 MR. CHRISTIE: Gabrielle, is she with  
16 the CJC or B'nai Brith?

17 MR. GOLDBERG: Where does it say  
18 Gabrielle.

19 MR. CHRISTIE: It says right under  
20 there, "Gabrielle". "I took pictures of the people,"  
21 37, "met with last week in Toronto. We may want to  
22 post or publish some of these. They are," and then  
23 "out of scope", "out of scope". "Section 37", "meeting  
24 with Canadian Jewish Congress to discuss hate on the  
25 Internet". "Section 37", "meeting with -- of the B'nai

1 Brith, human rights."

2 It seems, sir, that you were meeting  
3 with a number of prominent people in Toronto, took  
4 pictures and you wanted to publish it. So why were you  
5 meeting with those people?

6 MR. GOLDBERG: Furtherance of Section  
7 27(H) on the Canadian Human Rights Act.

8 MR. CHRISTIE: Were they all members  
9 of the Canadian Jewish Congress and B'nai Brith?

10 MR. GOLDBERG: No, they were not.

11 MR. CHRISTIE: Were they -- could we  
12 see those people if you wanted to publish their  
13 pictures? Would that be something they would not want  
14 you to do? Did you ask their permission.

15 MR. GOLDBERG: That's a hypothetical  
16 question. The pictures were not published. I presume  
17 that our publication people, before they publish  
18 pictures, follow whatever requirements there were to  
19 ensure we had the proper consent of people whose  
20 pictures we were publishing.

21 MR. CHRISTIE: So on the only problem  
22 here that purports to be privileged is out of scope.  
23 And I again would ask that the documents be produced  
24 for consideration by the Chair as to whether they  
25 really are out of scope. You know what our position is

1 and I would ask my friend to clarify who these pictures  
2 are?

3 MS. BLIGHT: Mr. Chairman, those  
4 relate to policy activities that are not under Section  
5 13, so different activities of the Commission under  
6 different sections and statute, if I understand  
7 correctly.

8 THE CHAIRPERSON: Well, sir, what's  
9 at issue in this case is Section 13, not other issues.

10 MR. CHRISTIE: You apparently --  
11 could that be produced then?

12 THE CHAIRPERSON: Yes.

13 MR. CHRISTIE: 16.

14 MS. BLIGHT: I just rise because I'm  
15 apprehensive that the witness might be tired. It's now  
16 been more than an hour since we returned from the  
17 break. I just wanted to point that out.

18 THE CHAIRPERSON: Yes, it has. I  
19 understood we'll go to about 5:30. I thought I  
20 mentioned that at one point. Ten minutes?

21 MR. CHRISTIE: Sure. I mean, I can  
22 be stopped at any point. I follow orders.

23 THE CHAIRPERSON: I try not to stop  
24 people, but sometimes when they run long --

25 MR. CHRISTIE: Obviously it's not

1 fair for anybody to go on too long. Unfortunately,  
2 there's a lot of material and I had done some careful  
3 work.

4 THE CHAIRPERSON: Perhaps you could  
5 pass it onto your colleague.

6 MS. KULASZKA: Could we go till 6:00  
7 o'clock given that Mr. Goldberg --

8 THE CHAIRPERSON: I'm seeing  
9 negatives from the court reporter, from -- I'm kind of  
10 tired, to be honest with you. I don't know if I can  
11 last.

12 MR. CHRISTIE: Let me just cover a  
13 few points that I think I could get to in a hurry. I'm  
14 up to page 16 in tab 4 and --

15 THE CHAIRPERSON: We haven't seen 16  
16 yet, have we?

17 MR. CHRISTIE: No.

18 THE CHAIRPERSON: Go ahead, 16.

19 MR. CHRISTIE: I would like to jump  
20 ahead, if I could, to tab 8. I just wanted to indicate  
21 where I stopped for my friend's sake. She can carry on  
22 if she wishes.

23 This is a letter to Bill Pentney of  
24 November 30th, 1994. I take it this is from yourself,  
25 sir?

1 MR. GOLDBERG: My signature is at the  
2 bottom of it.

3 MR. CHRISTIE: Now, you write in the  
4 penultimate paragraph on that page:

5 "Postings of typical examples of  
6 Holocaust denial. As such, it  
7 is my view the material is  
8 inherently anti-semitic."

9 Was this pertaining to anything to do  
10 with the Internet?

11 MR. GOLDBERG: I believe so. It  
12 makes reference to the Freenet users -- makes reference  
13 to the Freenet which was the Internet, yes.

14 MR. CHRISTIE: And the Freenet was  
15 eventually stopped, was it?

16 MR. GOLDBERG: No, the National  
17 Capital Freenet still exists.

18 MR. CHRISTIE: And what authority did  
19 you have at this time within your mandate to form the  
20 view that all Holocaust denial is anti-semitic or hate?

21 MR. GOLDBERG: On the basis of my --  
22 that was not a view of the Commission, it was my  
23 personal view based on my understanding, readings about  
24 the Holocaust and about so-called revisionism.

25 MR. CHRISTIE: What is Holocaust

1 denial?

2 MR. GOLDBERG: Holocaust denial is  
3 the diminution of the crimes committed by the Nazis  
4 against the Jews of Europe.

5 MR. CHRISTIE: Diminution?

6 MR. GOLDBERG: Yes.

7 MR. CHRISTIE: What does that mean?

8 MR. GOLDBERG: Diminishing in  
9 magnitude of the crimes that are carried out by the  
10 Nazis in terms of the number of people that were killed  
11 and the viciousness of their actions.

12 MR. CHRISTIE: So your view is, at  
13 least, that would it be correct to say that denial is  
14 questioning as well?

15 MR. GOLDBERG: Yes.

16 MR. CHRISTIE: So questioning the  
17 numbers, what, six million?

18 MR. GOLDBERG: Six million is the  
19 number that was generally accepted by the broad  
20 academic community that has studied this issue.

21 MR. CHRISTIE: Just to be clear,  
22 then, questioning that number is Holocaust denial?

23 MR. GOLDBERG: Not questioning that  
24 number alone, no.

25 MR. CHRISTIE: Can you be more

1 specific at all about it?

2 MR. GOLDBERG: I would say the  
3 Holocaust denial is an effort to -- no, I can't be more  
4 specific. It's an effort to diminish or deny the  
5 magnitude of the crimes committed by the Nazi regime  
6 between 1939 and 1945 against the Jews in Europe or the  
7 Jews in occupied territories.

8 MR. CHRISTIE: If we could just go  
9 back again to tab 4, page 17. This appears to be a  
10 speech which was written by somebody.

11 THE CHAIRPERSON: Hold on a second.  
12 We have not -- not forget to produce. So this policy  
13 and planning document is how many pages long?

14 MR. CHRISTIE: Actually what I  
15 referred to was just one page.

16 THE CHAIRPERSON: I know, but I'm not  
17 going to chop it up.

18 MR. CHRISTIE: It ends with page 11,  
19 I guess. 1 to 11. Sorry, goes 1 to 24.

20 THE CHAIRPERSON: So it had  
21 attachments to it, is that it?

22 MR. CHRISTIE: It did. That is tab 8  
23 in our book.

24 THE CHAIRPERSON: I don't have hear  
25 any objections. It was part of the Commission's

1 disclosure, was it not?

2 MS. BLIGHT: I'm not sure if it was  
3 or not, Mr. Chairman. I'm just trying to ascertain  
4 what is the list of attachments here.

5 THE CHAIRPERSON: Well, in the  
6 interest of advancing given the late time, we'll just  
7 consider it and if it's a problem bring it to my  
8 attention tomorrow.

9 MS. BLIGHT: So you are producing to  
10 page 7?

11 MR. CHRISTIE: All of tab 8, 24  
12 pages.

13 THE CHAIRPERSON: It's the  
14 attachments to the letter. Let's go back to tab 4?

15 MR. CHRISTIE: Page 17. We haven't  
16 referred to 16. But tab 7 -- page 17, tab 4. Did you  
17 write this speech?

18 MR. GOLDBERG: I don't recall, but I  
19 may have written it, yes.

20 MR. CHRISTIE: Was it for the  
21 Commissioner?

22 MR. GOLDBERG: It appears to be that,  
23 yes.

24 MR. CHRISTIE: Well, I think in  
25 fairness I should stop, but I thank you very much for

1 your patience, sir.

2 THE CHAIRPERSON: We can produce  
3 that. Well, again I gather it was part of Commission  
4 disclosure, so the witness sort of identified it, so I  
5 can consider it sufficiently identified. We'll produce  
6 it. 17, 18, 19, three pages.

7 So tomorrow --

8 MS. KULASZKA: Could we start early?

9 THE CHAIRPERSON: Any objection to  
10 starting at 9:00 tomorrow? Ms. Blight?

11 MS. BLIGHT: No, however, I would  
12 like to have just some direction with respect to how  
13 late Mr. Goldberg will be required to be here in order  
14 that he might finalize his travel arrangements.

15 THE CHAIRPERSON: He hasn't done so?

16 MS. BLIGHT: He has a ticket that has  
17 some flexibility but he does want to make plans as far  
18 as his arrival in Ottawa.

19 THE CHAIRPERSON: Look, let's be  
20 reasonable. How much time would you need, Mr.  
21 Goldberg?

22 --- Discussion off the record

23 MS. BLIGHT: We have a motion with  
24 respect to disclosure of certain -- I guess the  
25 compensation page of Karen Mock. We have the deal with

1 scheduling, we've may or may not have a lengthy  
2 discussion about the medical certificate issue, and I  
3 believe there may be something else as well.

4 THE CHAIRPERSON: Those three things  
5 don't seem to me extremely lengthy in scope. We've  
6 dealt with lots worse than that in this case in pretty  
7 short shrift. So I'm overly concerned about that.

8 I think what we should do is focus,  
9 rather, on the ability of the witness how long he can  
10 stay.

11 MS. BLIGHT: We had originally asked  
12 that he be permitted to be excused when we took the  
13 lunch break, and if we were to take a later lunch  
14 break, that I don't think presents a difficulty,  
15 although if we are starting early people may start to  
16 get tired. So I believe that the witness could stay  
17 somewhere beyond 1:00, but the witness can't stay till  
18 4:00, for example.

19 THE CHAIRPERSON: That's what I  
20 assumed, something around 1 o'clock. That will would  
21 be acceptable for you, sir?

22 MR. GOLDBERG: Yes, that's  
23 acceptable, yes.

24 THE CHAIRPERSON: Does that pose a  
25 problem for you in terms of your scheduling, Ms.

1           Kulaszka? That will give plenty of time to deal with  
2           the other issues, trust me.

3                         MS. KULASZKA: Yes, as long as it's  
4           understood he's coming back for Wednesday, 1 o'clock is  
5           fine.

6                         THE CHAIRPERSON: It is a bit of a  
7           problem on Wednesday. They have assigned to me a case  
8           management conference call that I have to do at 9:00  
9           a.m. on Wednesday.

10                        MS. BLIGHT: I would like to remind  
11           us that Mr. Goldberg's testimony was originally going  
12           to be for one day. Now, we did have notice, which is  
13           on record at the last day that the respondents and  
14           intervenors and support were taking the position that  
15           he may not be finished within one day.

16                        THE CHAIRPERSON: There was some  
17           discussion of new documents that had been -- that they  
18           were in receipt of that week that would have resulted  
19           in extending his evidence.

20                        MS. BLIGHT: We were never, until the  
21           last few days, apprised that the respondent and  
22           intervenors in support were planning to keep Mr.  
23           Goldberg here for a full three days. So if there is  
24           any way that we could push it a little bit against Mr.  
25           Goldberg's deadline to get on that plane in order to

1 complete his evidence, even using an earlier start  
2 time, I'm sure Mr. Goldberg would be very grateful for  
3 that. And then we could deal with the procedural and  
4 other issues on the record on Wednesday after your case  
5 conference.

6 THE CHAIRPERSON: I see your point.  
7 Ms. Kulaszka, do you think if we start early and you  
8 push yourself, whether you would be able to done by the  
9 end of the day?

10 MS. KULASZKA: No.

11 MS. BLIGHT: Do we have assurance  
12 that we will be done on Wednesday?

13 THE CHAIRPERSON: You have my  
14 assurance, because we will not continue beyond  
15 Wednesday. And I would a not allow any side to run the  
16 clock until such time that the other side doesn't have  
17 a chance to examine. Understood?

18 MS. KULASZKA: Mr. Chair, I won't run  
19 the clock. There is a lot of very relevant documents,  
20 as you can see.

21 THE CHAIRPERSON: At some reasonable  
22 point I'm going to tell you you are going to have to  
23 stop, if it runs long. We will be done by Wednesday.  
24 This witness is not worth three days in entirety,  
25 in-chief only.

1 MS. KULASZKA: I wonder if I could  
2 just raise the matter, and this is about the Section 37  
3 section judicial reviews. And you have mentioned this  
4 morning has anybody applied for a stay. I would like  
5 to know your position on that, because I would be  
6 asking for stay while these judicial reviews are being  
7 processed and --

8 THE CHAIRPERSON: I asked out of  
9 curiosity, that's all. You can see the authorities of  
10 the Tribunal, the jurisprudence of the Tribunal on the  
11 matter of -- stay requests generally have been -- the  
12 word stay has been avoided by the Tribunal. How does  
13 the Tribunal --

14 MS. KULASZKA: Adjourn sine die until  
15 the whole matter is --

16 THE CHAIRPERSON: That's the language  
17 that has been used, however, you'll see in our  
18 authorities -- I'm not giving a final view on this  
19 particular case, but the general trend has been for the  
20 Tribunal to continue with its process until such time  
21 as some higher authority tells it not to continue.

22 MS. KULASZKA: Even with Section 37.

23 THE CHAIRPERSON: 37 may be a new  
24 area, so I'm not going to tell you -- I don't know how  
25 much it may have made on 37. But there have been any

1 number of judicial reviews that have been taken over  
2 the years, and the recent trend, without being  
3 definitive on this, has been the Tribunal continues  
4 with the process, in fact has received direction from  
5 the Federal Court to continue unless the Federal Court  
6 stays, which it does on occasion. I'm familiar with at  
7 least one file where I had issued a preliminary ruling  
8 and the Federal Court issued a stay.

9 MS. KULASZKA: So perhaps there  
10 should be a motion for an adjournment sine die and we  
11 can argue this, because obviously this is on new area.

12 THE CHAIRPERSON: I can't tell you  
13 how successful that would be. It may be in a new area,  
14 but the trend line has been in the other direction with  
15 respect to Tribunal, I'll tell you that much. You  
16 following? Perhaps it might be better to go more a  
17 direct route to the instance that isn't the best  
18 position to suspend proceedings. I'll leave it there.

19 So tomorrow morning, 9 o'clock?  
20 Thank you, very much. Thank you all for your patience  
21 today.

22 --- Whereupon the hearing was adjourned at 5:30 p.m.

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I hereby certify the foregoing  
taken before me and transcribed  
to the best of my skill and  
ability this 25th day of June,  
2007

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Sandra Brereton  
Certified Shorthand Reporter  
Registered Professional Reporter

**StenoTran**