

**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<sup>o</sup> 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 TUESDAY, JUNE 26, 2007 AT 9:38 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
Paul Fromm	For the Canadian Association for Free Expression

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1 Oakville, Ontario

2 --- Upon resuming on Tuesday, June 26, 2007

3 at 9:38 a.m.

4 THE CHAIRPERSON: Ms. Kulaszka?

5 MS. KULASZ'KA: Good morning. Can  
6 you hear me?

7 THE CHAIRPERSON: We have the  
8 air-conditioning on. It was very, very hot in the  
9 room, I understand, so perhaps you can move the  
10 microphone closer.

11 PREVIOUSLY SWORN: HARVEY GOLDBERG

12 CROSS-EXAMINATION BY MS. KULASZKA

13 MS. KULASZKA: Mr. Goldberg, you said  
14 yesterday you gave two dates for when you started at  
15 the Commission, '88 and '89. Which is it?

16 THE CHAIRPERSON: I spotted that,  
17 too.

18 MR. GOLDBERG: I believe it was in  
19 August 1989.

20 THE CHAIRPERSON: '88, sir.

21 MR. GOLDBERG: I believe it was in  
22 August 1989. I have the CV here. I can consult my CV.  
23 According to my curriculum vitae, I started at the  
24 Commission in 1989.

25 MS. KULASZKA: I'm just wondering, is

1 the air-conditioning going to stay on? It's so noisy.

2 THE CHAIRPERSON: It is. Can we just  
3 let it run for a while? It still is hot in the room.  
4 Can you give it a chance for another five, 10 minutes?

5 (DISCUSSION OFF THE RECORD)

6 MS. KULASZKA: Yes, so you started in  
7 1989?

8 MR. GOLDBERG: That's correct.

9 MS. KULASZKA: And what did you do up  
10 to that point, from the time you got your Masters to  
11 the time you started at the Commission?

12 MR. GOLDBERG: I worked for a year  
13 for the Government of Manitoba, I travelled for a year  
14 and I worked for I guess approximately 12, 13 years for  
15 the Department of Indian Affairs.

16 MS. KULASZKA: What did you do there?

17 MR. GOLDBERG: I was a policy  
18 analyst.

19 MS. KULASZKA: A what?

20 MR. GOLDBERG: A policy analyst.

21 MS. KULASZKA: Okay. So when you  
22 moved to the Commission, what position did you have?

23 MR. GOLDBERG: I was the acting  
24 director of policy.

25 MS. KULASZKA: And what would your

1 duties be?

2 MR. GOLDBERG: I was responsible for  
3 overseeing the development of policy, briefing the  
4 chief Commissioner and members of the Commission on  
5 policy issues, developing Commission policies on  
6 various issues, monitoring what was happening in  
7 Parliament, et cetera.

8 MS. KULASZKA: And in that period  
9 what work did you do on Section 13?

10 MR. GOLDBERG: I don't recall being  
11 very directly involved in working on Section 13 in that  
12 early period.

13 MS. KULASZKA: So in these almost 20  
14 years, would you say your position, your duties have  
15 changed a great deal over that time, or are they  
16 essentially the same?

17 MR. GOLDBERG: No, they have changed.

18 MS. KULASZKA: How has it changed?

19 MR. GOLDBERG: Well, I've had -- I'm  
20 no longer the acting director of policy. I've had  
21 several different positions during my career at the  
22 Commission, and with the changes in positions and the  
23 changes in chief commissioners and the changes in  
24 what's happening in Canadian society, the priorities  
25 and focus of the Commission's activities have changed

1 and so has my work.

2 MS. KULASZKA: But essentially you  
3 develop policy?

4 MR. GOLDBERG: Yes, I work in the  
5 area of policy.

6 MS. KULASZKA: Yesterday, Mr.  
7 Christie asked you a lot of questions about policy, and  
8 my recollection is the answers were very nebulous.

9 Do you develop written policies or  
10 what kind of policies do you develop? I have nothing  
11 to do with government so I don't know. It's like a  
12 deck, I guess.

13 Do you actually write down policies?  
14 Because your answers were basically, there are no  
15 policies about anything.

16 MR. GOLDBERG: That was not my  
17 answer.

18 MS. KULASZKA: So make it very clear  
19 then. Say in the last seven years, what policies have  
20 you developed that are written down concerning Section  
21 13?

22 MR. GOLDBERG: I've written no  
23 policies concerning Section 13.

24 MS. KULASZKA: And has anybody at the  
25 Commission written policies concerning Section 13?



1 MR. GOLDBERG: As I testified  
2 yesterday, there's an investigative manual that gives  
3 guidance to investigators in the investigation of  
4 Section 13 complaints. Other than that, I'm not aware  
5 of a policy.

6 Policies are usually developed when  
7 there's a situation where it is not clear for the --  
8 excuse me -- are usually written for either the  
9 guidance of the Commission itself or for the guidance  
10 of the general public with regard to issues relating to  
11 the Canadian Human Rights Act where there is some  
12 unclarity. In the Commission's view there is no need  
13 for a specific policy with regard to Section 13 because  
14 the law and the jurisprudence is very clear on the way  
15 the Commission is to approach Section 13.

16 THE CHAIRPERSON: If I may interrupt.  
17 I'm familiar -- I believe the policy regarding drug  
18 testing, I think.

19 MR. GOLDBERG: Yes.

20 THE CHAIRPERSON: So that would be  
21 what you would define a policy emanating from the  
22 Commission, right?

23 MR. GOLDBERG: Yes, there are several  
24 policies that are posted publically on our website and  
25 are available for anybody to consult.

1                   MS. KULASZKA: Okay. So if you're  
2 not writing policies, what is the bulk of your work  
3 during the day?

4                   MR. GOLDBERG: First of all, I never  
5 testified that I'm currently writing policies. I am  
6 the team leader of strategic initiatives.

7                   My work consists of carrying out  
8 various projects on high priority Commission issues. I  
9 would point out that Section 13 is only a small  
10 minority of my work, no more than five to 10 percent of  
11 my time is taken up dealing with Section 13. The rest  
12 of my time is dealing with other projects, such as  
13 projects on the accessibility with persons with  
14 disabilities.

15                   We wrote a very important -- the  
16 Commission was the lead on a very important report on  
17 best practices in universal design. We carried out  
18 several studies on the accessibility of the telephone  
19 system for people who are deaf, deafened and hard of  
20 hearing; we've carried out studies on the availability  
21 of publications in multiple formats; I've participated  
22 in the inter-departmental committees on looking at the  
23 possibility of Federal disability legislation; I've  
24 worked on the United Nations Convention on the Rights  
25 of Persons with Disabilities; I've written submissions

1 to United Nations committees with regard to Canada's  
2 periodic reports on international treaties; I've  
3 written briefing notes for the Chief Commissioner and  
4 Commissioner on a whole host of issues that come up  
5 every day in Parliament; I monitor activities in  
6 Parliament every day in the Standing Committee; and  
7 last but not least in the last two years I've been very  
8 heavily involved in a project that the Commission has  
9 to encourage Parliament to repeal Section 67 of the  
10 Canadian Human Rights Act which deals with the denial  
11 of human rights to some people living in First Nations  
12 communities. In fact, I would say that project has  
13 consumed at least 60 percent of my time over the last  
14 18 months.

15 MS. KULASZKA: So Section 13 takes up  
16 a very small amount of your time, obviously?

17 MR. GOLDBERG: That's correct.

18 MS. KULASZKA: And what do you do for  
19 Section 13? Could you describe your duties?

20 MR. GOLDBERG: As I testified  
21 yesterday, I sit on the committee.

22 MS. KULASZKA: What committee?

23 MR. GOLDBERG: If you'll allow me to  
24 continue, I'll explain.

25 The Section 13 team that works with

1 the investigators on Section 13 cases. When I became  
2 team leader of Strategic Initiatives, as I testified  
3 yesterday, the Commission decided that one of the  
4 projects that Strategic Initiatives should undertake  
5 was to develop a comprehensive ongoing strategy with  
6 regard to Section 13 and hate on the Internet.

7 That strategy is -- I do not -- it's  
8 a Commission strategy, it is not my strategy. I  
9 coordinate implementation of the strategy. The  
10 strategy includes things such as insuring that  
11 complaints are dealt with effectively, efficiently and  
12 expeditiously; it includes making information available  
13 to the public on what Section 13 is and under -- how a  
14 complaint can be filed if somebody feels that Section  
15 13 has been infringed upon; it includes participating  
16 in and arranging meetings with Internet service  
17 providers. With community organizations such as the  
18 Council on American-Islamic Relations Canada, the  
19 Canadian Arab Federation, the Muslim Council of Canada,  
20 B'nai Brith, Canadian Jewish Congress, Canadian Race  
21 Relations Foundation, EGALE, and others which I may not  
22 recall at the moment; it includes looking at whether  
23 there are -- is any need or -- for the Commission to  
24 make recommendations with regard to the amendment to  
25 the Canadian Human Rights Act with regard to Section

1 13; it includes liaising with the people in the  
2 Department of Justice, Department of Canadian Heritage,  
3 the Department of Public Security and Emergency  
4 Preparedness.

5 Just let me think if I've missed any  
6 aspects of the strategy.

7 MS. KULASZKA: Let's go back through  
8 them. What are your duties when you sit on the Section  
9 13 team?

10 MR. GOLDBERG: I testified to that  
11 yesterday. I can go over it again, if you want.

12 MS. KULASZKA: No, it wasn't clear to  
13 me what you are doing. You sit in a room together with  
14 these people?

15 MR. GOLDBERG: Yes.

16 MS. KULASZKA: And what do you do?

17 MR. GOLDBERG: The investigators --  
18 there's various stages in the investigative process and  
19 the committee reviews or discusses what's happening at  
20 various stages.

21 So if a complaint has come in, and  
22 in-take officer will participate in the meeting, an  
23 in-take officer will say this complaint, this in-take  
24 has been received. We think that it fits -- that it's  
25 within the Commission's jurisdiction. It fits

1           within -- it's a legitimate -- I shouldn't say  
2           legitimate -- it's an acceptable allegation under the  
3           Canadian Human Rights Act, and the members of the  
4           committee will discuss the complaint form.

5                           It may be simply be to say yes,  
6           proceed with that, or it could be that there be  
7           discussion of whether we should use Sections 40 or 41  
8           of the Canadian Human Rights Act.

9                           MS. KULASZKA: How do you make a  
10          decision? Is there vote?

11                          MR. GOLDBERG: Pardon me?

12                          MS. KULASZKA: How do you make a  
13          decision? Is there a vote? What is if there's a great  
14          deal of disagreement?

15                          MR. GOLDBERG: There is not a vote.  
16          That's -- it's not that kind of committee, nobody -- in  
17          the -- in my understanding of the Canadian Human Rights  
18          Act, the Canadian Human Rights Act specifically  
19          mandates the appointment of an investigator.

20                          It is the investigator's statutory  
21          mandate and responsibility to prepare a report to be  
22          submitted to the Commission. And in the final analysis  
23          that's -- it's the investigator that prepares the  
24          report, of course, with input from other areas of the  
25          Commission.

1                   I should point out, of course, that  
2                   what I'm talking about in these meetings is solely  
3                   employees of the Commission. We are the servants of  
4                   the Commission. The only body that is  
5                   statutory-enabled to make a decision on complaints is  
6                   the Canadian Human Rights Commission, and nobody else  
7                   makes decisions.

8                   MS. KULASZKA: And why are you  
9                   sitting on this team?

10                  MR. GOLDBERG: Because the teams are  
11                  cross -- all the teams, and as I testified yesterday,  
12                  the Section 13 team is one of many teams. We have  
13                  teams on race-based complaints, sex-based complaints,  
14                  disability complaints. All the teams consist of  
15                  somebody with a policy background, a legal background,  
16                  the investigators, investigative manager, sometimes an  
17                  in-take officer. And I'm the representative for the  
18                  policy.

19                  MS. KULASZKA: So what is your input?  
20                  What is your role on the team?

21                  MR. GOLDBERG: My role on the team is  
22                  to participate in the meetings, to review whatever is  
23                  presented to the committee and to discuss it and to  
24                  provide my input based on my experience and knowledge  
25                  of the past experience in the Commission in dealing

1 with hate on the Internet.

2 MS. KULASZKA: And so do you discuss  
3 whether certain material that has been complained about  
4 is hate?

5 MR. GOLDBERG: We certainly do.

6 MS. KULASZKA: Do you discuss who the  
7 complainant is?

8 MR. GOLDBERG: Discuss who the  
9 complainant is?

10 MS. KULASZKA: That's right. As you  
11 are well aware, there have been complaints laid and  
12 they have been dismissed right by the Commission at  
13 that level because they have held that the complaints  
14 were vexatious and -- people like Alex Kulbashian. And  
15 in fact there was a Mr. Gill. There was in fact an  
16 investigation done on Mr. Gill, the police were  
17 contacted, Matt Lauder was contacted. You're well  
18 aware of that, I guess?

19 MR. GOLDBERG: No, I'm not aware of  
20 it at all. Don't know anything about that.

21 MS. KULASZKA: How could you not be  
22 aware of it when it's right in the report?

23 MR. GOLDBERG: Well, first of all,  
24 okay. Let me correct myself. I have no recollection  
25 of that. I read -- over my career at the Commission



1 I've read probably 10,000 reports. I regret that I  
2 don't have a photographic memory. I do not recall the  
3 details of reports that I read months ago. I'm lucky  
4 if I can recall the details of a report I read last  
5 week.

6 MS. KULASZKA: Would you agree, given  
7 a lot of your answers yesterday where you simply didn't  
8 remember and now today --

9 MR. GOLDBERG: Excuse me. I don't  
10 recall that I testified I didn't remember. I often  
11 testified that I didn't -- no to a question when you  
12 asked me if I knew something. That isn't the same as  
13 saying that I didn't remember.

14 MS. KULASZKA: Well, you didn't  
15 recall things.

16 THE CHAIRPERSON: Ms. Kulaszka, it's  
17 not necessary.

18 MS. KULASZKA: I'm reading into  
19 something. I'm not just making the allegation.

20 THE CHAIRPERSON: The principle we  
21 laid down yesterday still applies. Don't try to  
22 undermine the credibility of your witness.

23 MS. KULASZKA: Would you agree  
24 Section 13, it really is a very tiny part of your work?

25 MR. GOLDBERG: That's what I

1 testified.

2 MS. KULASZKA: And Section 13  
3 complaints are a very tiny component of what the  
4 Commission does?

5 MR. GOLDBERG: I wouldn't say tiny,  
6 no. It's a significant portion of what the Commission  
7 does.

8 MS. KULASZKA: Why is it significant?

9 MR. GOLDBERG: In terms of the number  
10 of complaints. I believe in the last -- I don't have  
11 the numbers right before me, but I believe since 2002  
12 there's been approximately 65 complaints under Section  
13 13.

14 During that period the Commission  
15 would have received approximately 900 complaints a  
16 year, so on a percentage basis it would be a very small  
17 percentage over that period, but not in significant.

18 MS. KULASZKA: Let's look at your  
19 affidavit then on that point. I think it's tab 1. Go  
20 to tab 1, page 4 -- page 4 on the bottom.

21 MR. GOLDBERG: Yes.

22 MS. KULASZKA: It's paragraph 5 of  
23 your affidavit?

24 MR. GOLDBERG: Yes.

25 MS. KULASZKA: What kind of records

1           have you got in your system? What kind of records do  
2           you keep for Section 13?

3                       MR. GOLDBERG: I only maintain  
4           electronic records. I keep all -- I have basically all  
5           the documents I've created for the Commission going  
6           back to 1990, I believe.

7                       MS. KULASZKA: But you probably  
8           weren't a person then to ask to disclose a lot of  
9           documents then if you --

10                      MR. GOLDBERG: To disclose what?

11                      MS. KULASZKA: To search for  
12           documents pursuant to a disclosure if your work with  
13           Section 13 was quite small. Why were you asked to do a  
14           search? Do you know who else was asked to do a search?

15                      MR. GOLDBERG: I believe you have the  
16           affidavits of the other people that were asked to do  
17           research. Mr. Steacy was asked to do research. Mr.  
18           Steacy is an investigator. He's involved with these  
19           files on a day-to-day basis. And as I testified  
20           yesterday, I was advised by Commission legal counsel  
21           that the request for the disclosure of these documents  
22           was a request to the Commission, not to me personally.

23                      I was asked to produce files that  
24           I -- that I should reasonably know about or could  
25           reasonably find. I do not deal with investigations of

1 files. I rarely have ever seen an investigation file  
2 and I could not produce investigation files or letters.

3 MS. KULASZKA: How about documents  
4 from prior to 2000? Some of these documents that were  
5 shown yesterday, of course, were not disclosed by  
6 Commission. Why weren't those documents searched for  
7 in the Commission archives?

8 MR. GOLDBERG: I personally went  
9 through every file. I actually brought it up on my  
10 computer screen and looked at every document that I had  
11 on my computer.

12 MS. KULASZKA: And how far back does  
13 the computer database go?

14 MR. GOLDBERG: Approximately 1990.

15 MS. KULASZKA: 1990?

16 MR. GOLDBERG: That's what I said.  
17 1990.

18 MS. KULASZKA: And every document  
19 that dealt with -- what did you look for? You looked  
20 for hate on the Internet. Are those the key words that  
21 you used?

22 MR. GOLDBERG: I used the words in  
23 the Tribunal order. I don't recall the paragraph  
24 numbers.

25 As I just testified, I did not do an

1 electronic search. I physically looked at each file. I  
2 was talking about the documents for the e-mails I did  
3 on electronic search because I have tens of thousands  
4 of e-mails and I couldn't personally search all those.  
5 Hate on the Internet.

6 MS. KULASZKA: Where does it say in  
7 your affidavit you went to the archives?

8 MR. GOLDBERG: I said that I  
9 undertook a search of all the relevant documents that I  
10 have in my possession. This consisted of electronic  
11 document files which I've archived on my computer.

12 I'm sorry, it says in my affidavit  
13 dating back to 1993. So I was mistaken in saying 1990.  
14 "And e-mail messages dating back to 2003."

15 MS. KULASZKA: Paragraph 5,  
16 "In complying with the Tribunal  
17 ruling, I undertook to search  
18 all the relevant records that I  
19 have in my possession."

20 If records have been transferred to  
21 the archives, you did not search for them?

22 MR. GOLDBERG: I did not personally  
23 search for them. I understand that a search was  
24 conducted by Commission officials.

25 I should point out also that there's

1 government policies with regard to the retention of  
2 records, and that records are destroyed after a period  
3 of time. I know, for example, in the case of  
4 investigation files, 10 years after an investigation or  
5 the proceedings coming from an investigation such as  
6 the Tribunal are concluded, all the documents relating  
7 to that investigation are destroyed pursuant to the  
8 Federal legislation dealing with retention of  
9 documents. The only ones that are maintained are  
10 documents that are of historic significance, and that's  
11 very few.

12 I presume that that same policy  
13 applies to paper files. I should point out, as I said,  
14 I have electronic files. Obviously there's electronic  
15 files, in most cases had paper versions of them that  
16 were sent to whoever they were sent to in the forms of  
17 letters or memos. Those would have been placed on  
18 paper files which would have been filed in the  
19 Commission's records office.

20 MS. KULASZKA: But you don't really  
21 have any expertise in records management to the  
22 Commission?

23 MR. GOLDBERG: No, I have no  
24 expertise.

25 MS. KULASZKA: You just did a search

1 on your computer?

2 MR. GOLDBERG: That's correct.

3 MS. KULASZKA: Do you know why it  
4 took so long to produce these documents then?

5 MR. GOLDBERG: I produced the  
6 documents at the times I was asked to produce the  
7 documents.

8 MS. KULASZKA: So the ruling was in  
9 August of 2006. When did you do your search?

10 MR. GOLDBERG: I don't recall. Well,  
11 obviously I did -- let me see.

12 I recall that there was the  
13 conference call in which I participated, the date of  
14 which I'm sure is obviously on record. At that time it  
15 was determined that the Commission should produce files  
16 by a certain date. I did the search that I was  
17 requested to do and I provided it to the Commission's  
18 legal counsel. I don't recall what date that was but I  
19 know that I provided it within the time that I was  
20 asked to provide it.

21 And then subsequent as --

22 MS. KULASZKA: What time was that?

23 MR. GOLDBERG: I don't recall. You  
24 would have to look at the motion to see what the date  
25 was.

1 MS. KULASZKA: The Commission asked  
2 you to provide the documents within a certain time  
3 period. What -- how much time did they give you?

4 MR. GOLDBERG: I believe it was about  
5 two months or -- I think the conference call -- this is  
6 just my recollection, but I think it was in September  
7 or October and there was a discussion about producing  
8 it by Christmas.

9 MS. KULASZKA: That was the actual  
10 production of the documents, but you had to do a  
11 search?

12 MR. GOLDBERG: Yes.

13 MS. KULASZKA: And the documents  
14 would have to be prepared?

15 MR. GOLDBERG: My only involvement in  
16 the process was I was requested to provide documents,  
17 as I've already testified, in the accordance with the  
18 Tribunal order. I provided those documents to the  
19 Commission officials that were responsible for vetting  
20 the documents for compliance with privacy legislation  
21 and other legislation and that's what I did.

22 I was not involved in any way in the  
23 process after I submitted those documents to the other  
24 officials of the Commission.

25 MS. KULASZKA: How long did it take



1           you to do this electronic search?

2                       MR. GOLDBERG:  As I recall, it took  
3           the better part of a couple days.

4                       MS. KULASZKA:  And that was it?

5                       MR. GOLDBERG:  Yes, that was it.

6                       MS. KULASZKA:  So what did you give  
7           the Commission?  Did you give them just a listing of  
8           files or do you actually print the files off, the  
9           documents?

10                      MR. GOLDBERG:  I print the files off.  
11           As I recall, I don't have an exact count of the pages,  
12           but it was certainly in the hundreds of pages of  
13           documents.

14                      MS. KULASZKA:  And you printed them  
15           off and gave them to who?

16                      MR. GOLDBERG:  Mr. Vigna.

17                      MS. KULASZKA:  In paragraph 6 you  
18           said that you did your search using the phrase "Hate on  
19           the Internet".  Why did you do that?

20                      MR. GOLDBERG:  Because I believe  
21           that's the phrase you have in the Tribunal order.

22                      MS. KULASZKA:  That's the very phrase  
23           that the Tribunal ruled should -- was -- that documents  
24           didn't need to be produced on.  That was too general.

25                      The actual order was held to be

1           overreaching and ambiguous and so there were other --  
2           the three -- the ruling stated to -- talked about ISPs,  
3           media network. Did you read the ruling?

4                       MR. GOLDBERG: Yes, I read the  
5           ruling. I apologize if I was excessive in providing  
6           information.

7                       MS. KULASZKA: No, you weren't  
8           excessive.

9                       MR. GOLDBERG: I think you just said  
10          that I was excessive.

11                      MS. KULASZKA: You used the wrong key  
12          words. Did you use any other key words?

13                      MR. GOLDBERG: My affidavit says I  
14          used that key word.

15                      MS. KULASZKA: And that was it?

16                      MR. GOLDBERG: As you'll read  
17          further, it also says I then manually reviewed all  
18          these documents. In the course of the review I  
19          identified some relevant documents not included in the  
20          original disclosure. And some document -- okay, I'm  
21          sorry, this is the second disclosure. No, that last  
22          sentence isn't relevant.

23                      MS. KULASZKA: So you generate a list  
24          using the key words "hate on the Internet", right?

25                      MR. GOLDBERG: That's correct.

1 MS. KULASZKA: Then you go through  
2 that list that you've generated looking for documents?

3 MR. GOLDBERG: That's correct.

4 MS. KULASZKA: So you didn't do any  
5 searches on the record -- say the term "ISP", "Internet  
6 service provider"?

7 MR. GOLDBERG: I know I have done  
8 such searches. I don't recall whether I did such a  
9 search at the time but -- okay. That's all.

10 THE CHAIRPERSON: I want to be clear.  
11 I'm a little confused on the distinction between the  
12 two, Mr. Goldberg.

13 Paragraph 5 seems to be referencing  
14 electronic document files. So those would be text  
15 files, if I can use the term, letters, memos.

16 MR. GOLDBERG: Yes.

17 THE CHAIRPERSON: Done with Word or  
18 word processing program likely.

19 MR. GOLDBERG: That's correct.

20 THE CHAIRPERSON: So paragraph 6  
21 relates to e-mails; is that correct?

22 MR. GOLDBERG: That's correct.

23 THE CHAIRPERSON: So those were two  
24 distinct types of searches that you did. You indicate  
25 on the first one, first category of text files you were

1 going through each file and physically reviewing it to  
2 review whether it was relevant to the order that the  
3 Tribunal issued.

4 MR. GOLDBERG: That's correct.

5 THE CHAIRPERSON: With regard to the  
6 second type of category, e-mails, because there are so  
7 many, "I have 16,223 e-mails", you write.

8 So you did the electronic search, and  
9 you put in those words that are found within the  
10 quotation marks, "hate on the Internet", in order to  
11 conduct the search?

12 MR. GOLDBERG: Yes.

13 THE CHAIRPERSON: No other words than  
14 that. Were they within -- when you did the search did  
15 you put them also between the quotation marks as such?  
16 I put the question -- I have some knowledge of  
17 computer.

18 When you put them in the quotation  
19 marks my understanding is it only works for those four  
20 words in that exact sequence. It wouldn't bring out an  
21 e-mail which only had "hate" in it and not "on the  
22 Internet"?

23 MR. GOLDBERG: That's correct.

24 THE CHAIRPERSON: So you had put them  
25 between the quotation marks?

1 MR. GOLDBERG: Yes.

2 MS. KULASZKA: So you realized that  
3 computer searches were phrased at that point, "hate on  
4 the Internet"?

5 MR. GOLDBERG: The computer searches  
6 were what?

7 MS. KULASZKA: If you put it in  
8 quotation marks, the computer looks for that exact  
9 phrase?

10 MR. GOLDBERG: Yes, I'm aware of  
11 that.

12 MS. KULASZKA: So it's clear that's  
13 the only phrase -- you looked for that exact phrase and  
14 that was it?

15 MR. GOLDBERG: That's what it says in  
16 my affidavit, and that's what I recall, yes.

17 MS. KULASZKA: With paragraph 5 it  
18 states that you did a search of the electronic document  
19 files. What key words did you use there?

20 MR. GOLDBERG: I just testified that  
21 I didn't use key words. I went through my electronic  
22 files personally. I looked at the titles -- first of  
23 all, I have most of my files going back a number of  
24 years are filed into folders on various issues. So the  
25 ones that -- they were filed into folders, electronic

1 folders, I searched any folder that related to hate,  
2 the Internet or Section 13. And I personally viewed  
3 all those documents to determine whether any of the  
4 documents met the criteria the Tribunal ordered.

5 For the earlier years where it wasn't  
6 filed into electronic folders, I went through every  
7 document I had in my electronic files.

8 MS. KULASZKA: So your testimony is  
9 that every document that you have dealing with hate on  
10 the Internet or Section 13 going back to 1993 is on  
11 your system?

12 MR. GOLDBERG: Could you repeat that,  
13 please?

14 MS. KULASZKA: You stated,  
15 "This consisted of electronic  
16 document files which I have  
17 archived on my computer dating  
18 back to 1993."

19 MR. GOLDBERG: Yes, and your question  
20 is?

21 MS. KULASZKA: My question is, do you  
22 keep all the documents you've generated with respect to  
23 Section 13 in electronic format going back to 1993?

24 MR. GOLDBERG: I generally keep all  
25 my files, electronic copies of my files. But in a

1 period dating back to 1993 I cannot testify in good  
2 conscience that every electronic -- every document that  
3 I've ever created with regard to Section 13 is still in  
4 my electronic files.

5 There's all sorts of things that  
6 happen to electronic files. There may have been files  
7 that's were corrupted. There may have been files that  
8 were deleted for one reason or another, but to the best  
9 of my -- well, I produced all the electronic documents  
10 that I had.

11 MS. KULASZKA: Do you have any other  
12 knowledge of any other search that was done other than  
13 yourself and Dean Steacy? Do you have any knowledge of  
14 that?

15 MR. GOLDBERG: I know from  
16 transactional discussions I had with the responsible  
17 Commission officials that other searches were being  
18 conducted, but I don't know the details of them.

19 I should point out, in order to  
20 clarify what my responsibilities were pursuant to the  
21 Tribunal order, I did discuss this with Mr. Vigna and I  
22 advised him that there could be documents in the  
23 records office or in the possession of other people in  
24 the Commission that I did not know about or have access  
25 to that could be relevant. And as far as I know, he

1           took that information into account in how he proceeded.

2                       MS. KULASZKA: I'm going to be asking  
3           for a new search to be done on those e-mails, and  
4           there's other documents that haven't been produced.

5                       Mr. Steacy testified that they never  
6           produced any documents past a Tribunal decision even  
7           though it fell within the ruling. He admitted that.  
8           And I think the Commission should be producing these  
9           documents.

10                      THE CHAIRPERSON: Ms. Kulaszka, what  
11           is the ultimate relevance of all of these documents?  
12           I'm starting to question -- okay, we get all these  
13           documents. How many of them make it into the hearing?

14                      MS. KULASZKA: There's a whole tab of  
15           them here.

16                      THE CHAIRPERSON: Look, this case has  
17           run very long. I'll consider it, but I want from you,  
18           Ms. Kulaszka, a serious consideration of what's needed  
19           and what's not needed for your file. I mean -- how  
20           quickly could you do this research on your computer?

21                      MR. GOLDBERG: I'm not sure what  
22           research I've been requested to do.

23                      THE CHAIRPERSON: With different key  
24           words than "hate on the Internet". One that would  
25           let's say just have "hate", or one more specifically --



1 I'm looking at my order here.

2 "The Commission's relations with  
3 Internet service providers  
4 including attempts to pressure  
5 ISPs. All documents relating to  
6 meetings, networking, and  
7 consultation with any group,  
8 presenting one of the groups."

9 Admittedly it would be difficult to  
10 try to search electronically with this kind of  
11 language. One possibility would be just to use "hate"  
12 or "Section 13" or "Internet". Yes?

13 MS. BLIGHT: Mr. Chairman, there's a  
14 great deal of production that has been made with  
15 respect to those particular issues, for example ISPs. I  
16 have not heard my friend say that based on the huge  
17 amount of production that has been done, there appear  
18 to be documents missing. I don't think there's any  
19 basis for us to be reaching that conclusion and  
20 ordering the witness to make further disclosure when,  
21 to all appearances, the disclosure that has been made  
22 by the Commission on these issues is complete.

23 I have reviewed a great deal of it.  
24 To me it appeared complete. My review is, in part, for  
25 the purpose of ensuring that there were not documents

1           that appear to have been missed. So I would submit to  
2           you there's simply no basis to reach a conclusion that  
3           the Commission has failed in its compliance with your  
4           order.

5                           THE CHAIRPERSON: How can we say it's  
6           complete? Did you see the 16,000 e-mails on Mr.  
7           Goldberg's computer? How do you know it's complete?  
8           It means you've seen it all and found everything that's  
9           relevant and you pulled it out. The "you", of course,  
10          is the Commission, not you yourself.

11                          MS. BLIGHT: Since there was a manual  
12          review done of all files other than e-mail files, I  
13          think that had there been any significant number of  
14          documents that had been missed that were e-mails that  
15          related to any of these matters, that would be at least  
16          some indication of that by missing links in the file,  
17          and there simply are none.

18                          It's my submission that this is  
19          simply an attempt to prolong this hearing, to send the  
20          Commission on a further search through its  
21          documentation without any real basis other than a  
22          criticism of the key word that the witness has used.

23                          THE CHAIRPERSON: To be fair to the  
24          respondents, I don't think there's been any attempt to  
25          prolong the hearing. In fact, I'm impressed with how

1           quickly the case evolved given the volume in this file.  
2           And the only reason that we're not finishing today, the  
3           only reason we're not done today, or a good reason why,  
4           the reason is the request for a postponement was asked  
5           by the Commission.

6                         MS. BLIGHT:   Because its counsel was  
7           ill.

8                         THE CHAIRPERSON:   I understand.

9                         MS. BLIGHT:   But Mr. Goldberg's  
10          affidavit, including his key word search criteria, has  
11          been known to the respondent for quite sometime and all  
12          of a sudden second last day of the hearing we have a  
13          request for an additional --

14                        THE CHAIRPERSON:   Hold it.  I'm  
15          sorry, that's not correct.  The situation was this:  
16          From moment one the respondents have taken the  
17          affidavits to task.  They have been stating from moment  
18          one that they feel that they, from secondary and third  
19          sources, have been able to locate material that wasn't  
20          disclosed by the Commission.

21                        For that reason Ms. Kulaszka asked  
22          before the first day of the hearing in January to  
23          cross-examine on the affidavit of these three  
24          witnesses.

25                        We -- because I wanted to get the

1 case rolling, there was an understanding reached on the  
2 first day of the hearing that we would put off to a  
3 later date the cross-examination of these witnesses.  
4 That's why we're here.

5 So ordinarily had the disclosure -- I  
6 won't say devil's advocate -- on the respondent's side,  
7 had the disclosure been complete pursuant to my  
8 original decision of August 2006, in short, within a  
9 short delay, this exercise probably would have been  
10 completed in the fall 2006.

11 Because of objections from the  
12 respondent's side, we had a conference call, and during  
13 the conference call in which Mr. Goldberg did  
14 participate, as did the individuals from the  
15 Commission, it was determined other material and  
16 searches needed to be done to comply with the  
17 disclosure order. And that all took place by Christmas  
18 indeed.

19 That's when I was asked -- it was  
20 identified by the respondent that in their mind, in  
21 their view there was material missing. And then I  
22 said, well, listen we're not going to do this whole  
23 exercise with days before the hearing begins. Let's  
24 put it in the hearing.

25 At that point on day one we thought

1 the most efficient way to go about it is to deal with  
2 the Toronto witnesses that are here already, finish  
3 that all up, and we'll go up to Ottawa and hear the  
4 remaining three witnesses to be examined on their --  
5 cross-examined on their affidavits.

6 So that's where we're at.

7 MS. BLIGHT: My point is only that  
8 the affidavit discloses the key words that were used in  
9 that search, and if that was unsatisfactory to the  
10 respondent we could have had a request to do additional  
11 key word searches before today. That was my only  
12 point.

13 I'm simply objecting to opening this  
14 whole thing up. We may find a few additional  
15 documents. Those will be disclosed and then there will  
16 be a request to cross-examine the witness again, all on  
17 issues that are quite tangential in view of the volume  
18 and content of the disclosure that has been made to  
19 date.

20 THE CHAIRPERSON: Well, that is my  
21 concern, Ms. Kulaszka. My concern is that you'll get  
22 some documents that have some perhaps distant  
23 relationship to the issue and we end up stalling the  
24 whole process unnecessarily.

25 MR. GOLDBERG: Mr. Chairman, might I

1           be able to say something that might be of assistance to  
2           the Tribunal?

3                           THE CHAIRPERSON:   Please.

4                           MR. GOLDBERG:   As I've already  
5           testified, I was asked questions about which Internet  
6           service providers the Commission has met with.  And to  
7           the best of my knowledge and recollection, there's  
8           either documents, or I testified to those  
9           organizations.

10                           To the best of my knowledge, there  
11           are no e-mails in my possession other than the ones  
12           that were disclosed with regard to my communication  
13           with Internet service providers.

14                           As I also testified I'm not involved  
15           in investigations, so I would not have any e-mails in  
16           my possession with regard to asking supposedly --  
17           allegedly asking Internet service providers to remove  
18           information from the Internet.  The only ones that I  
19           would have are with regard to my policy  
20           responsibilities, and I believe the disclosure already  
21           shows that those documents are on file.

22                           THE CHAIRPERSON:   There was also the  
23           matter in items L and M, though, in my order which  
24           relate to meetings that were working consultation with  
25           groups representing one of the groups protecting

1 discrimination and any police or governmental  
2 agencies -- I'm paraphrasing a bit here -- relating to  
3 hate on the Internet.

4 So we've dealt with some of that  
5 material yesterday so that would also have to be in the  
6 category of what you would have to search for and as  
7 well -- or you would have had to search for -- and all  
8 documents relating to educative or publicity activities  
9 of the Commission with respect to hate. So it's not  
10 only limited to Internet activities is what I'm trying  
11 to say, in terms of the scope of the order.

12 Can you make the same affirmation  
13 with regard to items L and M, what I just read?

14 MR. GOLDBERG: Could you just repeat  
15 those?

16 THE CHAIRPERSON: Yeah. All  
17 documents relating to meetings, networking and  
18 consultation with any group representing one of the  
19 groups protected from discrimination under the Canadian  
20 Human Rights Act, and any police or governmental  
21 agencies relating to hate on the Internet. That's one  
22 item.

23 Second item was, all documents  
24 relating to educative or publicity activities of the  
25 Commission with respect to hate.

1                   MR. GOLDBERG: In line with what I've  
2 testified about the searches I did of searches of  
3 information in my personal possession that I'm able to  
4 search, I confirm that to the best of my knowledge all  
5 the documents I have -- electronic files, written paper  
6 documents or e-mails that fit those criteria -- were  
7 provided to Mr. Vigna.

8                   THE CHAIRPERSON: E-mails as well?

9                   MR. GOLDBERG: E-mails as well.

10                  THE CHAIRPERSON: Even though they  
11 wouldn't have come up with -- would you always use the  
12 term "hate on the Internet" for any of this material?

13                  MR. GOLDBERG: I believe, as I said  
14 in response to the original question, I used a broader  
15 term in order to catch everything that might be  
16 included, and then I produced the documents that were  
17 relevant.

18                  THE CHAIRPERSON: You used a broader  
19 term than "hate on the Internet"?

20                  MR. GOLDBERG: Well, I believe "hate  
21 on the Internet" -- as I recall, my assumption was that  
22 all the documents that come under the categories in  
23 your order would come up in a search of "hate on the  
24 Internet", seeing that that's the general terminology  
25 that the Commission uses with regard to Section 13,



1 "hate on the Internet".

2 So I can't imagine that there would  
3 be documents of relevance, for example, that would not  
4 come under -- come up under a search of "hate on the  
5 Internet".

6 THE CHAIRPERSON: My concern is that  
7 you would always use the phrase. Because we could be  
8 putting it in between the parentheses, you know, "hate  
9 with the Internet" would not come up or something like  
10 that. "Hate on the Internet" would not come up.

11 MR. GOLDBERG: That's is  
12 theoretically true, however, if I used individual words  
13 I would have tens of thousands of -- like, if I search  
14 for just "hate", I would have all sorts of documents  
15 that have nothing to do with hate on the Internet. The  
16 same with searching for "Internet".

17 THE CHAIRPERSON: I'm not sure what  
18 to do with that.

19 MS. KULASZKA: With the greatest  
20 respect to Mr. Goldberg, yesterday there were some of  
21 those e-mails, he didn't even recognize them. He had  
22 to say, "Well, here they are, I can't quite remember, I  
23 don't know who sent me that e-mail." And these are  
24 e-mails from a year ago, and he's just testified he  
25 reads hundreds and thousands of reports and he can't

1 remember things.

2 MR. GOLDBERG: You might point -- you  
3 may want to check the transcript. I don't believe that  
4 that was my testimony. I believe that I testified if  
5 the e-mail was an e-mail that I had produced, I said  
6 that, yes, I recognize the e-mail. I cannot recognize  
7 e-mails that other people have generated. No, I cannot  
8 do that.

9 With regard to the names of people on  
10 e-mails, if the name has been redacted and other  
11 identifying features of the e-mail had been redacted,  
12 it's not possible for me to testify with certainty who  
13 the e-mail came from.

14 MS. KULASZKA: Why would the word  
15 "Internet" or the word "hate" -- especially the word  
16 "hate" -- generate many, many irrelevant e-mails?

17 MR. GOLDBERG: Because hate on the  
18 Internet is only one aspect of a much broader  
19 phenomenon, that of hate activity in society. If you  
20 want to do a search on Google, you'll find all sorts of  
21 references to racial hatred --

22 MS. KULASZKA: We're talking about  
23 your e-mails, not a Google search.

24 MR. GOLDBERG: Okay. As I testified  
25 earlier, I deal with many, many, many files. I deal

1 with all sorts of issues relating to Human Rights. Hate  
2 is certainly an aspect of human rights work, and I can  
3 assure you if I did a search just on "hate" I would  
4 come up with a lot of e-mails that were completely  
5 irrelevant to the Tribunal order.

6 THE CHAIRPERSON: That would have  
7 been something that would have been vetted in the  
8 vetting process, would it not have?

9 MR. GOLDBERG: Yes.

10 MS. KULASZKA: Yes, they should have  
11 been vetted.

12 MR. GOLDBERG: They were vetted.

13 THE CHAIRPERSON: But you didn't  
14 bring up those documents. It says here that you have  
15 found over 2,000 documents with the phrase "hate on the  
16 Internet". So you did find 2,000 e-mails.

17 MR. GOLDBERG: Yes. I didn't produce  
18 2,000. We produced the ones that were relevant.

19 THE CHAIRPERSON: Ms. Kulaszka,  
20 having seen 2,000 of the 16,000, do you really think  
21 there is going to be something more in the remaining --

22 MS. KULASZKA: Do you know what it  
23 is, Mr. Hadjis? I was told counsel in the Finta case  
24 and the Crown produced over 40 boxes, boxes of  
25 disclosure, and we went through every one of those 40

1 boxes, and we found a little file like this and that  
2 file produced evidence that basically won the case, and  
3 so you never know what's going to be in disclosure.

4 THE CHAIRPERSON: I've issued  
5 decisions where the smoking gun was buried in the  
6 paperwork.

7 I'm trying to look for a practical  
8 solution here. We've all been through this in a  
9 different way. It doesn't seem difficult for me -- for  
10 this individual to go through his computer and produce  
11 what's left electronically.

12 MS. BLIGHT: Mr. Chairman, you have  
13 the witness's affirmation that he has produced -- that  
14 he is satisfied --

15 THE CHAIRPERSON: With all due  
16 respect, I cannot accept that affirmation. I could  
17 affirm to you right now, with all due respect, that I  
18 have been through all my -- my e-mails and I can tell  
19 you it seems to me I produced all my e-mails that  
20 relate to the topic. But how could I possibly know if  
21 I didn't do the full search?

22 MS. BLIGHT: He has reviewed a full  
23 one-eighth of his e-mails, and that represents more  
24 than a portion of his work on hate on the Internet at  
25 the Commission.

1                   It's my contention that the witness  
2                   has done a fair, bona fide and -- effort to render the  
3                   disclosure. If there were anything of significance  
4                   missing in terms of these categories I submit to you we  
5                   would have become aware of that either because the  
6                   witness would have recalled it.

7                   We have a very good idea now, based  
8                   on the disclosure what -- and the witness's evidence,  
9                   what the Commission's activities are with respect to  
10                  this educative and publicity activity with respect to  
11                  hate; we have a very good idea based on the disclosure  
12                  of Mr. Goldberg and others, and no apparent missing  
13                  information with respect to the meetings, networking  
14                  and consultations with respect to stakeholder groups  
15                  and with police and governmental agencies relating to  
16                  hate on the Internet to the extent that those have been  
17                  produced in evidence.

18                  We've had a very good and complete  
19                  understanding, I submit, with respect to the ISP issue.  
20                  Mr. Goldberg has already testified that his activities  
21                  vis-a-vis the ISPs have been to meet with them in the  
22                  context of Section 27, and we have the evidence that  
23                  the respondent has sought, and I really urge you that  
24                  there's nothing to be gained by --

25                  THE CHAIRPERSON: That's my point.

1 Here's what I'm going to propose, Ms. Kulaszka, the  
2 same line of thinking. I said before, I get the  
3 message. I said that several times in this hearing.

4 MS. KULASZKA: It's not my fault they  
5 are not doing their work properly.

6 THE CHAIRPERSON: In terms of the  
7 points that need to be raised from your perspective, I  
8 see a lot of it already.

9 Here's what I propose: If the  
10 witness reviews his documentation with greater detail  
11 electronically, without much effort, relatively I would  
12 hope, pursuant to my order, and any documents that are  
13 then relevant get produced, I'm not going to reopen the  
14 hearing just because further documents were disclosed,  
15 Ms. Kulaszka.

16 Take a look at those documents. Look  
17 at them. Seriously look at them and see if they  
18 contribute anything more than any existing e-mails or  
19 documents that have been produced into the record  
20 already.

21 If you find -- if you think it's  
22 important that that be put before the Tribunal, what  
23 I'm going suggest, we don't reopen the hearing, just  
24 send copies to your colleagues, they might admit it,  
25 fine.

1                   This document you can put in front of  
2                   the Tribunal, we don't have any issue. It's in line  
3                   with everything we've already heard. And then if  
4                   that's the case, just send it to the Tribunal and I'll  
5                   consider it part of the record. We'll even formalize  
6                   it with an exhibit number.

7                   MS. KULASZKA: I've always made every  
8                   effort to keep this Tribunal going.

9                   THE CHAIRPERSON: I know that. I  
10                  think that might be an option in order to get  
11                  everything done. Because if everything that you see  
12                  there, these additional documents, is in line with  
13                  everything we've seen until now, same kind of answers  
14                  we've been getting, but you think it's important it be  
15                  before the Tribunal, you put it before the Tribunal  
16                  that way. That way it will be in the record, you can  
17                  use it in your final submissions. It's not only AOL and  
18                  Bell that got contacted, but Telus got contacted also,  
19                  and, I don't know, another company that does Internet.  
20                  If you just want to demonstrate to what extent these  
21                  contacts has reached --

22                  MS. KULASZKA: Obviously it's a great  
23                  concern when he gives testimony that there's so many  
24                  documents that were being produced and he hasn't even  
25                  looked at them, he hasn't vetted them with counsel. Mr.

1 Vigna should have been doing that.

2 MR. GOLDBERG: I know, but that gets  
3 into the nuts and bolts of how this hearing has managed  
4 to proceed.

5 I just want to get -- let's get  
6 through evidence, Ms. Kulaszka. That's what's  
7 important here.

8 What I can propose is that -- either  
9 the witness take these three paragraphs from my ruling  
10 and do some kind of a search, or we can narrow it down  
11 and pick the key words that we would like to see in  
12 there that we all agree appear to be pursuant to my  
13 ruling. And that would -- a certain reasonable time,  
14 you just punch that into your Outlook, sir, or whatever  
15 e-mail program you are using, and see what comes up and  
16 submit it to the Commission for vetting and then send  
17 that over electronically, as we've been doing to this  
18 date, to Ms. Kulaszka, and if she finds any documents  
19 in that batch that's worth putting in front of my eyes,  
20 I would urge you to communicate amongst yourselves to  
21 see if there can be any acknowledgement of this --

22 MS. KULASZKA: Maybe this afternoon  
23 we could discuss how a search could be done and what  
24 key words...

25 MS. BLIGHT: Well, I object



1 strenuously to producing every document, for example,  
2 in Mr. Goldberg's e-mail that contains the word "hate".

3 THE CHAIRPERSON: That's not what I'm  
4 saying. I'm saying it will be submitted pursuant to  
5 Rule 6 -- what happened here, in my view, is that  
6 without anyone being blamed or -- perhaps Mr. Vigna  
7 gave insufficient instruction in his file. He has many  
8 files, I'm familiar with that.

9 So the basic search apparently may  
10 not have been complete. So once that basic search is  
11 modified to be completed, it still must be vetted by  
12 the Commission.

13 MS. BLIGHT: Mr. Goldberg has advised  
14 us that it is complete, but I have a great deal of  
15 concern with that --

16 THE CHAIRPERSON: With all due  
17 respect, you've said that three times to me. I'm  
18 telling you I don't accept that because using an  
19 ebullient search with "hate on the Internet" with two  
20 quotation marks on each side does not yield every  
21 document that has the word "hate", that has the word  
22 "Internet", that has the word "discrimination",  
23 "networking", "educative publicity". That doesn't come  
24 up.

25 MS. BLIGHT: I'm submitting to you

1           that if Mr. Goldberg is forced to search for every  
2           e-mail that has any one of those words, he will be  
3           vetting his e-mail account of 16,000, probably now  
4           17,000.

5                           THE CHAIRPERSON:   Good guess, maybe,  
6           maybe not.  I don't know.  That was my order.  It was  
7           made in August 2006.  This is June 2007.  Nobody said  
8           disclosure is easy, but it has to be done.

9                           MS. KULASZKA:   Could you turn to tab  
10          14?

11                          MR. GOLDBERG:   Yes.

12                          MS. KULASZKA:   Do you recognize the  
13          e-mail that's on page 1?

14                          MR. GOLDBERG:   Yes, I do.

15                          THE CHAIRPERSON:   Which tab?

16                          MS. KULASZKA:   It's tab 14.  What is  
17          that e-mail?

18                          MR. GOLDBERG:   It's an e-mail  
19          received by Harvey Goldberg December 26, -- e-mails, it  
20          should say, December 26th, 1994 to January 4th, 1995.

21                          MS. KULASZKA:   And it's an original  
22          message.  Did you write that message?

23                          MR. GOLDBERG:   Yes, I wrote that  
24          message.

25                          MS. KULASZKA:   That's not the entire

1 message, is it?

2 MR. GOLDBERG: I don't recall from  
3 1994 whether that's the entire message or not.

4 MS. KULASZKA: Okay, turn to the next  
5 page.

6 MR. GOLDBERG: Yes?

7 MS. KULASZKA: You'll see the words  
8 "you wrote", then there's the little -- I don't know  
9 what you call those things, but it's the quote:

10 "The use of the Internet by  
11 white supremacists, Holocaust  
12 deniers, gay bashers and other  
13 elements of the extreme right is  
14 a matter of concern to Human  
15 Rights agencies. I work for the  
16 Canadian Human Rights  
17 Commission. I am currently  
18 doing research on the use of  
19 Internet for the propagation of  
20 hate material. The purpose of  
21 the research is to determine  
22 what measures could be  
23 considered to control the use of  
24 net for this type of purpose.  
25 I'd appreciate hearing from

1                    anyone who has information or  
2                    comments on this subject or who  
3                    know of anywhere on the Internet  
4                    where this matter is discussed."

5                    Is that the entire e-mail you sent?

6                    MR. GOLDBERG: I don't recall. This  
7                    was in 1995. I certainly -- 1994. I certainly can't  
8                    recall if that's the whole e-mail. I presume it is. I  
9                    recall sending this e-mail but I --

10                   MS. KULASZKA: You do remember  
11                   sending it?

12                   MR. GOLDBERG: I testified to that  
13                   already, yes.

14                   MS. KULASZKA: I don't think you  
15                   have. But you do remember --

16                   MR. GOLDBERG: -- I wrote the e-mail  
17                   message on page 1, and I said yes.

18                   MS. KULASZKA: Yes, but you'll see  
19                   the one on page 2 someone has hit the "reply" button  
20                   and they have included your entire e-mail?

21                   MR. GOLDBERG: That's correct.

22                   MS. KULASZKA: Why did you use the  
23                   word -- the words "white supremacist, Holocaust  
24                   deniers, gay bashers and other elements of the extreme  
25                   right"?

1 MR. GOLDBERG: Why did I use those  
2 words?

3 MS. KULASZKA: Yes.

4 MR. GOLDBERG: Because I had  
5 information which led me to believe that people  
6 identified with themselves who are -- who were  
7 identified as being in these groups were using the  
8 Internet to promote hatred.

9 MS. KULASZKA: What was that  
10 information?

11 MR. GOLDBERG: I don't recall the  
12 specific information, but I know that basically as soon  
13 as the Internet began to become popular among the  
14 general public there were reports in the media and  
15 reports by advocacy groups that the Internet was being  
16 used by groups the promote hatred.

17 MS. KULASZKA: Why didn't you just  
18 use the words of Section 13? Why didn't you actually  
19 zero in on certain historical points of view or  
20 political points of view?

21 MR. GOLDBERG: I don't know why I  
22 chose those words.

23 MS. KULASZKA: So yesterday you  
24 identified yourself as being on the left. How do you  
25 define "the left"?

1 MS. BLIGHT: Mr. Chairman, I believe  
2 you ruled yesterday that that questioning, even the  
3 question itself, was right on the line and I'm  
4 reluctant to --

5 MS. KULASZKA: I'm just asking for  
6 him to --

7 MS. BLIGHT: -- pursue it without  
8 raising and reminding you of that.

9 THE CHAIRPERSON: We know what it  
10 means, Ms. Kulaszka. Go on.

11 MS. KULASZKA: Actually, I don't know  
12 what the left and right means. What does that mean to  
13 you?

14 THE CHAIRPERSON: No, I just said no.

15 MS. KULASZKA: Well, my problem is  
16 he's targeting the extreme right. What is the extreme  
17 right to you? You use this e-mail, sending out.

18 MR. GOLDBERG: In this sense I use it  
19 in the terminology of extreme right wing groups that  
20 are known to have been involved, or potentially be  
21 involved in acts of hatred, and even in the case of the  
22 United States in acts of criminal violence.

23 MS. KULASZKA: And you would agree  
24 that's basically who the Commission is going after,  
25 isn't it?

1 MR. GOLDBERG: No, I would not agree  
2 with that.

3 MS. KULASZKA: How many of your  
4 respondents have been non-white?

5 MR. GOLDBERG: We don't keep  
6 statistics on the race of respondents to the  
7 Commission.

8 MS. KULASZKA: How come you don't?  
9 You keep statistics on the race of people who work at  
10 the Commission. And write in your annual reports  
11 you've got how many minorities, how many people with  
12 disabilities, how many women.

13 MR. GOLDBERG: We are required under  
14 the Employment Equity Act, which is the statute of the  
15 Parliament of Canada, to report on the representation  
16 of target groups in our employ -- among our employees.

17 MS. KULASZKA: You've worked on  
18 almost every complaint under Section 13. Please. How  
19 many respondents have not been white?

20 MR. GOLDBERG: I have no idea how  
21 many respondents have not been white. I told you, we  
22 do not keep statistics on the race of respondents or  
23 complainants.

24 MS. KULASZKA: Now, you got many  
25 replies to that e-mail. Would you agree?

1 MR. GOLDBERG: Yes.

2 MS. KULASZKA: Was that actually -- I  
3 can't imagine how many. It was over a hundred pages of  
4 e-mails. It was a tremendous response, wasn't there?

5 MR. GOLDBERG: Yes. In the documents  
6 that I produced to you, these e-mails -- yes, there  
7 were many responses.

8 MS. KULASZKA: You never produced  
9 these documents?

10 MR. GOLDBERG: I certainly did  
11 produce these documents. They were in my disclosure.  
12 Excuse me. Let me correct myself. I'm sorry, I  
13 apologize.

14 I produced these documents for Mr.  
15 Vigna. I don't know if they were disclosed by the  
16 Commission.

17 MS. KULASZKA: Mr. Goldberg, I want  
18 you to take a look through tab 14 and I want you to  
19 think very carefully. Did you produce these documents  
20 for Mr. Vigna?

21 MR. GOLDBERG: I just said I produced  
22 these documents for Mr. Vigna. I do not know whether  
23 the Commission disclosed them, but I produced them.

24 MS. KULASZKA: That's very  
25 interesting. Could you explain what these -- Section



1 19, little Section 19's are on page 2?

2 MR. GOLDBERG: No, I cannot.

3 MS. KULASZKA: I would like to ask  
4 Ms. Blight to explain this, because I would like to  
5 assure the Tribunal that these were received via me in  
6 an access request in 1996. Mr. Goldberg didn't produce  
7 these documents or -- I'm sorry, Mr. Vigna didn't  
8 produce those documents.

9 MR. GOLDBERG: I did not testify that  
10 Mr. Vigna produced the documents. I testified that I  
11 produced the documents to Mr. Vigna.

12 MS. KULASZKA: What that Section 19  
13 is, when I did the access request -- Section 19 is an  
14 exemption under the Access to Information Act and they  
15 excluded the information.

16 You also look at the bottom of page  
17 2, you'll see number 00066664, and notes the access to  
18 information office at the Commission numbered the  
19 pages.

20 THE CHAIRPERSON: Okay.

21 MS. KULASZKA: I would like an  
22 explanation, if Mr. Goldberg produced those documents  
23 they were not given to me.

24 THE CHAIRPERSON: So your assertion  
25 here is these documents -- well, witness says he gave

1           them to Mr. Vigna. Your assertion is that Mr. Vigna  
2           never disclosed these documents.

3                       MS. KULASZKA: Correct. I'm in shock  
4           that Mr. Goldberg -- I thought Mr. Goldberg never  
5           produced them, but obviously he did. But I never  
6           received them.

7                       THE CHAIRPERSON: Can you be of  
8           assistance about this information?

9                       MS. BLIGHT: Not at this time. I  
10          will ask the question. If there is any information to  
11          add I would report to the Tribunal.

12                      MS. KULASZKA: Would you agree that  
13          the general tenor of the replies you got were that  
14          people did not want the Commission to control the  
15          Internet. They were quite angry at you?

16                      MR. GOLDBERG: Yes.

17                      MS. KULASZKA: And one of those  
18          people was from News Corp, Kenneth McVay. He sent you  
19          an e-mail.

20                      THE CHAIRPERSON: Where is that?

21                      MS. KULASZKA: Let's see. It is  
22          included in here somewhere.

23                      THE CHAIRPERSON: I just want to be  
24          clear. This is an e-mail that was sent in some sort of  
25          a public way. You are saying there were multiple

1 replies to the e-mail?

2 MR. GOLDBERG: Mr. Chair, if I can of  
3 assistance?

4 THE CHAIRPERSON: Yes.

5 MR. GOLDBERG: First of all, as  
6 you'll see from the date, this was 1994. This was very  
7 early in the use of the Internet.

8 I was at the time what they called a  
9 newbie, which was a novice on using -- I think this was  
10 called the Usenet (ph). And I had -- in fact, I don't  
11 think the Commission at the time was even connected to  
12 the Internet because, according to this, I was  
13 connecting through my own personal connection on the  
14 National Capital Freenet.

15 And because I was interested in this  
16 issue and was very naive, there was a Usenet where  
17 there was a discussion about the Internet or electronic  
18 means of communications. And I put out this message,  
19 thought -- thinking that there would be -- maybe I  
20 would be able to get some useful information to further  
21 our research.

22 I should point out in 1994 -- it was  
23 just a brand new idea that hate on the Internet might  
24 be covered by Section 13. So we were really in the  
25 initial stages of researching whether this was an

1 issue, whether the Commission should do anything about  
2 it.

3 And like I said, I naively thought I  
4 would get responses saying yes, we should, no, we  
5 shouldn't. But, in fact, I got hundreds of responses  
6 from people who believe the Internet should not be  
7 controlled in any way. I think they put it, "Don't  
8 muzzle our modems".

9 THE CHAIRPERSON: "Don't muzzle our  
10 modems"?

11 MS. KULASZKA: Let's go to page 3.  
12 We'll start looking at some of the responses that you  
13 got.

14 THE CHAIRPERSON: Just to complete  
15 the thought. This was on a news net which I gather was  
16 a cruder form of like the message boards today, right?

17 MR. GOLDBERG: Similar, yes.

18 THE CHAIRPERSON: Go on, please.

19 MS. KULASZKA: On page 3 at the  
20 bottom someone has reproduced, part of your e-mail  
21 anyway. Then they say,

22 "This was only a matter of time,  
23 eh? It's been a long since we  
24 to use this phrase but this is a  
25 good time. Don't tread on us.

1                   Keep your suppression of speech  
2                   ideas to yourself, please and  
3                   thank you."

4                   MR. GOLDBERG:   Where is that?

5                   MS. KULASZKA:   That's on page 3, if  
6                   you -- the number I'm using is at the bottom of the  
7                   page.

8                   MR. GOLDBERG:   Yes?

9                   MS. KULASZKA:   So you look at --  
10                  they've reproduced part of your e-mail at least. Then  
11                  it starts, "This is --"

12                  MR. GOLDBERG:   I see it, thank you.

13                  MS. KULASZKA:   That's the message?

14                  MR. GOLDBERG:   Yes.

15                  MS. KULASZKA:   It's just a series of  
16                  e-mails here. Then there's another one. And they  
17                  reproduced the first paragraph about the use of the  
18                  Internet. And then the person says,

19                         "Well, what can I say? I have  
20                         met many races on the Internet.  
21                         Black and white. It is not just  
22                         a white thing, although your  
23                         little intro seems to imply that  
24                         is. For one, you can try and  
25                         try but it won't go away. Hate

1 is immortal."

2 Then below,

3 "Dear Mr. Goldberg, the use of  
4 the Internet by Holocaust denial  
5 is matter of grave concern to me  
6 too. That is why I spend some  
7 of my time reading what they  
8 have to say and why I spent some  
9 of arguing against on newsgroups  
10 like alt.revisionism."

11 Do you know what "alt.revisionism"  
12 is?

13 MR. GOLDBERG: As I recall, it was a  
14 newsgroup that dealt with so-called Holocaust  
15 revisionism.

16 MS. KULASZKA: Have you ever read it?

17 MR. GOLDBERG: I presume I looked at  
18 it during this period, yes.

19 MS. KULASZKA: But you don't monitor  
20 newsgroups like that to see what's going on?

21 MR. GOLDBERG: No, I do not.

22 MS. KULASZKA: This e-mail goes on  
23 and -- at the middle or near the end of the next large  
24 paragraph it starts,

25 "And I am afraid I still harbour

1 the liberal view that lies are  
2 best countered with truths  
3 rather than with suppression. I  
4 take grave offence at some of  
5 the things that the deniers have  
6 to say, but I would find it more  
7 offensive to have my delicate  
8 sensibilities protected at the  
9 cost of free speech."

10 Then talks about policing the  
11 Internet. It's impractical. People can start  
12 newsgroups at any time,

13 "You would not be able to police  
14 the Internet unless you hired a  
15 lot of people to do nothing all  
16 day but read an awful lot of  
17 dull postings and a lot more  
18 people to analyze whether  
19 newsgroups showed a pattern of  
20 postings which warranted action  
21 by Human Rights Commission."

22 This e-mail sent out a great number  
23 of problems that the Commission would face in  
24 monitoring the Internet. Would you say that those  
25 concerns have proven correct?

1 MR. GOLDBERG: Yes, I would say some  
2 of the concerns are legitimate concerns. I would point  
3 out, however, that it's not up to the Commission to  
4 determine whether or not we enforce Section 13 of the  
5 Canadian Human Rights Act.

6 The Commission is a statutory body  
7 mandated under the Canadian Human Rights Commission to  
8 administer the Canadian Human Rights Act. Parliament  
9 has enacted Section 13, and it is our responsibility to  
10 accept complaints under Section 13. We have no ability  
11 to deny -- to refuse a complaint.

12 MS. KULASZKA: And what concerns are  
13 being raised in that e-mail that have been justified,  
14 in your experience?

15 MR. GOLDBERG: It's true that the  
16 reach of the Canadian Human Rights Commission in terms  
17 of its jurisdiction or its ability to control Internet  
18 sites is confined by Canadian jurisdiction, and it's  
19 very difficult to control what appears on the Internet  
20 outside our jurisdiction, or there's -- the technology  
21 is very difficult to control, that's true.

22 MS. KULASZKA: If you look at page 5.  
23 This is the e-mail from Ken McVay. Can you tell me who  
24 Ken McVay is?

25 MR. GOLDBERG: Ken McVay is an



1 individual in British Columbia who runs a website  
2 called Niskor.

3 MS. KULASZKA: He reproduces your  
4 first two paragraphs of your e-mail and he states --  
5 this is the middle of the page,

6 "Are you serious? Who on earth  
7 lead you to believe it would be  
8 (a), or (b) possible to control  
9 the Internet? Do you really  
10 believe that you speak for a  
11 majority of Canadians? You have  
12 no respect for free speech. Are  
13 you afraid of something?" And  
14 then he reproduces the last  
15 paragraph of your e-mail. Then  
16 he states,

17 "Harvey, I've devoted a fair  
18 chunk of my life to fighting  
19 Holocaust denial and racism on  
20 the net. My archives are chock  
21 full of the data you are  
22 seeking, but your post and  
23 alt.revisionism can only be  
24 described as harmful and  
25 counter-productive. If the

1 Canadian Human Rights Commission  
2 tries to move in the area, I  
3 assure you the battle will not  
4 be solely between the bad guys  
5 and Commission. I, for one,  
6 will fight tooth and nail with  
7 all the media resources at my  
8 disposal. Any attempt by the  
9 Canadian government to censor  
10 the net."

11 Do you recall that e-mail coming from  
12 Mr. McVay?

13 MR. GOLDBERG: I don't recall it at  
14 the moment, but I'm sure that it did, yes.

15 MS. KULASZKA: Did you reply to him?

16 MR. GOLDBERG: I have no recollection  
17 of replying to Mr. McVay, but I met Mr. McVay on  
18 several occasions and I respect very much what Niskor  
19 has done. I respect Mr. McVay very much, but we agreed  
20 to disagree on this issue.

21 MS. KULASZKA: If you turn to page 7  
22 near the bottom of the page, there's another message,  
23 "I sincerely hope you never find  
24 the means to control. We  
25 ordinary people are sensible

1                   enough to censor oneself without  
2                   any government interference.  
3                   Get lost and stay lost."

4                   Would you agree that was the tenor of  
5                   the messages you got?

6                   MR. GOLDBERG:   Yes.

7                   MS. KULASZKA:   Would you agree that  
8                   most of the messages made the point to you that  
9                   ordinary people wanted the freedom to discuss things  
10                  amongst themselves on the net and to argue and discuss  
11                  things freely?

12                  MR. GOLDBERG:   No, I did not get that  
13                  impression.  This was a very select group of people who  
14                  were replying.  It was on a website that was devoted to  
15                  Internet issues and was a self-selecting group, and it  
16                  turned out that that self-selecting group goes with the  
17                  opinion that there should be unlimited free speech on  
18                  the Internet; that I do not believe at the time or  
19                  today, that that is the view of the majority of  
20                  Canadians.

21                  MS. KULASZKA:   I don't think they  
22                  said "unlimited freedom".  They believe they could  
23                  argue and discuss things and refute things themselves  
24                  back and forth, like Ken McVay.  That was his point,  
25                  wasn't it?

1 MR. GOLDBERG: Well, if you are  
2 contrasting different theories of freedom of speech,  
3 I'm taking that most of these posts are based on the  
4 American jurisprudence, which basically says that in  
5 the competition of good ideas and bad ideas, good ideas  
6 will win out in a free and open discussion and that you  
7 shouldn't limit what anybody says except inciting  
8 somebody to physical violence.

9 That's under the American  
10 jurisprudence on the first amendment.

11 I would point out based on my study  
12 and the study of others on freedom of speech issues,  
13 that the United States jurisprudence and the United  
14 States position with regard to freedom of speech is  
15 actually a minority position in the world; that most  
16 nations in the world are more in line with the  
17 jurisprudence of the Canadian Supreme Court, which says  
18 that there are competing interests of freedom of speech  
19 and freedom from hatred. In a free and democratic  
20 society you have to find an appropriate balance between  
21 those very important freedoms.

22 MS. KULASZKA: Do you do these  
23 studies yourself? Is that part of your work?

24 MR. GOLDBERG: I don't mean -- I  
25 meant studies in my general research and knowledge

1 about these issues.

2 MS. KULASZKA: So you actually don't  
3 have any expertise in that area. This is just your  
4 personal opinion?

5 MR. GOLDBERG: No. I believe that as  
6 an official of the Commission who has been mandated to  
7 deal with these issues, I provided policy advice to the  
8 Commission. And what I've just stated is the  
9 Commission's view with regard to the balance between  
10 freedom of speech and freedom from that hatred.

11 MS. KULASZKA: So you have given  
12 policy advice like this to the Commission?

13 MR. GOLDBERG: Yes, I believe I  
14 testified to that already.

15 MS. KULASZKA: Did you write  
16 anything?

17 MR. GOLDBERG: I write briefing  
18 notes, Power Point presentations; I do oral briefings;  
19 I have discussions with my colleagues and officials, we  
20 network. Yes, that's how I convey my information.

21 MS. KULASZKA: How did you do your  
22 studies?

23 MR. GOLDBERG: By reading the  
24 jurisprudence, by reading articles such as the article  
25 prepared by Mr. Justice Jeriantz (ph) and other

1 articles that discuss the issue of the -- the Canadian  
2 approach to freedom of speech.

3 MS. KULASZKA: So these e-mails had  
4 virtually no effect on you, these e-mails from ordinary  
5 Canadians?

6 MR. GOLDBERG: No, I wouldn't say  
7 they had no effect on me.

8 MS. KULASZKA: What kind of effect  
9 did they have on you? Say Mr. Ken McVay's opinions --  
10 the other person was from the University of Alberta.

11 MR. GOLDBERG: At the time I  
12 testified this whole issue was brand new and I didn't  
13 know that these opinions existed or the vehemence with  
14 which they existed. So it provided information to the  
15 Commission about what a certain segment of Canadian  
16 society thought about the possibility that Section 13  
17 might cover hate on the Internet.

18 MS. KULASZKA: Have you done any  
19 studies on Canadian's feelings about the extent that  
20 the Internet should be censored?

21 MR. GOLDBERG: No, I have not.

22 MS. KULASZKA: How many complaints  
23 has the Commission received under Section 13 since its  
24 inception? Do you know that? I think we actually --  
25 Mr. Lemire was able to get that number. Yes, look at

1 tab 16. Maybe I could produce tab 14.

2 THE CHAIRPERSON: Right. Is it  
3 all -- that's the series of e-mails?

4 MR. GOLDBERG: We're back at 15?

5 THE CHAIRPERSON: Going back to 14.

6 MS. KULASZKA: Tab 14. If you could  
7 just have a look through that tab and make sure those  
8 are the e-mails that you received in response, and I  
9 should say that I've only produced a very small  
10 proportion of those e-mails because there was a stack  
11 of them.

12 MR. GOLDBERG: Yes, to the best of my  
13 recollection.

14 THE CHAIRPERSON: I'm assuming you  
15 disclosed these to the other side?

16 MS. KULASZKA: Yes. Section 13.

17 THE CHAIRPERSON: Okay.

18 MS. KULASZKA: So that tab is  
19 produced?

20 THE CHAIRPERSON: Yes. I expect  
21 what's good for the goose is good for the gander, and  
22 expect full disclosure from both sides.

23 MS. KULASZKA: It was produced on a  
24 CD.

25 MS. BLIGHT: And Mr. Goldberg was

1 familiar with this.

2 THE CHAIRPERSON: But still, the  
3 Commission deserves to be notified. So what tab are we  
4 now looking at?

5 MS. KULASZKA: Looking at tab 16.  
6 This was reply which Mr. Lemire received from the --  
7 received from the Canadian Human Rights Commission,  
8 Secretary General, pursuant to an access request that  
9 he made. Mr. Goldberg won't recognize this document. I  
10 wonder if I could just produce it.

11 Would there be any objection from my  
12 friend?

13 MS. BLIGHT: No, it's already been  
14 produced.

15 THE CHAIRPERSON: So this has not  
16 been produced. So we have no objection from the  
17 Commission?

18 MS. BLIGHT: No objection.

19 THE CHAIRPERSON: I note that the  
20 address, personal information of Mr. Lemire appears to  
21 have been deleted.

22 MS. KULASZKA: Yes.

23 THE CHAIRPERSON: Sometimes it works  
24 both ways, that's what I'm trying to say.

25 MS. KULASZKA: This letter is dated



1 April 16, 2007, so it's very up-to-date. It says,  
2 "Thank you for your request made  
3 under the Access to Information  
4 Act received in this office  
5 March 16, 2007. Pursuant to  
6 your request concerning Section  
7 13 cases received by the  
8 Canadian Human Rights Commission  
9 our data shows that:  
10 Received: 100 complaints.  
11 Number that had been refused to  
12 deal with under section 41 of  
13 the Canadian Human Rights Act:  
14 14.  
15 The remaining 86 complaints  
16 either have been otherwise  
17 determined by the Commission  
18 and/or are at various stages of  
19 the Commission complaints  
20 process."

21 Now that is since 1978, since the  
22 inception of the Act.

23 THE CHAIRPERSON: Sorry, I just want  
24 the policy information straight. This is -- for what  
25 period does it cover? Does it indicate? Is it until

1 March 16th, 2007?

2 MS. KULASZKA: The date of this  
3 letter is April 16,2007.

4 THE CHAIRPERSON: His letter March  
5 16.

6 MS. BLIGHT: Mr. Chairman, may I add  
7 for the record that I am familiar with this as counsel  
8 for the Commission, and I can advise Ms. Kulaszka and  
9 yourself that the number of 100 was based on the  
10 Commission's electronic recordkeeping system, and the  
11 Commission is not, in fact, able to conclusively  
12 confirm the accuracy of that number but it is the best  
13 number that the Commission has been able to produce  
14 based upon the records that it has at this time.

15 THE CHAIRPERSON: And to the date of  
16 around March/April 2007.

17 MS. BLIGHT: Yes. It was intended to  
18 be current at the time the response was provided.

19 MS. KULASZKA: Mr. Lemire is going to  
20 hand out a further volume for Mr. Goldberg, and there's  
21 another letter in there that contains a breakdown of  
22 these complaints. It might be helpful to look at it at  
23 this time.

24 This second volume contains excerpts  
25 from the annual reports going back several years. I'm

1 going to be asking the Tribunal simply to take judicial  
2 notice of those reports. They contain some valuable  
3 statistics about how many complaints have been received  
4 by Commission concerning Section 13.

5 THE CHAIRPERSON: Yes, okay. We can  
6 get them all produced, if that is what they are. I'm  
7 still producing them as an exhibit. Shall we just go  
8 through the tabs quickly and get the entire binder  
9 produced?

10 MS. KULASZKA: There is other  
11 material. But basically tab 1 -- there are also -- tab  
12 1 is the 2007/2008 Report on Plans and Priorities by  
13 Commission, and I'm hoping to ask Mr. Goldberg about  
14 these annual reports and these types of documents --  
15 and/or documents --

16 THE CHAIRPERSON: Let's go tab by  
17 tab.

18 MS. KULASZKA: Perhaps we could just  
19 go to tab 6.

20 THE CHAIRPERSON: First of all, let's  
21 produce the binder.

22 THE REGISTRAR: The binder entitled  
23 Report on Plans and Priorities will be filed as Exhibit  
24 R-19.

25 EXHIBIT NO. R-19: Reports on

1 Plans and Priorities

2 MS. KULASZKA: And at tab 6 is  
3 another letter from the Canadian Human Rights  
4 Commission, the secretary general, concerning the  
5 complaints received by the Commission under Section 13  
6 and their breakdown concerning how many went to  
7 investigation, how many were dismissed, how many were  
8 settled, et cetera.

9 THE CHAIRPERSON: Do you wish to  
10 produce that document?

11 MS. KULASZKA: Yes, I can produce  
12 that.

13 THE CHAIRPERSON: Multi-page  
14 document, all one.

15 MS. KULASZKA: Just the first  
16 document, page 1.

17 MS. BLIGHT: No objection.

18 MS. KULASZKA: To Mr. Goldberg -- as  
19 best as the Commission could do, it has received 100  
20 complaints since 1978 and the Act was passed, I think,  
21 in 1977. Is that right?

22 MR. GOLDBERG: That's correct.

23 MS. KULASZKA: So how many years is  
24 that?

25 MR. GOLDBERG: 30, 31.

1 THE CHAIRPERSON: The coming into  
2 force may have been '78.

3 MR. GOLDBERG: The Act was passed 30  
4 years ago right around now. The Commission did not  
5 start receiving complaints until March of 1979 --  
6 excuse me, of 1978.

7 MS. KULASZKA: Now, Mr. Steacy gave  
8 testimony in his affidavit -- let's just look at that  
9 affidavit.

10 I think he's the one that talks about  
11 how many complaints have been received and when. Tab  
12 1, is -- that would be page 2 of tab 1. At paragraph 5  
13 of Dean Steacy's affidavit he stated from 2001 to the  
14 present the Commission has accepted approximately 55  
15 Section 13 complaints in respect to hate on the  
16 Internet.

17 Does that sound just about right to  
18 you?

19 MR. GOLDBERG: What was the date on  
20 this affidavit? Yes, that sounds about right.

21 MS. KULASZKA: So over half of the  
22 complaints have been received since 2001?

23 MR. GOLDBERG: That's correct, yes.

24 MS. KULASZKA: Do you know how many  
25 of those complaints have been laid by Mr. Warman?

1 MR. GOLDBERG: No, I do not.

2 MS. KULASZKA: You don't keep track?

3 MR. GOLDBERG: No, I do not.

4 MS. KULASZKA: Does it concern the  
5 Commission that so many of the complaints are being  
6 laid by Mr. Warman, by one person?

7 MR. GOLDBERG: Under the Canadian  
8 Human Rights Act, any citizen or person resident in  
9 Canada has the right to file a complaint with the  
10 Canadian Human Rights Commission. There are no  
11 statutory limitations on the number of times a person  
12 may avail himself of his legal right to file a  
13 complaint.

14 MS. KULASZKA: I'm just going to hand  
15 around to my friends -- and I would like to go through  
16 that?

17 THE CHAIRPERSON: While we look at  
18 these documents, let's take our morning break. 15  
19 minutes.

20 --- Recess taken at 10:25 a.m.

21 --- Upon resuming at 10:45 a.m.

22 MR. GOLDBERG: I wonder if I could  
23 just correct something I had said prior to the break?

24 THE CHAIRPERSON: Sure. Go ahead.

25 MR. GOLDBERG: I was -- with regard

1 to the exchange of e-mails with regard to the National  
2 Capital Freenet.

3 THE CHAIRPERSON: Yes?

4 MR. GOLDBERG: To the best of my  
5 recollection, I produced those for the disclosure. But  
6 I said previously that I don't know if they were  
7 disclosed -- on further recollection that's not really  
8 accurate because I did review the documents that were  
9 vetted by the Commission staff. And so I do -- to the  
10 best of my recollection, those e-mails weren't among  
11 those documents. So I did produce it to Mr. Vigna and  
12 I do know, to the best of my recollection, that it  
13 wasn't disclosed to the respondent.

14 THE CHAIRPERSON: It's not your duty  
15 to determine what's disclosed or not.

16 MS. BLIGHT: I don't have further  
17 information, but I have noted, Mr. Chairman, in your  
18 order you rejected the motion for disclosure of  
19 internal documents relating to hate and the Internet  
20 from 1993.

21 So no general disclosure --  
22 historical disclosure order and I seem to recall  
23 reading somewhere in the record that date of 2002 had  
24 been identified. So I will continue to make inquiries,  
25 but I suspect that the document would have been outside

1 of the scope.

2 MS. KULASZKA: Just for Ms.  
3 Blight's -- the Commission proposed that day, and I did  
4 not agree to it, and that was not agreed to by the  
5 Tribunal.

6 THE CHAIRPERSON: No. What I  
7 rejected was the request for,

8 "....all internal documents  
9 relating to hate on the Internet  
10 from 1993, excluding documents  
11 for all Tribunal proceedings  
12 under Section 13 of the Act;  
13 transcripts of such proceedings  
14 or any internal correspondence  
15 related to such files."

16 So that was in heading (H) that I did  
17 reject. However, that doesn't prevent a document which  
18 would fall under that general class from also falling  
19 within the category or class that I did accept as being  
20 subject to disclosure, items (J), (L) and (M).

21 MS. BLIGHT: And I have some  
22 difficulty identifying how they fall --

23 THE CHAIRPERSON: You may have a  
24 point. You know what?

25 MS. BLIGHT: Because it wasn't a



1           consultation with a group, a protected group. It  
2           wasn't a consultation with police or governmental  
3           agencies. It was simply a posting on the Internet, an  
4           early posting on the Internet on the subject.

5                         THE CHAIRPERSON: You may have a  
6           point there. I can see where there may be an argument.  
7           It's not really relevant.

8                         MS. BLIGHT: No, but I had undertaken  
9           to at least look at the matter. I haven't yet, though,  
10          been able to discuss it with the person who actually  
11          reviewed the material.

12                        THE CHAIRPERSON: Ms. Kulaszka?

13                        MS. KULASZKA: I've handed out a  
14          series of charts. These were generated by Mr. Lemire  
15          and I would just like to go through these with Mr.  
16          Goldberg.

17                        THE CHAIRPERSON: Do I have them?

18                        THE REGISTRAR: They are in tab 14.

19                        MS. KULASZKA: Mr. Goldberg, if you  
20          could turn to the chart. It's a box chart headed  
21          "Canadian Human Rights Act Tribunal Decisions by Date".  
22          Do you see that one?

23                        MR. GOLDBERG: Yes.

24                        THE CHAIRPERSON: Ms. Kulaszka, these  
25          have been placed in which exhibit?

1 MS. KULASZKA: R-19.

2 THE CHAIRPERSON: R-18.

3 THE REGISTRAR: No, it's R-19.

4 THE CHAIRPERSON: Tab 14, R-19.

5 MR. GOLDBERG: Yes, yes, I have that  
6 page.

7 THE CHAIRPERSON: It's the last page.

8 MS. KULASZKA: Now, if we could look  
9 over this chart. In your work, you are very familiar  
10 with the Tribunal decisions, are you, in Section 13  
11 cases?

12 MR. GOLDBERG: I'm fairly familiar  
13 with them, yes.

14 MS. KULASZKA: Let's go through them  
15 starting in the 1970s. The first one, Tribunal  
16 decision, was against the Western Guard and John Ross  
17 Taylor. Are you familiar with that case?

18 MR. GOLDBERG: Yes, I am.

19 MS. KULASZKA: Are you aware of any  
20 decisions given in 1980 to 1985?

21 MS. BLIGHT: Mr. Chair, this is a  
22 matter of record, so I don't think that the Mr.  
23 Goldberg can be asked to provide, by memory, the dates.

24 MS. KULASZKA: If Ms. Blight is  
25 consenting to this, I would be very happy.

1 MS. BLIGHT: The document says what  
2 it says. I can't vouch for the accuracy of it, neither  
3 can the witness.

4 THE CHAIRPERSON: We do have a clock  
5 running here. So let's go quicker through it, if we  
6 can, Ms. Kulaszka. You are going to have to -- time  
7 will be allocated tomorrow for cross-examination or --

8 MS. KULASZKA: Ms. Blight could look  
9 it over and just check its accuracy. I think it's very  
10 accurate concerning the Tribunal decisions and its time  
11 frames.

12 THE CHAIRPERSON: Let's work on the  
13 assumption it's accurate, subject to any subsequent  
14 exception.

15 MS. KULASZKA: Now we're looking at  
16 the next chart, "Canadian Human Rights Commission  
17 Tribunal Decisions By Year", and you'll see how many  
18 decisions are in a year. And it's generated by first  
19 chart. It's simply another way of looking at it by  
20 numbers.

21 And the last chart are the number of  
22 complaints referred to the Canadian Rights Tribunal.  
23 This is different. It's not decisions. It's the  
24 number of complaints referred to the Tribunal.

25 It's based on a previous spread sheet

1           which has been filed an exhibit here which you haven't  
2           seen. But I would like you to look at the names on  
3           this chart.

4                           The Centre For Research Action on  
5           Race Relations. Are you aware of that complaint?

6                           MR. GOLDBERG: Yes.

7                           MS. KULASZKA: And what is that  
8           organization?

9                           MR. GOLDBERG: I think the name  
10          pretty well describes it. It's the Centre For Research  
11          Action on Race Relations. They work on race relations  
12          issues. I believe they are located in Montreal.

13                          THE CHAIRPERSON: I'm not too  
14          concerned about you back there. I don't know who said  
15          that. It's what the Tribunal hears that counts.  
16          Please, no further outbursts. Go ahead, sir.

17                          MS. KULASZKA: And the Toronto  
18          Mayor's Committee on Race Relations. You're aware that  
19          was the complaint against Mr. Zundel?

20                          MR. GOLDBERG: Yes.

21                          MS. KULASZKA: The next one,  
22          Chilliwack Anti-Racism Project Society. Are you aware  
23          they have laid two complaints?

24                          MR. GOLDBERG: No.

25                          MS. KULASZKA: Do you know what that

1 organization is?

2 MR. GOLDBERG: No.

3 MS. KULASZKA: The Canadian Jewish  
4 Congress?

5 MR. GOLDBERG: What's the question?

6 MS. KULASZKA: You are aware of that  
7 organization? You work with it?

8 MR. GOLDBERG: I'm aware of that  
9 organization.

10 MS. KULASZKA: Have you dealt with  
11 any complaints which they have laid?

12 MR. GOLDBERG: I have --

13 MS. KULASZKA: Have you sat on a  
14 committee, the committee -- Section 13 committee that  
15 deals with these complaints?

16 MR. GOLDBERG: I don't recall  
17 specifics, but I quite probably did.

18 THE CHAIRPERSON: You can move on. We  
19 know who the JCC is. They are a party in this case, as  
20 is B'nai Brith.

21 MS. KULASZKA: Urban Alliance on Race  
22 Relations, B'nai Brith. Do you know what the Committee  
23 For Racial Justice is?

24 MR. GOLDBERG: No, I don't.

25 MS. KULASZKA: Do you know what

1 Asziton Lodge (ph) is?

2 MR. GOLDBERG: I believe it's a  
3 branch of B'nai Brith.

4 MS. KULASZKA: Toronto Zionist  
5 counsel. We'll just go through these. There's several  
6 individuals.

7 Now, the total of these complaints is  
8 58. I added those up. If we look at tab 14 -- letter  
9 at tab 14 in R-19. I'm sorry, tab 6. The Commission  
10 informed Mr. Lemire that 61 have been --

11 MR. GOLDBERG: Excuse me, which  
12 binder?

13 MS. KULASZKA: It's R-19.

14 MR. GOLDBERG: Tab R-9?

15 MS. KULASZKA: R-19, tab 6. I think  
16 you have the right one, just tab 6, first page.

17 MR. GOLDBERG: Yes.

18 MS. KULASZKA: The Commission  
19 informed Mr. Lemire that 61 cases have been referred  
20 to -- complaints have been referred to the Tribunal  
21 under Section 13. So there's three missing here.

22 Would you know what those three  
23 complaints are?

24 MR. GOLDBERG: No.

25 MS. KULASZKA: AOL. Does that sound

1 familiar?

2 MR. GOLDBERG: No, I don't know what  
3 the three missing complaints would be.

4 MS. KULASZKA: Do you know of  
5 complaints laid against AOL Canada?

6 MR. GOLDBERG: I have recollection of  
7 the complaints -- that there were complaints involving  
8 AOL Canada. I don't know if they were referred the  
9 Tribunal or not.

10 THE CHAIRPERSON: They are missing in  
11 which direction, Ms. Kulaszka? The chart is missing  
12 them.

13 MS. KULASZKA: The chart has 58  
14 complaints referred to the Tribunal, but the Commission  
15 has informed Mr. Lemire in that letter in tab 6, that  
16 in fact 61 have been referred to the Tribunal. So  
17 we're missing three. I was just trying to find out  
18 what they are.

19 THE CHAIRPERSON: Maybe it was in the  
20 interim since he made the chart.

21 MR. GOLDBERG: They're a matter of  
22 public record. They would be on the Tribunal site.

23 THE CHAIRPERSON: Yes, likely on the  
24 Tribunal's website if it was missing. Any case that  
25 has been referred to the Tribunal ends up on our

1 website.

2 MS. KULASZKA: Mr. Goldberg, looking  
3 at the chart. Number complaints referred to the  
4 Tribunal. You'll see that Mr. Warman so far has  
5 referred -- or has had 26 --

6 MR. GOLDBERG: Sorry, what tab is  
7 that?

8 MS. KULASZKA: That would be tab 14.

9 MR. GOLDBERG: Yes.

10 MS. KULASZKA: That would be the  
11 chart -- "Number of Complaints" headed?

12 MR. GOLDBERG: Yes, I have that.

13 MS. KULASZKA: You'll see Mr. Warman  
14 has had 26 complaints referred to the Canadian Human  
15 Rights Tribunal.

16 MS. BLIGHT: Mr. Chairman, is the  
17 witness being asked to assume that? I'm not sure if  
18 the witness can confirm it on his own.

19 MS. KULASZKA: I think he's going to  
20 have to assume it unless he can give testimony.

21 MS. BLIGHT: I just wanted to be  
22 clear that the witness is not necessarily in a position  
23 to confirm that number.

24 THE CHAIRPERSON: But I am, because  
25 it's come to the Tribunal. I can confirm or deny any



1 of this.

2 Go ahead. On the assumption Mr.  
3 Warman has referred as many as 26 -- has had 26 of his  
4 complaints referred to the Tribunal. What's your  
5 question, Ms. Kulaszka?

6 MS. KULASZKA: You saw that. As a  
7 policy analyst, is that of any concern to you?

8 MR. GOLDBERG: No.

9 MS. KULASZKA: Do you do any kind of  
10 policy studies about who is using the Act and how they  
11 are using it, Section 13 of the Act?

12 MR. GOLDBERG: No, we do not.

13 MS. KULASZKA: Would you agree that  
14 in fact very few complaints --

15 THE CHAIRPERSON: Sorry?

16 MR. FROMM: I'm having trouble  
17 hearing Mr. Goldberg. Ask him to get a little closer  
18 to his mic.

19 MR. GOLDBERG: The sound man asked me  
20 to I put it where it is, but I'll put it wherever  
21 anybody wants me to put it.

22 THE CHAIRPERSON: It's important that  
23 the participants hear, not the audience.

24 MS. KULASZKA: Even I have to strain  
25 to hear because of this big fan.

1 THE CHAIRPERSON: That's why we have  
2 sound systems to begin with. We have to move on.

3 MS. KULASZKA: Would you agree that  
4 very few complaints have been received in the past 30  
5 years under Section 13?

6 MR. GOLDBERG: Relatively few, yes.

7 THE CHAIRPERSON: Your question was  
8 very few complaints --

9 MS. KULASZKA: Very few complaints  
10 have been laid under Section 13 of the Act.

11 THE CHAIRPERSON: Since when?

12 MS. KULASZKA: Since 1978.

13 Now, in that volume you've got right  
14 at tab 1 and tab 2 and tab 3 and tab 4, are some  
15 official documents of the Commission. They are the  
16 annual reports and some Reports on Plans and  
17 Priorities, which are submitted to the Treasury Board,  
18 I believe?

19 MR. GOLDBERG: Actually, they are  
20 tabled in Parliament.

21 MS. KULASZKA: I think you gave  
22 testimony yesterday, there's no ministry that oversees  
23 you, oversees the work of the Commission?

24 MR. GOLDBERG: Well, it's a little  
25 bit more complex than that. We don't have a minister

1 that oversees us, but for some reporting relationships  
2 to Parliament we submit documents through the Minister  
3 of Justice and I believe this document -- on the cover  
4 it says it's signed by the Honourable Rob Nickelson.

5 MS. KULASZKA: Are you familiar with  
6 the annual report that's filed every year?

7 MR. GOLDBERG: Yes, I am.

8 MS. KULASZKA: Do you have any input  
9 into drafting the annual report?

10 MR. GOLDBERG: Some limited input,  
11 yes.

12 MS. KULASZKA: What do you do?

13 MR. GOLDBERG: I'm requested to write  
14 sections relevant to the work I do.

15 MS. KULASZKA: Have you written any  
16 section on Section 13?

17 MR. GOLDBERG: Certainly.

18 MS. KULASZKA: How about the annual  
19 report for 2006? It's at tab 2.

20 MR. GOLDBERG: And where are you  
21 referring to in specific?

22 MS. KULASZKA: The entire report has  
23 not been produced, just parts dealing with hate on the  
24 Internet. Do you know whether you wrote anything in  
25 that annual report?

1 MR. GOLDBERG: Well, I think I wrote  
2 this section on page 11 at the bottom of the page.  
3 That's probably the only part I wrote. The part about  
4 complaints would have been written by someone else.

5 THE CHAIRPERSON: Page 11 handwritten  
6 or --

7 MR. GOLDBERG: Yes, the handwritten  
8 11.

9 MS. KULASZKA: It refers to the  
10 magazine "Canada Issues"?

11 MR. GOLDBERG: Yes, it does.

12 MS. KULASZKA: That was proceedings  
13 of a conference that was held?

14 MR. GOLDBERG: That's correct.

15 MS. KULASZKA: And you helped  
16 organize that conference?

17 MR. GOLDBERG: Yes, I did.

18 MS. KULASZKA: What was the purpose  
19 of the conference?

20 MR. GOLDBERG: I testified to that  
21 yesterday, but I'll testify to it again. The purpose  
22 of the conference was to bring together a small group  
23 of people that were interested in the issue of hate on  
24 the Internet and Section 13 of the Canadian Human  
25 Rights Act, to exchange information and viewpoints

1 about the history of the legislation, the jurisprudence  
2 surrounding the legislation, developments  
3 internationally with regard to hate on the Internet,  
4 and similar issues.

5 MS. KULASZKA: And you do have a copy  
6 of the Canadian Issues magazine?

7 MR. GOLDBERG: Yes.

8 MS. KULASZKA: If I could file that  
9 as an exhibit?

10 THE REGISTRAR: The Canadian Issues  
11 Spring 2006 Hate on the Internet will be filed at  
12 respondent Exhibit R-20.

13 EXHIBIT NO. R-20: Canadian  
14 Issues Magazine, Spring 2006  
15 Hate on the Internet

16 MS. KULASZKA: Mr. Chairman, maybe I  
17 could seek your direction. I would like to enter the  
18 Annual Reports, and I don't think there will be any  
19 dispute about that. I won't be going through all of  
20 them. I'll be using it in argument.

21 THE CHAIRPERSON: Just tell us which  
22 ones you want to be referring to, so we can eventually  
23 remove those that you have no interest in discussing.

24 I saw you reference tabs 1, 2 and 3  
25 so why don't we get those in. The tab 1 is the Report

1 on Priorities?

2 MS. KULASZKA: Tab 4. These are  
3 formal documents that are being submitted to Parliament  
4 in one way or the other.

5 THE CHAIRPERSON: Any objection to  
6 those documents being entered?

7 MR. FOTHERGILL: It might be helpful  
8 to know why they are being produced.

9 MS. KULASZKA: Annual reports provide  
10 statistics on how many complaints are being laid under  
11 Section 13 and other provisions of the Act. And I'm  
12 going to be using that to argue -- show us how Section  
13 13 is being used, and that's going to be part of our  
14 argument about the constitutionality.

15 THE CHAIRPERSON: Fine, tabs 1  
16 through 4 produced of R-19.

17 Go ahead, Ms. Kulaszka.

18 MS. KULASZKA: The Annual Report is  
19 the major way in which the Commission reports to  
20 Parliament, isn't it?

21 MR. GOLDBERG: It's one of the ways  
22 the Commission reports to Parliament.

23 MS. KULASZKA: Is it a minor way it  
24 reports to Parliament?

25 MR. GOLDBERG: No, it's an important

1 way the Commission reports to Parliament.

2 MS. KULASZKA: Now, concerning  
3 Section 13. You stated one of your jobs is to monitor  
4 what goes on in Parliament and what the Commission is  
5 doing in Parliament?

6 MR. GOLDBERG: Yes, that's correct.

7 MS. KULASZKA: I wonder if you could  
8 give us the references where the Commission has either  
9 reported to Parliament or given testimony to Parliament  
10 concerning its activities under Section 13 over the  
11 past seven years?

12 MR. GOLDBERG: Well, I can't be  
13 certain, but I have a high -- I'm highly confident that  
14 probably every annual report in that period makes some  
15 reference to Section 13.

16 I would suspect the other two  
17 reporting documents -- the Report on Plans and  
18 Priorities and the other one, which name I can't  
19 remember. There's two planning documents that are  
20 tabled each year in Parliament -- that they would also  
21 make reference to Section 13.

22 MS. KULASZKA: Let's look at the  
23 Plans and Priorities document at tab 1. What is the  
24 purpose of this document?

25 MR. GOLDBERG: People in Ottawa ask

1           that question all the time, and we're not really sure.  
2           I'm sorry, I'm being facetious.

3                         The purpose of this document is to  
4           report to Parliament on how -- first of all, this is a  
5           standard document that all Federal departments and  
6           agencies table in Parliament. It outlines their plans  
7           for that period covered and -- plans and priorities, as  
8           it says, and it reports on what progress has being  
9           achieved in achieving previous plans and priorities.

10                        MS. KULASZKA: And is it to make sure  
11           you are spending your money wisely?

12                        MR. GOLDBERG: It is to give  
13           Parliament the information it needs, if  
14           Parliamentarians wish to question the Commission about  
15           how it spends its allocations.

16                        MS. KULASZKA: Has the Commission, to  
17           your knowledge, ever filed a report where it reports to  
18           Parliament about its meetings with ISPs and its  
19           activities with ISPs?

20                        MR. GOLDBERG: I believe there may be  
21           some references in annual reports to meetings with  
22           ISPs.

23                        MS. KULASZKA: Do you know which  
24           ones?

25                        MR. GOLDBERG: No, I don't.



1 MS. KULASZKA: Let's look at tab 2,  
2 and that's the annual report for 2006. And you can  
3 look at page 11.

4 MR. GOLDBERG: Yes.

5 MS. KULASZKA: At the bottom talks  
6 about hate on the Internet, talks about, first of all,  
7 the conference, and then the last line states,

8 "Throughout the year the  
9 Commission continued to meet  
10 with groups interested in issues  
11 relating to combatting hate  
12 including a number of groups  
13 targeted by hate messages."

14 Is that what you are referring to?

15 MR. GOLDBERG: Is that what I'm  
16 referring to in what regard?

17 MS. KULASZKA: I asked you if you  
18 were ever -- had the Commission ever reported to  
19 Parliament about --

20 MR. GOLDBERG: Yes.

21 MS. KULASZKA: That's what you are  
22 referring to?

23 MR. GOLDBERG: Well, you pointed out  
24 one instance. You asked me over a seven-year period,  
25 and I really can't recall what was in the annual

1 reports for the last seven years. But they are all  
2 matters of public record.

3 MS. KULASZKA: So if there was any  
4 report it would be in that annual report on Section 13  
5 and your activities thereunder?

6 MR. GOLDBERG: I would presume so,  
7 yes.

8 MS. KULASZKA: We're going to look in  
9 the other volume, that would be R-17. Let's look at  
10 tab 21.

11 MR. GOLDBERG: Yes.

12 MS. KULASZKA: Do you know who wrote  
13 this?

14 MR. GOLDBERG: Yes.

15 MS. KULASZKA: Who?

16 MR. GOLDBERG: I did.

17 MS. KULASZKA: This is an overview  
18 regarding hate on the Internet. Now, you state,  
19 "Question 1. What is the  
20 Commission doing to combat hate  
21 on the Internet? The Commission  
22 has a unique role in combatting  
23 hate on the Internet. Section  
24 13 of the Canadian Human Rights  
25 Act empowers the Commission to

1 deal with complaints regarding  
2 use of the Internet to transmit  
3 hate messages. To the best of  
4 the Commission's knowledge this  
5 is the only noncriminal  
6 legislation in the world that  
7 deals specifically with hate on  
8 the Internet."

9 Is that still true today?

10 MR. GOLDBERG: To the best of my  
11 knowledge, yes.

12 MS. KULASZKA: So this really is  
13 unique legislation, globally even?

14 MR. GOLDBERG: To the best of my  
15 knowledge it is, yes.

16 THE CHAIRPERSON: This document  
17 hasn't been described to me. Is it a document that is  
18 found on your website or something?

19 MR. GOLDBERG: Yes, this is a  
20 printout from the Commission's website. It's  
21 frequently asked questions about Section 13 of the  
22 Canadian Human Rights Act.

23 THE CHAIRPERSON: So this is in its  
24 current state. The date at the bottom says 2007, so  
25 this is what it would look like today.

1                   MR. GOLDBERG: That I can't testify.  
2                   There may have been alterations made to it since this  
3                   was printed out, but it would only be to update  
4                   material.

5                   MS. KULASZKA: If we look at the last  
6                   page, Mr. Chair, you'll see the document itself states,  
7                   "Last updated 2007/04/11". Could I produce that  
8                   document?

9                   THE CHAIRPERSON: Yes.

10                  MS. KULASZKA: It states that  
11                  complaints are an important tool in combatting hate and  
12                  that you'll continue to pursue them. The next  
13                  paragraph states,

14                                 "However, the Commissioner is  
15                                 also acutely aware that  
16                                 combatting Internet hate  
17                                 messages is only one part of a  
18                                 broader fight against  
19                                 hate-motivated activity in  
20                                 Canada and around the world.  
21                                 This is a national and  
22                                 international problem which  
23                                 requires a coordinated response  
24                                 from a number of parties."

25                                 Is that the policy of the Commission?

1 Is that what you believe?

2 MR. GOLDBERG: Yes.

3 MS. KULASZKA: And why does it  
4 require a coordinated response from a number of  
5 parties?

6 MR. GOLDBERG: Because hate on the  
7 Internet is an international and inter-jurisdictional  
8 phenomena, and to have effective control with regard to  
9 hate on the Internet it's necessary for organizations  
10 like the Commission to cooperate with players in civil  
11 society such as nongovernmental organizations; to  
12 cooperate with other Human Rights Commissions, both in  
13 Canada and abroad; to cooperate with international  
14 organizations that are interested in this issue, such  
15 as the office of the United Nations High Commissioner  
16 for Human Rights or the Organization for Security and  
17 Cooperation in Europe.

18 So, yes, there's a requirement to  
19 deal with broad group of organizations, governments and  
20 quasi-governmental organizations that are involved in  
21 this issue.

22 MS. KULASZKA: Now, yesterday you  
23 gave similar testimony but you never say how you are  
24 cooperating. What are you doing? I assume you are  
25 doing something.

1 MR. GOLDBERG: Cooperating with --

2 MS. KULASZKA: How do you cooperate?

3 You have meetings, you send e-mails.

4 MR. GOLDBERG: We have meetings, we  
5 have conferences, we exchange e-mails, we have  
6 telephone discussions, we meet at conferences, we read  
7 articles that are being printed, we -- there's a whole  
8 range of activities involved in networking and  
9 coordinating activities between organizations which  
10 have similar interests which we do pursuant to Section  
11 27(H) of the Canadian Human Rights Act.

12 MS. KULASZKA: What is the product of  
13 all of this schmoozing?

14 MR. GOLDBERG: I did not testify that  
15 it was schmoozing. The product --

16 MS. KULASZKA: There has to be a  
17 product. What is the product?

18 MR. GOLDBERG: The product is -- part  
19 of the mandate of the Canadian Human Rights Commission  
20 is the Commission should be the central focus for  
21 issues relating to human rights in the Federal  
22 jurisdiction. It's part of our -- not only mandate but  
23 the expressed desire of the Commission.

24 I'm talking as the commissioners,  
25 that the Commission be aware of what's happened with

1 regard to issues of interest to the Commission; that  
2 they be informed about that; that they be able to  
3 interact with other people; Commission staff interact  
4 with other people; that we keep on top of all the files  
5 of interest to the Commission.

6 And I would point out that Section 13  
7 is just one of these files. I have networks of  
8 contacts and the Commission has networks of contacts  
9 with regard to aboriginal issues, disabilities issues,  
10 women's issues, the right to persons with disabilities,  
11 et cetera, et cetera, et cetera.

12 MS. KULASZKA: But we're dealing with  
13 hate on the Internet?

14 MR. GOLDBERG: Yes, we are.

15 MS. KULASZKA: Now, the Act is  
16 complaints driven, correct?

17 MR. GOLDBERG: Not solely, no.

18 MS. KULASZKA: Has the Commission  
19 ever laid a complaint itself under Section 13 against a  
20 respondent?

21 MR. GOLDBERG: Yes, it has.

22 MS. KULASZKA: Against who?

23 MR. GOLDBERG: John Ross Taylor,  
24 along with others.

25 MS. KULASZKA: Are you sure about

1           that. John Ross Taylor?

2                       MR. GOLDBERG: I stand to be  
3           corrected. But I know it was the first couple cases, I  
4           believe there were two cases; one was John Ross Taylor  
5           and one was another group. I know for certainty that  
6           the Commission filed a complaint on its own initiative  
7           with regard to one of those complaints.

8                       MS. KULASZKA: Are you sure it wasn't  
9           the Canadian Holocaust Remembrance Association, David  
10          S. Smith, the Toronto Zionist Council and Azsheton  
11          Lodge (ph)?

12                      MR. GOLDBERG: Yes, it may have been.

13                      MS. KULASZKA: Do you know which case  
14          the Commission laid the complaint under Section 13?

15                      MR. GOLDBERG: That's the only one  
16          I'm aware of.

17                      THE CHAIRPERSON: The Taylor case.

18                      MR. GOLDBERG: The case that the  
19          counsel just referred to, the Smith and -- was a  
20          companion case to the Taylor case, as I recall. Well, I  
21          don't recall but --

22                      THE CHAIRPERSON: Ms. Kulaszka, I  
23          haven't verified it, but I've had this said in the past  
24          too. Wasn't Mr. Christie counsel on that file?

25                      MS. KULASZKA: Not before the



1 Tribunal. It was only when he'd been put in jail for a  
2 year that --

3 THE CHAIRPERSON: I have heard that.  
4 I can't verify it independently either.

5 MS. KULASZKA: But the Commission's  
6 activities with respect to Section 13 are complaint  
7 driven, correct?

8 MR. GOLDBERG: No.

9 MS. KULASZKA: So do you monitor the  
10 Internet on your own?

11 MR. GOLDBERG: No, I do not.

12 MS. KULASZKA: Do you obtain lists of  
13 websites from any organization or individual that  
14 should be checked?

15 MR. GOLDBERG: No, I do not. The  
16 Commission has chosen not to exercise its power under  
17 the Canadian Human Rights Act to file complaints under  
18 Section 13.

19 MS. KULASZKA: That's what I mean by  
20 complaint driven. You wait for a complaint to come in  
21 before you investigate a website?

22 MR. GOLDBERG: No, you asked me with  
23 regard to our work with regard to Section 13 was  
24 complaint driven.

25 My testimony is that a complaint,

1           certainly part of it, but it is not the only thing we  
2           do with regard to Section 13 as I've already testified.

3                       MS. KULASZKA:   The percentage of the  
4           Commission's work would be the complaints with respect  
5           to Section 13?

6                       MR. GOLDBERG:   What percentage of the  
7           Commission's overall work?

8                       MS. KULASZKA:   No.   You're saying --  
9           I'm trying to ask you about whether your Section 13  
10          work is complaint driven, and you say no, no, no, there  
11          is so much more work under Section 13.

12                      So I'm saying this other work under  
13          Section 13, what percentage is it of the Commission  
14          work under Section 13?

15                      MR. GOLDBERG:   Well, if you're  
16          talking about percentage of time devoted, it would be a  
17          small -- small relative to the investigation process.  
18          But that's because the investigation process is  
19          quasi-judicial process which is quite complicated and  
20          time consuming.  That's not to say the other aspects of  
21          the Commission's work don't also have impact and are  
22          not also important to the Commission.

23                      MS. KULASZKA:   And the other work is  
24          just what you've described?

25                      MR. GOLDBERG:   That's correct.

1 MS. KULASZKA: Now, further on you  
2 state in this overview,

3 "The Commission is actively  
4 working with other concerned  
5 parties to combat hate on the  
6 Internet."

7 What work would that be?

8 MR. GOLDBERG: The work that I've  
9 already testified, meeting with ISPs meeting with  
10 groups that are affected by hate on the Internet,  
11 meeting with other government departments, monitoring  
12 the situation in the media and in Parliament, in  
13 international fora, et cetera.

14 MS. KULASZKA: So you meet with B'nai  
15 Brith, Canadian Jewish Congress. Those are two groups  
16 that you seem to meet with regularly; is that correct?

17 MR. GOLDBERG: I don't know if I  
18 would characterize it as meeting with them regularly. I  
19 have been with them.

20 MS. KULASZKA: What would you discuss  
21 at these meetings concerning your work under Section  
22 13?

23 MR. GOLDBERG: I would discuss with  
24 them issues such as, do you think -- in the opinion of  
25 your organization, is Section 13 an effective tool to

1 deal with the issue of hate on the Internet? Do you  
2 think a Commission is doing an effective job in dealing  
3 with these complaints and bringing them to conclusion?  
4 Do you feel that there should be other -- that the  
5 Canadian Human Rights Act may require a legislative  
6 amendment to make it more effective? Issues such as  
7 that.

8 MS. KULASZKA: What is the opinion of  
9 the Canadian Jewish Congress on this?

10 MR. GOLDBERG: The Canadian Jewish  
11 Congress, I believe, based on my discussions with them,  
12 feels that Section 13 has been effective.

13 MS. KULASZKA: I think the Canadian  
14 Jewish Congress wants the ISPs to simply take down  
15 websites.

16 MR. GOLDBERG: My discussions with  
17 them, they have discussed that with me, yes.

18 MS. KULASZKA: What do they say? What  
19 is the protocol they want?

20 MR. GOLDBERG: They discussed with  
21 the Commission a proposal. This is going back to my  
22 testimony yesterday about the tip line. If I can  
23 provide a little background information.

24 The tip line is based on a tip line  
25 which already exists with regard to childhood sexual

1 exploitation and pornography. It's run by an  
2 organization called Child Find Manitoba. And the  
3 website is called cybertip.ca.

4 What that website does is it provides  
5 a means by people to contact the website, usually by  
6 e-mail, to say that they have been on the web, they saw  
7 material which they think violates the Canadian  
8 Criminal Code prohibition against child sexual  
9 exploitation or child pornography.

10 The analysts at cybertip.ca, which I  
11 think I said is located in Winnipeg, who are all  
12 retired police officers and are special constables,  
13 review the material and they refer the material to the  
14 appropriate police authorities for further action.

15 This was the model that the  
16 Department of Justice, without any consultation with  
17 the Commission, was looking at as a possible model for  
18 a tip line with regard to hate on the Internet.

19 The Canadian Jewish Congress made a  
20 proposal to the Commission that a similar system be  
21 established on a voluntary basis where there would be a  
22 tip line set up, information from the tip line would be  
23 sent to a body. That body would notify the Internet  
24 Service Provider that they believed that the postings  
25 might contravene Section 13 of the Canadian Human

1 Rights Act.

2 And according to the Canadian Jewish  
3 Congress -- I cannot verify this -- they had assurances  
4 from some of the major ISPs, that the ISPs would then,  
5 on a voluntary basis under their acceptable use  
6 policies, take appropriate action if they were notified  
7 of such situations.

8 Canadian Jewish Congress, at one  
9 point, discussed this proposal with us. And they  
10 actually proposed that the Commission be the body to  
11 accept such tips and pass the information onto the  
12 Internet Service Providers, but the Commission did not  
13 agree with that proposal.

14 MS. KULASZKA: Why?

15 MR. GOLDBERG: Because it would be  
16 inconsistent with our mandate.

17 MS. KULASZKA: Now, Cybertip actually  
18 produces a filter, doesn't it, and it's used by the  
19 major ISPs and it automatically blocks sites. Do you  
20 know that?

21 MR. GOLDBERG: I do know of their  
22 project called Clean Feed. I don't know if you call it  
23 that filter, but I guess it has the same effect, yes.

24 MS. KULASZKA: What does it do?

25 MR. GOLDBERG: Well, actually, it's

1 built into the system that I was just discussing. My  
2 understanding is, what would happen is cybertips.ca  
3 would notify Internet Service Providers that there are  
4 websites coming into Canada which they consider to be a  
5 contravention of the Criminal Code of Canada, and  
6 Internet Service Providers, on a voluntary basis, will  
7 use technological means, which in broad terms I guess  
8 you would call filtering, the filter out those websites  
9 from their subscribers.

10 MS. KULASZKA: Now, are you aware of  
11 the Canadian Jewish Congress tip line?

12 MR. GOLDBERG: I'm aware they  
13 established a tip line, yes.

14 MS. KULASZKA: Have you ever seen it?

15 MR. GOLDBERG: I've seen their  
16 website, yes.

17 MS. KULASZKA: If you could -- if the  
18 witness could be given the Bernard Klatt volume. I  
19 would like him to identify a document that has not been  
20 produced.

21 THE CHAIRPERSON: Yes.

22 MS. KULASZKA: I would like to show  
23 it to him.

24 THE CHAIRPERSON: R-2?

25 MR. GOLDBERG: I have R-2 here.

1 MS. KULASZKA: I would like to show  
2 him that document so I can ask him some questions are  
3 it.

4 THE CHAIRPERSON: R-2, tab?

5 MS. KULASZKA: Tab 11, page 7.

6 MR. GOLDBERG: Yes, I have it.

7 MS. KULASZKA: So this is the CJC  
8 home page and in the middle of it they have a thing,  
9 "Stop Internet hate. Have you  
10 seen hate on the Internet? To  
11 report it click here."

12 Do you have any cooperation with the  
13 CJC about the reports they are getting from that tip  
14 line?

15 MR. GOLDBERG: In one of my meetings  
16 with the Congress Jewish Congress, officials of  
17 Congress said that they might do this, and they have  
18 done so.

19 MS. KULASZKA: But you don't get any  
20 ongoing reports from them about the kind of complaints  
21 they are getting, their numbers or --

22 MR. GOLDBERG: I do not personally,  
23 no.

24 MS. KULASZKA: Has the Canadian  
25 Jewish Congress filed any recent complaints?



1 MR. GOLDBERG: I believe that there  
2 are complaints that are relatively recent within the  
3 last several years, but I'm really not sure.

4 MS. KULASZKA: If you could go back  
5 to the overview which you wrote which appears on the  
6 Commission website.

7 THE CHAIRPERSON: Was this document  
8 produced? I see it has been produced.

9 MS. KULASZKA: Yes, it has been  
10 produced. I just want him to -- I just wanted to ask  
11 him about it, just make sure we knew what we were  
12 talking about.

13 If we could turn to the second page  
14 of your overview.

15 MR. GOLDBERG: Which tab is that?

16 MS. KULASZKA: Tab 21 again, R-17.

17 MR. GOLDBERG: Yes?

18 MS. KULASZKA: Question 5, near the  
19 bottom on page 2. "What does the Commission do once  
20 the complaint is filed?"

21 And you state,

22 "There's -- Anti-Hate team --  
23 consists of lawyers,  
24 investigators, and policy  
25 experts with special expertise

1 in investigating hate on the  
2 Internet cases."

3 Now, you say they have special  
4 expertise. Now, we've questioned Hannya Rizk and Dean  
5 Steacy and they have no training whatsoever in what  
6 constitutes hate. Did you know that?

7 MR. GOLDBERG: I don't know that, no.

8 MS. KULASZKA: Do you know what kind  
9 of training is given Section 13 investigators?

10 MR. GOLDBERG: As I testified  
11 previously, I'm not involved in the investigation  
12 complaints. I'm not aware of training they have  
13 received.

14 I do know I've attended some -- we  
15 attended a conference that was sponsored I believe by  
16 the Law Society of Upper Canada several years ago, and  
17 I believe both Hannya and Dean were there, but I don't  
18 know what other training they have received.

19 MS. KULASZKA: What special expertise  
20 were you referring to there?

21 MR. GOLDBERG: Pardon me?

22 MS. KULASZKA: What special expertise  
23 were you referring to?

24 MR. GOLDBERG: Referring to?

25 MS. KULASZKA: In your paragraph.

1                   MR. GOLDBERG: Well, the experience  
2 accumulated in the process of dealing -- focusing on  
3 Section 13 complaints over a number of years.

4                   MS. KULASZKA: Okay. And the last  
5 paragraph there,

6                                 "While the Commission generally  
7 offers to mediate complaints,  
8 this is not generally done in  
9 the case of hate message  
10 complaints."

11                                 Why is that?

12                   MR. GOLDBERG: To the best of my  
13 knowledge, mediation is a standard part of the  
14 notification to respondent, to complainant, is that  
15 mediation is available. But mediation is a completely  
16 voluntary process. Both parties have to agree to it.

17                                 And I am not privy to what  
18 discussions are held between parties with regard to  
19 whether mediation will be carried out or not. I do  
20 know, however, that mediation has only been successful  
21 in, I believe, one Section 13 complaints.

22                                 The Commission is certainly open to  
23 mediating Section 13 complaints, if complainants are  
24 willing to mediate them.

25                   MS. KULASZKA: So the complainant has

1 to be willing to mediate?

2 MR. GOLDBERG: Yes.

3 MS. KULASZKA: How about  
4 conciliation?

5 MR. GOLDBERG: Conciliation is a  
6 statutory process under the Canadian Human Rights Act,  
7 and my understanding of the law is the parties are  
8 required to participate in conciliation.

9 MS. KULASZKA: And is that true  
10 concerning Section 13 complaints as well, that there is  
11 no conciliation -- has any conciliation --

12 MR. GOLDBERG: The decision to refer  
13 a matter to conciliation is a statutory power of the  
14 Canadian Human Rights Commission sitting as a  
15 Commission. And it's in their discretion to decide  
16 whether or not the complaint is likely to be resolved  
17 through conciliation or not.

18 THE CHAIRPERSON: That typically  
19 comes up after the investigator's report, right? When I  
20 had occasion to see the investigator's report, there's  
21 a reference to recommendation that it go to  
22 conciliation or it be referred to Tribunal. Is that  
23 the stage where it happens?

24 MR. GOLDBERG: Yes.

25 MS. KULASZKA: Turning the page.

1 First paragraph, you state again that it's unique,  
2 Section 13 is unique. You've undertaken special  
3 measures because it's unique. "These include the  
4 assignment of all Section 13 cases to the Anti-Hate  
5 team."

6 And you do use that phrase, right,  
7 the "Anti-Hate team"?

8 MR. GOLDBERG: Yes, we do.

9 MS. KULASZKA: That's the Section 13  
10 team?

11 MR. GOLDBERG: Yes, it is.

12 MS. KULASZKA: There's ongoing staff  
13 training to broaden knowledge about the nature of hate  
14 activity. What kind of training would that be?

15 MR. GOLDBERG: Attending conferences,  
16 keeping up-to-date on information with regard to hate  
17 on the Internet.

18 As I already testified, I'm not  
19 responsible for the training of investigators, so I'm  
20 really not conversant with what training they have  
21 received or will receive in the future.

22 MS. KULASZKA: Now, has Richard  
23 Warman ever been a member of the Anti-Hate team?

24 MR. GOLDBERG: Not to my  
25 recollection, no.

1 MS. KULASZKA: Did you know he gave  
2 training to investigators?

3 MR. GOLDBERG: I -- I did not know  
4 that until sometime last week when it was mentioned, or  
5 sometime in the very recent future -- very recent past  
6 where some document relating to this Tribunal made a  
7 reference to it. Perhaps it was Mr. Lemire's website.

8 MS. KULASZKA: Do you know what  
9 document that was?

10 MR. GOLDBERG: I can't really recall.  
11 I just know that it came to my attention that this was  
12 an issue that was raised at a previous hearing of the  
13 Tribunal and I was not previously previously aware of  
14 it.

15 MS. KULASZKA: Did you read the  
16 transcript of Mr. Steacy's testimony?

17 MR. GOLDBERG: No, I did not read the  
18 transcript except that which was made publically  
19 available on Mr. Lemire's website.

20 MS. KULASZKA: So you did read that  
21 on his website?

22 MR. GOLDBERG: Yes, I read portions  
23 of it that were posted on his website.

24 MS. KULASZKA: So you visit the  
25 Freedom Site.

1                   MR. GOLDBERG: I have looked at the  
2 Freedom Site, yes.

3                   MS. KULASZKA: So as part of your  
4 work, do you monitor websites?

5                   MR. GOLDBERG: In order -- I guess  
6 that would depend on what you mean by "monitor". Yes, I  
7 have looked at websites that are known to contain  
8 information which is alleged to have -- or possibly  
9 could be a violation of Section 13. I do not do for  
10 the purpose of investigations or for the purpose of  
11 filing complaints. I do that for the purpose of  
12 keeping myself current about developments.

13                   MS. KULASZKA: So what kind of  
14 websites do you look at? Do you look at Stormfront?

15                   MR. GOLDBERG: I've looked at  
16 Stormfront.

17                   MS. KULASZKA: Do you have an account  
18 on Stormfront?

19                   MR. GOLDBERG: I do not have an  
20 account on Stormfront.

21                   MS. KULASZKA: Do you know who Jade  
22 Where (ph) is?

23                   MR. GOLDBERG: No, I do not.

24                   MS. KULASZKA: Do you know who  
25 Fennerson (ph) is?

1 MR. GOLDBERG: No, I do not.

2 MS. KULASZKA: You realize how the  
3 posting by a person named Fennerson was used?

4 MR. GOLDBERG: No, I do not.

5 MS. KULASZKA: Did you sit on a team  
6 that looked into or discussed the complaint by Andrew  
7 Gill?

8 MR. GOLDBERG: As I recall, it was  
9 discussed by the Section 13 team, yes.

10 MS. KULASZKA: Was the Fennerson post  
11 discussed at that time?

12 MR. GOLDBERG: It may have been. As  
13 I testified previously, I have a very poor recollection  
14 of what was in specific complaints. I should point out  
15 as I've already testified, my involvement on the  
16 Section 13 team amounts to a meeting once a week for a  
17 period of perhaps an hour.

18 I receive e-mail documents in advance  
19 of that meeting. I review the documents, time  
20 permitting. The documents are then discussed at that  
21 meeting, then I destroy the documents in order to  
22 preserve their confidentiality. So I'm not involved in  
23 an ongoing basis in these investigations.

24 I read, like I said, complaint forms  
25 or draft investigation reports and I do not remember



1 the details.

2 MS. KULASZKA: On the next page, that  
3 would be question 15 of the Overview. The second  
4 paragraph there,

5 "The Commission monitors the  
6 implementation of all Tribunal  
7 orders to make sure that they  
8 are fulfilled and takes  
9 appropriate enforcement action  
10 when appropriate."

11 That would be question 15?

12 MR. GOLDBERG: Question 15, yes.

13 MS. KULASZKA: That would be the  
14 second paragraph?

15 MR. GOLDBERG: Yes, I have it.

16 MS. KULASZKA: Who monitors the  
17 implementation of the orders?

18 MR. GOLDBERG: The legal offices.

19 MS. KULASZKA: Websites that have  
20 been the subject of Section 13 complaints, such as the  
21 Zundel are still up, right? There are some still up?

22 MR. GOLDBERG: That's what I  
23 testified to yesterday.

24 MS. KULASZKA: Why do you think that  
25 website is still up?

1 MR. GOLDBERG: Because the website is  
2 outside -- is currently outside the jurisdiction of the  
3 Canadian Human Rights Commission.

4 MS. KULASZKA: How is it still up,  
5 considering Mr. Zundel has been in jail for four years?

6 MR. GOLDBERG: I have no idea. I  
7 presume other people are running it on his behalf.

8 MS. KULASZKA: Do you know, is De-Tax  
9 Canada still up?

10 MR. GOLDBERG: I have no idea.

11 MS. KULASZKA: Can you look at tab  
12 13.

13 THE CHAIRPERSON: Of the same binder?

14 MS. KULASZKA: R-17. This letter, do  
15 you recognize it?

16 MR. GOLDBERG: Tab 17?

17 MS. KULASZKA: Tab 13 of R-17. It's  
18 a letter dated July 4, 1995.

19 MR. GOLDBERG: Yes, I recognize it.

20 MS. KULASZKA: What is that?

21 MR. GOLDBERG: Just let me read it,  
22 please. It's a memo I sent to officers of the  
23 Commission.

24 MS. KULASZKA: And there's an  
25 attachment to it. Do you recognize the attachment?

1 MR. GOLDBERG: I don't recognize it,  
2 but I accept it but I accept that was an attachment to  
3 this memo?

4 MS. KULASZKA: You are saying the  
5 attachment comes from the Voice of Freedom, Worldwide  
6 Web home page operated by -- and it's a blank but it  
7 would be Ernst Zundel. Would that be the word, Ernst  
8 Zundel? That's in your letter, second paragraph.

9 MR. GOLDBERG: I wouldn't know. I  
10 presume so.

11 MS. KULASZKA: Well, you wrote the  
12 letter.

13 MR. GOLDBERG: Yes, I presume it says  
14 Ernst Zundel, but I can't remember what I wrote in  
15 1995.

16 MS. KULASZKA: I'm just saying if you  
17 look at page 2 it says Voice of --

18 MR. GOLDBERG: I accept it's Ernst  
19 Zundel.

20 MS. KULASZKA: Can I produce that?

21 MR. GOLDBERG: Yes, yes.

22 MS. KULASZKA: The entire tab.

23 THE CHAIRPERSON: It's the  
24 attachments, right?

25 MS. KULASZKA: Plus the attachments.

1 Did you produce these documents to Mr. Vigna?

2 MR. GOLDBERG: Did I -- pardon me?

3 MS. KULASZKA: In the disclosure  
4 requirements, did you produce these documents to Mr.  
5 Vigna?

6 MR. GOLDBERG: I don't recall. If  
7 they were in my electronic files, I would have produced  
8 them. If they are in my electronic files and I didn't  
9 produce them, it was simply a matter of inadvertence.  
10 As I testified to, I searched my files thoroughly for  
11 any information that would comply with the Tribunal's  
12 order.

13 THE CHAIRPERSON: This is not an  
14 e-mail, this is a letter, right?

15 MR. GOLDBERG: It's a memo.

16 THE CHAIRPERSON: Memo, so a text  
17 file?

18 MR. GOLDBERG: Yes.

19 MS. KULASZKA: The purpose of this  
20 letter, you are saying that you aware there's been  
21 considerable discussion recently about the use of the  
22 Internet for the propagation of hatred.

23 I thought you might be interested in  
24 seeing an example of the type of information that is  
25 now easily accessible. The attached material comes

1 from the Voice of Freedom. We found it on a large  
2 on-line access provider. It's available on an Ottawa  
3 phone number.

4 What kind of searches were you doing?  
5 You are obviously getting on the information and you  
6 are looking at the material?

7 MR. GOLDBERG: I was familiarizing  
8 myself with the -- as I testified previously, various  
9 organizations I believe, perhaps even in -- well, I  
10 can't testify there was in Parliament, but I know at  
11 the time in the early 1990s, various organizations  
12 raised concerns about the use of the Internet for the  
13 promotion of hatred. The Commission had a mandate  
14 under Section 13 of the Canadian Human Rights Act with  
15 regard to a repeated telephonic communication of hate  
16 messages.

17 And there was at the time a  
18 proposition which was later sustained by the courts  
19 that information transmitted on the Internet via means  
20 of a telephone line connecting to a modem might be  
21 included in Section 13, therefore, it was a matter of  
22 interest to the Commission to look into this matter  
23 further.

24 MS. KULASZKA: So you are doing  
25 monitoring of the Internet and seeing what you could

1 get?

2 MR. GOLDBERG: No.

3 MS. KULASZKA: Isn't that what you  
4 did here? Did somebody send you this material?

5 MR. GOLDBERG: I found this material  
6 on my own, but I wasn't doing that as part of a process  
7 on monitoring the Internet. I was doing it as part of  
8 the process of informing myself about what the  
9 phenomena was, what its extent was.

10 MS. KULASZKA: You are making a  
11 report to the Chief Commissioner?

12 MR. GOLDBERG: That's correct.

13 MS. KULASZKA: And who is J. Hucker?

14 MR. GOLDBERG: He was the secretary  
15 general at the time.

16 MS. KULASZKA: Was he a lawyer?

17 MR. GOLDBERG: I believe he has a  
18 legal degree, yes.

19 MS. KULASZKA: So what was -- look at  
20 the attachment. What is it that you saw that was hate?

21 MR. GOLDBERG: I would need some time  
22 to review it to answer that question.

23 First of all, I think if you read the  
24 memo correctly, it does not say the material attached  
25 would be a violation of Section 13.

1 MS. KULASZKA: Could you speak up?

2 MR. GOLDBERG: I'm sorry. First of  
3 all, my memo -- if you read the memo, I don't think it  
4 says the material attached was in my -- was definitely  
5 hatred.

6 It says, "This is an example of  
7 materials that --" of this type. I did not make any --  
8 did not have an opinion at the time whether it would  
9 actually constitute a violation of Section 13 of the  
10 Canadian Human Rights Act, seeing it wasn't even clear  
11 that the Internet was covered by Section 13.

12 But I would say even the title of the  
13 page, which is called "Holocaust Facts: Must Holocaust  
14 Survivors Must Be believed". I think that is supposed  
15 to say, "Most Holocaust -- must" -- I don't know what  
16 it says. No, I can't make sense of that sentence.

17 But the overall tenor of these  
18 documents is to undermine the testimony of survivors of  
19 the Holocaust and academic experts who have, in their  
20 writings and in their witnessing, have testified to the  
21 fact that gas chambers existed, that people were killed  
22 in them, that approximately six million Jews were  
23 killed by the Nazis during the Second World War, et  
24 cetera, et cetera.

25 I would consider statements of that

1 type to be hatred -- possibly to incite hatred and  
2 contempt against an identifiable group protected by the  
3 Canadian Human Rights Act. Actually, several  
4 identifiable groups.

5 MS. KULASZKA: If you look at page 5.  
6 The second full paragraph states,

7 "Jewish historian Arno Mayer of  
8 Princeton now admits that  
9 evidence for the gas chambers  
10 rare and unreliable."

11 It's from the book, "Why Did The  
12 Heavens Not Darken?" Do you know who Arno Mayer is?

13 MR. GOLDBERG: No, I do not.

14 MS. KULASZKA: Why is the Commission  
15 even getting into arguments like this about history?  
16 Why are you even taking a position on these matters?

17 MR. GOLDBERG: I don't believe we  
18 have taken a position, but I don't think it would be  
19 inconsistent with the Commission's mandate for us to  
20 take a position.

21 MS. KULASZKA: Has it ever occurred  
22 to you that German groups, the German minority of this  
23 country, might a different point of view?

24 MR. GOLDBERG: I've never mentioned  
25 anything about Germans in my testimony. I've talked



1 about the Nazi regime of occupied Europe between 1939  
2 and 1945. Has nothing to do with Germans.

3 MS. KULASZKA: Have you ever  
4 consulted German groups?

5 MR. GOLDBERG: No, I have not.

6 MS. KULASZKA: How long have you been  
7 working at the Commission?

8 MR. GOLDBERG: Since 1989.

9 MS. KULASZKA: Let's go back to tab 8  
10 of that same volume. I think Mr. Christie asked you  
11 some questions about this.

12 This is series of postings. This is  
13 from 1994 and he asked you and you said it was your  
14 personal opinion this was hatred. And, again, you  
15 were -- you seem to be doing a lot of monitoring  
16 yourself. This is on your personal time or was this  
17 with work?

18 MR. GOLDBERG: I guess I was working  
19 at home.

20 MS. KULASZKA: Then you asked for a  
21 legal opinion from Bill Pentney?

22 MR. GOLDBERG: That's what it says,  
23 yes.

24 MS. KULASZKA: You gave testimony to  
25 Mr. Christie you never asked for legal opinions?

1                   MR. GOLDBERG: Well, as I've  
2 testified, I worked at the Commission for -- since  
3 1989, I've worked in various capacities -- in  
4 managerial capacities, in policy advisory capacities. I  
5 believe when I was asked that question I was testifying  
6 as to my recent experience, and my recent experiences  
7 I'm not really in a position where I asked for legal  
8 opinions. If I feel a legal opinion is necessary, I  
9 might request of my superiors to request that legal  
10 opinion, but I don't personally request them.

11                   At the time in question in 1994 I was  
12 the director of policy and it was within my mandate and  
13 responsibilities to ask for legal opinions if I thought  
14 they were necessary.

15                   MS. KULASZKA: Now, you asked for a  
16 legal opinion. Was that the only advice you asked for  
17 with respect to these threads? Did you approach  
18 anybody else to ask for their opinion about this  
19 material?

20                   MR. GOLDBERG: I don't recall what I  
21 did in 1994.

22                   MS. KULASZKA: Now, if you could look  
23 at the attachments. There's a thread, as you say. Can  
24 you tell us what that is? It goes to page 7. It  
25 appears to be from, what, a news group? This is what

1           you attached to your letter.

2                           MR. GOLDBERG:  Yes, it appears to be  
3           from a news group.

4                           MS. KULASZKA:  How did this news  
5           group work?

6                           MR. GOLDBERG:  As I recall, in the  
7           old days of the Internet we had these groups that you  
8           could access that had -- very similar to was currently  
9           called message boards where there would be grouping of  
10          e-mails, exchanges of e-mails on a similar topic.

11                          MS. KULASZKA:  So people were  
12          conversing with each about a topic?

13                          MR. GOLDBERG:  That's right.

14                          MS. KULASZKA:  How many people were  
15          in on this occasion?  They seem to be arguing back and  
16          forth.

17                          MR. GOLDBERG:  I have no idea how  
18          many people.

19                          MS. KULASZKA:  Let's go over to page  
20          8.  This is a memorandum.  This is a meeting with the  
21          National Capital Freenet February 16, 1995.  It states  
22          that you were one of the people who met with  
23          representatives of the National Capital Freenet to  
24          discuss how to deal with use of the NCF for the posting  
25          of messages which may contravene Section 13 of the

1 Canadian Human Rights Act.

2 At the bottom,

3 "The meeting with NCF officials  
4 was amicable and productive.  
5 Jerry Savard and Harvey Goldberg  
6 explained the Commission's  
7 concerns regarding the possible  
8 use of the NCF and similar  
9 systems to post hate messages."

10 What kind of concerns did you express  
11 at that meeting?

12 MS. KULASZKA: Again, this was at the  
13 very early stages of the Commission's involvement with  
14 the possibility that hate on the Internet might be  
15 included in Section 13.

16 The National Capital Freenet was --  
17 is located right in Ottawa and, as per the other  
18 documents that you've just discussed, there was some  
19 concern about postings on use nets that were run at  
20 least through the National Capital Freenet, so we  
21 thought it would be a good idea to meet with them.

22 MS. KULASZKA: Who what?

23 MR. GOLDBERG: To meet with them and  
24 discuss these issues.

25 MS. KULASZKA: So you obviously had

1           their user agreement? You had a copy?

2                           MR. GOLDBERG: Apparently so, yes.

3                           MS. KULASZKA: And you discussed a  
4 procedure. That's on page 9 at the bottom. I'm  
5 looking at the middle of the page. And a protocol was  
6 set out. Did you suggest that protocol?

7                           THE CHAIRPERSON: Where is the  
8 protocol?

9                           MS. KULASZKA: Starts the third  
10 paragraph -- full paragraph down,

11                                   "The following procedure for  
12 dealing with possible future  
13 inquiries, complaints to the  
14 Commission was discussed."

15                                   Did you suggest that protocol?

16                           MR. GOLDBERG: I really don't recall,  
17 but I accept that that was -- this outlines what was  
18 discussed with the National Capital Freenet.

19                           MS. KULASZKA: The protocol was,

20                                   "The Commission is made aware of  
21 an alleged breach of Section 13.  
22 The messages in question will be  
23 reviewed to determine whether  
24 they appear to constitute hate  
25 messages.

1                   2. If the messages in question  
2                   are considered to constitute  
3                   hate messages, the Commission  
4                   will notify the NCS that a  
5                   complaint inquiry has been  
6                   received and request their  
7                   assistance in dealing with the  
8                   matter.

9                   3. The NCF will then take the  
10                  steps it deems appropriate to  
11                  insure that the same or similar  
12                  postings are not transmitted by  
13                  means of the NCF system. The  
14                  actions taken by the NCF may  
15                  include warning the member to  
16                  discontinue posting in offensive  
17                  messages and suspending or  
18                  terminating NCF membership for  
19                  if the NCF is unwilling or  
20                  unable to control the use of  
21                  system for purposes contrary to  
22                  Section 13, the Commission will  
23                  accept a formal complaint and  
24                  proceed with it in the usual  
25                  manner."

1 Do you see that?

2 MR. GOLDBERG: Yes, I do.

3 MS. KULASZKA: Did you suggest that  
4 protocol?

5 MR. GOLDBERG: Did I personally  
6 suggest it? I don't have any recollection that I  
7 personally suggested it, but I accept, according to  
8 this memo, that it was discussed with them. I would  
9 note that it says -- this was all hypothetical. It  
10 wasn't -- it never happened.

11 MS. KULASZKA: So there never was a  
12 protocol that was entered into?

13 MR. GOLDBERG: No, there never was  
14 such a protocol, as I believe the National Capital  
15 Freenet, to the best of my recollection had concerns  
16 with the proposed patrol and it did not proceed any  
17 further than what is discussed here.

18 MS. KULASZKA: So they brought up  
19 themselves several concerns with you, and that's at the  
20 bottom. Number one, is Internet uncontrollable. It  
21 would be very difficult for them to administratively to  
22 do what you wanted; is that right?

23 MR. GOLDBERG: Yes.

24 MS. KULASZKA: Turning the page. You  
25 acknowledge the limitations -- acknowledge the

1 limitation of the Commission's jurisdiction but  
2 explained that the Commission was required to act when  
3 alleged breaches of the Act were brought to your  
4 attention.

5 And they made the point to you that  
6 the Commission should be doing this because they were  
7 acting as a common carrier; is that right?

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

9 MS. KULASZKA: And you said that the  
10 NCF was a telecommunication undertaking within the  
11 meaning of Section 13 it and had an onus to cooperate  
12 with the Commission.

13 Do you still take that position,  
14 about operators of bulletin boards and message boards,  
15 that they are a telecommunication undertaking?

16 MR. GOLDBERG: Operators of message  
17 boards? No, I would not take the position that they  
18 are a telecommunication undertaking.

19 MS. KULASZKA: That's what the NCF  
20 was, it was a bulletin board?

21 MR. GOLDBERG: I'll reiterate, this  
22 was at the early stages of our consideration of whether  
23 hate on the Internet was covered by Section 13.  
24 Subsequent to that, we did more research. We had more  
25 legal analysis, and I would say that if similar facts



1           were brought to us today, we would not conclude that an  
2           organization like the National Capital Freenet was a  
3           common -- was a telecommunication undertaking.

4                         We would say -- actually, I can't be  
5           definitive, I'm not a lawyer, but in my opinion a  
6           telecommunications undertaking refers to organizations  
7           like Telus and Bell and Sympatico and organizations  
8           like that.

9                         MS. KULASZKA:   Okay.  If you look at  
10          point 3,

11                                 "The NCF official stressed it's  
12                                 not feasible for them to monitor  
13                                 and control all postings  
14                                 transmitted on their system".

15                                 Right?

16                                 MR. GOLDBERG:   Yes.

17                                 MS. KULASZKA:   That's generally true  
18          for all bulletin boards and message boards, isn't it?  
19          It's very difficult to monitor all the postings because  
20          it's so live?

21                                 MR. GOLDBERG:   Yes.

22                                 MS. KULASZKA:   So when you receive a  
23          complaint about a bulletin board, do you require the  
24          complainant to first complain to the operator of the  
25          bulletin board or the message board?  Give them an

1           opportunity to look at the message, see what's there  
2           and remove it, if possible?

3                   MR. GOLDBERG:  I don't know precisely  
4           what the investigative procedures are.  I do know that  
5           the Commission, wherever possible, tries to encourage  
6           the resolution of Human Rights issues before they  
7           become complaints or even in the process of the  
8           Commission investigating a complaint, the Commission is  
9           always in favor of the parties resolving the matter  
10          without need for formal processes.

11                   So, yes, I would assume that that  
12          would apply with regard to Section -- I know that that  
13          applies with regard to Section 13 complaints.

14                   MS. KULASZKA:  A complaint is  
15          required.  They need to complain first and see if the  
16          material is taken down.

17                   MR. GOLDBERG:  No, complaint isn't  
18          necessarily required, as I testified previously.  All  
19          major Internet providers have acceptable use policies.  
20          Almost in variably the --

21                   MS. KULASZKA:  We're misunderstanding  
22          here.  Say somebody finds something on a bulletin board  
23          they don't like?  We're talking about a complaint to  
24          the operator of the bulletin board, not a complaint  
25          under Section 13.

1 MR. GOLDBERG: Yes, okay.

2 MS. KULASZKA: Does the Commission  
3 say to a potential complainant, you should complain to  
4 the operator of the bulletin board, see if they're  
5 aware of it and whether they will remove it before you  
6 lay a complaint with us?

7 MR. GOLDBERG: That I don't know. As  
8 a general proposition, though, the Commission does  
9 before it accepts a complaint, does at ask complainants  
10 whether, if they have tried to resolve it through other  
11 means. The Commission, the Canadian Human Rights Act,  
12 clearly provides and in fact encourages potential  
13 complainants to resolve their complaints by --

14 MS. KULASZKA: Before a complaint is  
15 laid?

16 MR. GOLDBERG: Yes, before a  
17 complaint is laid.

18 MS. KULASZKA: And how long has that  
19 procedure been in force?

20 MR. GOLDBERG: I believe it's part of  
21 the statute.

22 MS. KULASZKA: So from 1978?

23 MR. GOLDBERG: Yes.

24 MS. KULASZKA: Maybe we could just  
25 look at the other volume, it's R-19, I think, and look

1 at tab 5.

2 MR. GOLDBERG: Yes.

3 MS. KULASZKA: And that's at the top  
4 and it says "Canadian Human Rights Act Overview  
5 Complaints"?

6 MR. GOLDBERG: I'm sorry?

7 MS. KULASZKA: I think you've got the  
8 wrong volume. R-19.

9 THE REGISTRAR: It's marked R-18.

10 MR. GOLDBERG: Which tab?

11 MS. KULASZKA: Tab 5. It's a  
12 printout from the Canadian Human Rights Commission.  
13 It's hard to read. Overview of Complaints?

14 MR. GOLDBERG: Yes.

15 MS. KULASZKA: Are you familiar with  
16 that document?

17 MR. GOLDBERG: I've seen it  
18 previously, yes.

19 THE CHAIRPERSON: It looks like an  
20 FAQ from the website again.

21 MR. GOLDBERG: Actually, I think it's  
22 an on-line questionnaire with regard to filing a  
23 complaint.

24 MS. KULASZKA: Now, at the very  
25 bottom it says at number 9,

1 "Have you exhausted all other  
2 redress mechanisms available to  
3 you? The Canadian Human Rights  
4 Act allows the Commission to  
5 refer complainants to other  
6 available redress procedures,  
7 such as grievance processes and  
8 procedures under other  
9 legislation and it does so in  
10 the majority of cases, however,  
11 at the end of the process should  
12 the complainant be dissatisfied  
13 with the result, he or she could  
14 return to the Commission.  
15 Complainants still have to file  
16 complaint with the Commission  
17 within a one-year period."

18 Is that what you are talking about,  
19 or are you talking about simply trying to resolve it  
20 with someone?

21 MR. GOLDBERG: That's, in part, what  
22 I'm talking about there. There is the statutory  
23 provision under Section 41, I believe, that the  
24 Commission may refer a complaint to an alternative  
25 means of redress if it believes that the matter

1           complained of can be revolved through an alternative  
2           means of redress, such as a grievance or an internal  
3           complaint system.

4                               But in order to minimize the need to  
5           have formal decisions of the Commission and to get  
6           bogged down in process, the Commission will recommend  
7           to complainants -- well, actually will ask  
8           complainants, as they are asking in this questionnaire,  
9           whether they have sought alternate means of redress  
10          before the Commission makes a decision to refer the  
11          matter to alternate redress.

12                              MS. KULASZKA: I would like to  
13          produce that tab. If you could just look through it,  
14          Mr. Goldberg. These are just printouts from the  
15          Commission website. Other redress procedures. These  
16          are kind of directions given to potential complainants  
17          on the website?

18                              MR. GOLDBERG: That's correct.

19                              MS. KULASZKA: If I could produce  
20          that?

21                              THE CHAIRPERSON: What time do you  
22          have to leave for the airport, sir?

23                              MR. GOLDBERG: I was hoping to go  
24          leave --

25                              MS. BLIGHT: Could we conduct this

1 off the record, just in order that Mr. Goldberg's  
2 arrangements can be --

3 THE CHAIRPERSON: Okay. Off the  
4 record.

5 (DISCUSSION OFF THE RECORD)

6 THE CHAIRPERSON: We just had some  
7 discussion about timing, and I do want to put on the  
8 record that yesterday counsel for the interested  
9 parties, Canadian Jewish Congress, B'nai Brith and  
10 friends of Simon Wiesenthal, were not present. And  
11 today, in addition to those groups not being present,  
12 also Mr. Christie is not present, but the remaining  
13 parties are.

14 MS. KULASZKA: Mr. Warman was not  
15 present.

16 THE CHAIRPERSON: That Mr. Warman is  
17 not present. That was placed on the record by Mr.  
18 Fromm.

19 So let's take a quick 10-minute  
20 break. I think we can go until -- that will give us an  
21 hour till about 1:30. Is that okay? And then we'll  
22 come back for our own discussion afterward.

23 --- Recess taken at 12:20 p.m.

24 --- Upon resuming at 12:30 p.m.

25 MS. KULASZKA: Just before we go any

1 further with tab 8, I want to put on the record this  
2 entire tab was produced by the respondent. It was not  
3 disclosed by the Commission.

4 Do you know whether you gave this to  
5 Mr. Vigna?

6 THE CHAIRPERSON: Tab 8 of which  
7 exhibit?

8 MS. KULASZKA: R-17.

9 MR. GOLDBERG: I don't recall.

10 MS. KULASZKA: Yes, you are really  
11 going to have to speak into the mic.

12 MR. GOLDBERG: I don't recall.

13 MS. KULASZKA: I can't hear you, just  
14 to let you know.

15 MS. BLIGHT: I know there were  
16 several documents that were produced with respect to  
17 the Capital Freenet discussions, but I can't advise as  
18 to whether any of the specific ones are now here.

19 THE CHAIRPERSON: Okay.

20 MS. KULASZKA: This one was not  
21 produced. This was produced by the respondent.

22 THE CHAIRPERSON: Disclosed, you  
23 mean. When you say produced, you mean disclosed?

24 MS. KULASZKA: It was disclosed and  
25 produced by the respondent.



1 THE CHAIRPERSON: Yes, but not by the  
2 Commission is what you are saying?

3 MS. KULASZKA: No, the Commission  
4 never disclosed it.

5 THE CHAIRPERSON: Okay.

6 MS. KULASZKA: If we could go back to  
7 page 10.

8 THE CHAIRPERSON: Page 10?

9 MS. KULASZKA: Yes, page 10 of tab 8.  
10 Number 3, the NCF officials stressed to you it wasn't  
11 feasible for them to monitor and control all the  
12 postings transmitted on their system. And they noted  
13 that they already had a complaints procedure through  
14 which the members could officially notify the concerns.  
15 Is that right?

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

17 MS. KULASZKA: Did that satisfy you,  
18 the fact they had a complaints procedure?

19 MR. GOLDBERG: I don't know that we  
20 were looking for satisfaction. We were discussing  
21 issues.

22 MS. KULASZKA: And number 4,  
23 "The NCF representatives  
24 reiterated the classic argument  
25 against restrictions on freedom

1 of expression. The best defence  
2 against untruths are truths."

3 THE CHAIRPERSON: Where is that last  
4 comment?

5 MS. KULASZKA: That is number 4.

6 "They noted that the Internet  
7 provides a unique opportunity  
8 for people to rebut hate monger.  
9 Postings on the Internet can be  
10 responded to immediately. This  
11 is quite different from  
12 traditional means of  
13 communication, such as printed  
14 materials where the recipient of  
15 hateful material may never see  
16 the reputations of that  
17 material."

18 Would you agree with that position by  
19 the NCF?

20 MR. GOLDBERG: Well, there are  
21 several aspects to that.

22 MS. KULASZKA: Let's look at "the  
23 unique opportunity to rebut hate mongers"?

24 MR. GOLDBERG: Yes, that's true.

25 MS. KULASZKA: And how was that true?

1 MR. GOLDBERG: Because the Internet  
2 is the interactive real-time method of communicating.

3 MS. KULASZKA: Especially with a  
4 message board, people are posting backwards and  
5 forwards?

6 MR. GOLDBERG: That's correct.

7 MS. KULASZKA: And postings on the  
8 Internet can be responded to immediately. Is that  
9 true?

10 MR. GOLDBERG: Often that's the case,  
11 yes. Not always.

12 MS. KULASZKA: How is that different  
13 from a telephone hot line message?

14 MR. GOLDBERG: Telephone hot line  
15 messages you call in, you hear a message. You can't  
16 respond to the message.

17 MS. KULASZKA: Now, the next  
18 paragraph,

19 "The NCF representatives noted  
20 by way of example the use of the  
21 Internet by Holocaust deniers.  
22 Each posting by a Holocaust  
23 denier is almost immediately  
24 refuted or challenged,  
25 therefore, anyone reading these

1                                    messages also has immediate  
2                                    access to the truth?"

3                                    Did they show you any examples of  
4                                    that?

5                                    MR. GOLDBERG:  No, not to the best of  
6                                    my recollection.

7                                    MS. KULASZKA:  And the next  
8                                    paragraph,

9                                    "We explained the Commission was  
10                                    required to follow a law in  
11                                    precedents established by the  
12                                    courts."

13                                    Had you received a complaint with  
14                                    respect to this bulletin board?  Were you investigating  
15                                    a complaint?

16                                    MR. GOLDBERG:  No, we were not  
17                                    investigating a complaint.

18                                    MS. KULASZKA:  So how were you  
19                                    following the law?  What were you doing?  What is  
20                                    your mandate to do what you were doing?

21                                    MR. GOLDBERG:  Our mandate was  
22                                    pursuant to Section 27(H) of the Canadian Human Rights  
23                                    Act which says,

24                                    "The Commission shall, so far as  
25                                    practical and consistent with

1 the application of part 3, try  
2 by persuasion, publicity or any  
3 other means that it considers  
4 appropriate, to discourage and  
5 reduce discriminatory practices  
6 referred to in Sections 5 to  
7 14.1."

8 MS. KULASZKA: Okay. If you turn to  
9 page to page 11,

10 "Jerry Savard undertook to write  
11 to someone at the NCF outlining  
12 the undertakings the Commission  
13 is seeking from NCF."

14 What undertakings were you seeking?

15 MS. BLIGHT: Mr. Chair, just before  
16 we go much further, I would like to rise to advise the  
17 Tribunal that this letter that the witness is now being  
18 cross-examined on was, in fact, produced by the  
19 Commission, although in a somewhat more edited format.

20 THE CHAIRPERSON: Perhaps that may  
21 have prevented her from identifying it.

22 MS. BLIGHT: It's readily identified  
23 based on the --

24 THE CHAIRPERSON: I was being  
25 facetious.

1 MS. KULASZKA: I have to ask Ms.  
2 Blight whether that was revealed. In any event, this  
3 version is the respondent's version. You can see the  
4 stamp --

5 THE CHAIRPERSON: I've come to  
6 realize when I see references to 19.1 and the series of  
7 numbers at the bottom, the five numerals at the bottom,  
8 that we are looking at material that was probably  
9 disclosed under Access to Information.

10 MS. KULASZKA: It may have been  
11 blanked out so completely, I couldn't recognize it.

12 THE CHAIRPERSON: You got the joke  
13 finally.

14 MS. KULASZKA: What were the  
15 undertakings the Commission was seeking from the NCF?

16 MR. GOLDBERG: I don't recall.

17 MS. KULASZKA: Wouldn't that be  
18 important to remember? You're meeting with them, you  
19 want a protocol, you are asking for undertakings.

20 MR. GOLDBERG: This meeting happened  
21 February 16th, 1995. That's over 20 years ago -- no,  
22 that's 12 years ago. I don't recall what I did in  
23 meetings last week, let alone what I did in a meeting  
24 12 years ago.

25 MS. KULASZKA: But you were meeting

1 with ISPs quite a lot. What does he want from them?  
2 You say you don't have any policy with respect to them.  
3 Are you asking them for undertakings? What do you want  
4 from them? Why are you meeting with them?

5 MR. GOLDBERG: We meet with them to  
6 discuss the Commission's mandate pursuant to Section  
7 13, and we're carrying out our mandate pursuant to  
8 Section 27(H). I will not repeat it again.

9 We are meeting to discuss with them  
10 how to uphold the laws of Canada. They are interested  
11 in meeting with us. We don't force anybody to meet  
12 with us. They meet with us on their own position and  
13 we discuss issues with them.

14 MS. KULASZKA: What is it you want  
15 from them? You say so they can uphold the law. It's  
16 not up to them to uphold the law.

17 MR. GOLDBERG: It's the duty of every  
18 citizen of Canada to uphold the laws of Canada.

19 MS. KULASZKA: So you want them to  
20 censor material?

21 MR. GOLDBERG: I did not say that.

22 MS. KULASZKA: You are not telling us  
23 what you want from them --

24 MR. GOLDBERG: -- exactly what we  
25 want from them. We want their cooperation in the

1 furtherance of the mandate of the Canadian Human Rights  
2 Commission as set out in the Canadian Human Rights Act  
3 which is a statute of Parliament.

4 It's the Commission's view, all  
5 citizens of Canada have an interest in Canada ensuring  
6 the laws of Canada are upheld, and as citizens of  
7 Canada and organizations that come under the  
8 jurisdiction of the Commission, will cooperate within  
9 the limits of the law and within the limits of their  
10 discretion as what is appropriate for their  
11 organization to do in the furtherance of the laws of  
12 Canada.

13 MS. KULASZKA: That's what I want, a  
14 list of what is appropriate for them to do.

15 MR. GOLDBERG: There is no such list.  
16 We've never given them any such list.

17 MS. KULASZKA: That's a little scary  
18 for an ISP, isn't it? You keep telling them they have  
19 to uphold the law but you never tell them what they  
20 want. It's kind of scary.

21 MR. GOLDBERG: In my experience after  
22 many meetings with Internet service providers, I have  
23 never heard an Internet service provider express fear  
24 or concern that the Commission was forcing them to do  
25 anything.



1                   I can assure you that organizations  
2           like Bell Canada, Telus and other large Internet  
3           service providers are well able to protect their own  
4           interests and they are not intimidated by the  
5           Commission.

6                   MS. KULASZKA: Well, let's continue  
7           on. The National Capital Freenet. Let's go to page  
8           12.

9                   This is an attached letter obviously  
10          received from the NCF outlining the National Capital  
11          Freenet's proposed process for dealing with complaints  
12          is attached for your information.

13                  And if you turn to page 13, there is  
14          a letter from Freenet,

15                   "The purpose of this letter is  
16                  to outline a proposed process  
17                  for dealing with complaints  
18                  brought to the attention of the  
19                  Canadian Human Rights Commission  
20                  about the actions of members of  
21                  the National Capital Freenet."

22                  Had you asked them to come up with a  
23          proposed process?

24                  MR. GOLDBERG: I can't recall  
25          specifically, but given the contents of the letter,

1           it's possible that we asked or that they volunteered to  
2           communicate with us on this issue.

3                           MS. KULASZKA:  If you look at the  
4           next paragraph, they say they have a user agreement.  
5           Then they state,

6    "We do not take explicit action  
7   to ensure that members comply  
8   with the agreement acting  
9   instead on complaints brought to  
10    our attention.  We feel this is  
11    both the most practical method  
12    of dealing with the occasional  
13    contravention and the most  
14    appropriate balance between  
15    managing the system responsibly  
16    and limiting the assumed  
17    liability which would accrue  
18    from a more interventionalist  
19    approach."

20    Now, that raises issue of assumed  
21           liability, correct, that if you start to intervene and  
22           edit, you are making yourself liable?

23    MR. GOLDBERG:  What is the question?

24    MS. KULASZKA:  You understand the  
25           issue that they were raising?

1 MR. GOLDBERG: Yes, I understand the  
2 issue.

3 MS. KULASZKA: Had they raised that  
4 with you during the meeting?

5 MR. GOLDBERG: I don't know. I don't  
6 recall, but they are raising it in the letter, and I  
7 accept they raise that issue.

8 MS. KULASZKA: And they state there  
9 is occasional contraventions. Would you agree that in  
10 fact bulletin boards -- it's a very occasional posting  
11 that would contravene Section 13?

12 MR. GOLDBERG: Yes, extremely.

13 MS. KULASZKA: It's a very, very tiny  
14 percentage of all bulletin boards?

15 MR. GOLDBERG: Absolutely.

16 MS. KULASZKA: The letter goes onto  
17 propose a type of protocol. In the last paragraph,

18 "The Canadian Human Rights  
19 Commission wishes to proceed  
20 beyond the warning stage. The  
21 NCF will cooperate subject to  
22 the understanding that we have  
23 assured our members that the  
24 personal information they have  
25 provided us will remain

1 private."

2 On the next page, 14, there is a  
3 letter from Jerry Savard. Do you recognize that  
4 letter?

5 MR. GOLDBERG: No.

6 MS. KULASZKA: There's discussions  
7 with Blue Sky Freenet of Manitoba. They have a  
8 membership policy, sent to the National Capital  
9 Freenet.

10 Were you aware -- do you know who  
11 Blue Sky Freenet is?

12 MR. GOLDBERG: No, I do not.

13 MS. KULASZKA: Next page, 15, another  
14 letter to Freenet. In the second paragraph, the third  
15 sentence,

16 "We believe that your policy  
17 user agreement should be one  
18 that prohibits the use of the  
19 National Capital Freenet to  
20 communicate hatred or concept  
21 against anyone because of that  
22 person's race, ethnic origin,  
23 colour, et cetera. This would  
24 not only send a correct message  
25 but also limits your liability."

1                   Is that one of the things that the  
2 Commission has asked from ISPs?

3                   MR. GOLDBERG: We've asked -- we have  
4 certainly suggested to them that their acceptable use  
5 policies be consistent with the provisions of the  
6 Canadian Human Rights Act.

7                   MS. KULASZKA: I'm sorry, if you  
8 could just lean in your mic.

9                   MR. GOLDBERG: We have certainly  
10 asked Internet service providers that their acceptable  
11 use policies, which almost invariably, in my opinion,  
12 almost invariably make reference to the unlawful or --  
13 unlawful or inappropriate use of their Internet  
14 services; that that include a reference to the Section  
15 13 of the Canadian Human Rights Act, which prohibits  
16 the repeated telephonic communication by means of the  
17 Internet of messages likely to expose groups to hatred  
18 or contempt.

19                   MS. KULASZKA: And have ISPs  
20 generally have been cooperative?

21                   MR. GOLDBERG: Yes, they have.

22                   MS. KULASZKA: If you could turn to  
23 page 16. This is another letter to the National  
24 Capital Freenet. Second paragraph,

25                   "Contrary to the first opinion

1                   you received in April, I believe  
2                   the Canadian Human Rights  
3                   Commission would have  
4                   jurisdiction over this new  
5                   medium because of the use of  
6                   telephone lines to communicate."

7                   Were you aware that the Freenet had  
8                   got a legal opinion saying that the Commission didn't  
9                   have jurisdiction?

10                  MR. GOLDBERG: No, I was not aware.

11                  MS. KULASZKA: Then last paragraph,  
12                    "In the meantime I will be  
13                    consulting with the head office  
14                    in order to see what we could do  
15                    to provide you guidance on  
16                    standards to apply and the  
17                    respect of freedom of speech."

18                  Do you know what that's referring to?

19                  MR. GOLDBERG: No, I do not. I've  
20                  never seen this letter before.

21                  MS. KULASZKA: In your meetings with  
22                  ISPs, do you talk about the standards to apply with  
23                  respect to hate messaging and respect of freedom of  
24                  speech?

25                  MR. GOLDBERG: Yes, we do.

1 MS. KULASZKA: And what do you say?

2 MR. GOLDBERG: We refer them to the  
3 Supreme Court decision in Taylor.

4 MS. KULASZKA: With respect to what  
5 hate is?

6 MR. GOLDBERG: That's correct.

7 MS. KULASZKA: And how about freedom  
8 of speech?

9 MR. GOLDBERG: The Supreme Court  
10 decision, as I'm sure you'll recall, found that Section  
11 13 violates freedom of expression under the charter --  
12 the Canadian Charter of Rights and Freedoms, but it was  
13 a limitation demonstrably justified in a free and  
14 democratic society.

15 MS. KULASZKA: If you could turn to  
16 page 17. This was a memo. You received a copy of this  
17 memo, apparently your name is at the top, Harvey  
18 Goldberg. Do you remember this memo?

19 MR. GOLDBERG: No, I don't have any  
20 specific recollection of this memo, but I accept I  
21 received it.

22 MS. KULASZKA: If I could, I would  
23 like to produce the entire tab. Would there be any  
24 objection?

25 THE CHAIRPERSON: After that page 17

1           it's all one document?

2                           MS. KULASZKA:  These are a series of  
3 documents about a back and forth with the National  
4 Capital Freenet.  This is after a meeting that Mr.  
5 Goldberg has with them with other officials from the  
6 Commission, and then there's a series of letters back  
7 and forth.

8                           THE CHAIRPERSON:  I mean after page  
9 17 and following.  That's not a series of letters.  
10 Those are appendices.

11                           MS. KULASZKA:  Yes, it's an  
12 attachment to that letter.  I've got a note, "Produced  
13 1 to 24."  Has this all been produced.

14                           THE CHAIRPERSON:  It has been  
15 produced, okay.

16                           MS. KULASZKA:  If we turn to the next  
17 tab.  Mr. Goldberg it's tab 9.

18                           MR. GOLDBERG:  Yes.

19                           MS. KULASZKA:  This is another a  
20 memorandum which you received.  Your name is at the  
21 top.  It's from a P. Child, Compliance Section.  Says  
22 that you were part of a group which met to review and  
23 discuss the Commission's position in dealing with the  
24 publication of hate messages.  This is from 1995.

25                           Do you remember when that meeting was



1 about?

2 MR. GOLDBERG: No, I have no  
3 recollection of that meeting, but I accept, based on  
4 this memo, that the meeting occurred and I participated  
5 in it.

6 MS. KULASZKA: The next paragraph  
7 states that,

8 "There's a sense that the  
9 secretary general was not  
10 briefed in a systematic way in  
11 issues relating to hate  
12 messages. He suggested that a  
13 committee comprising of those  
14 present should be formed to  
15 review our approach from time to  
16 time to an issue that is of  
17 growing concern and interest to  
18 the Commission."

19 So did a group form?

20 MR. GOLDBERG: I don't have  
21 recollection -- recollect the group, but I accept what  
22 it says in this memo, that there was such a committee.

23 MS. KULASZKA: It was agreed that the  
24 compliance manual was to be reviewed to determine  
25 whether it should be amended and attached with the

1 compliance manual. If you look at page 2 and 3.

2 Were you familiar with the compliance  
3 manual at that time? I think the date is 1994.

4 MR. GOLDBERG: I knew that there was  
5 a compliance manual. I knew it included information of  
6 this type. I had no involvement in drafting it.

7 MS. KULASZKA: Does the compliance  
8 manual differ considerably today for hate line  
9 messages?

10 MR. GOLDBERG: With regard to hate  
11 line messages?

12 MS. KULASZKA: Yes. If you turn to  
13 page 2 you'll see a copy of the compliance manual  
14 that --

15 MR. GOLDBERG: Yes, I have that. I  
16 don't know.

17 MS. KULASZKA: You don't know?

18 MR. GOLDBERG: I don't know if the  
19 manual today has the same information in it or not.

20 MS. KULASZKA: You haven't seen the  
21 manual with respect to hate messages?

22 MR. GOLDBERG: I've seen the manual  
23 in a cursory way, yes.

24 MS. KULASZKA: The last page was a  
25 memo which you received, also from P. Child. Do you

1 recognize that document?

2 MR. GOLDBERG: No, I do not.

3 MS. KULASZKA: The last paragraph,  
4 there was some discussion on how a secretary general  
5 should be kept informed of hate propaganda. What role  
6 is the secretary general of the Commission?

7 MR. GOLDBERG: He's chief  
8 administrative officer of the Commission.

9 MS. KULASZKA: And do you know how  
10 that occurs today? Do you get reports give to the  
11 secretary general on Section 13?

12 MR. GOLDBERG: I don't give reports.  
13 If you mean, do I do periodic reports on Section 13?  
14 No, I do not. Do I do reports on issues arise that  
15 concern Section 13? Yes, I have done so.

16 MS. KULASZKA: What kind of issues  
17 have you reported on?

18 MR. GOLDBERG: The only one I recall  
19 is when the European -- I believe it was the European  
20 Union adopted the International Convention on the  
21 Prevention of Cyber Crime, the option protocol dealing  
22 with the criminal use of the Internet. I believe I did  
23 a memo to the Chief Commissioner, or the secretary  
24 general at the time, advising them that this occurred.

25 MS. KULASZKA: I would like to

1 produce that tab, tab 9.

2 THE CHAIRPERSON: Yes.

3 MS. KULASZKA: Go to the next tab,  
4 tab 10. This was an e-mail. The subject is "Hate  
5 Crime Task Force". It was sent to a group of people,  
6 including yourself. It's about the Canadian Police  
7 College, and the College was trying to come up with a  
8 National task force. There was representation from the  
9 Canadian Jewish Congress, Canadian Council Christians  
10 and Jews, Solicitor General's office, and others  
11 including the Commission.

12 Was that set up?

13 MR. GOLDBERG: I have no  
14 recollection.

15 MS. KULASZKA: You don't remember?

16 MR. GOLDBERG: I do not remember.

17 MS. KULASZKA: Do you remember  
18 receiving this e-mail?

19 MR. GOLDBERG: I do not remember  
20 receiving this e-mail.

21 MS. KULASZKA: I wonder if there  
22 would be any objection to the document being produced  
23 by the Commission?

24 THE CHAIRPERSON: It's addressed to  
25 Mr. Goldberg.

1 MS. KULASZKA: Yes. Eddie Taylor.

2 MS. BLIGHT: It appears to be a  
3 document from the Commission.

4 THE CHAIRPERSON: Right. What's  
5 attached to this is a newspaper article. Is that  
6 related?

7 MS. KULASZKA: I meant just the first  
8 page. The second page is an article from the Canadian  
9 Jewish News regarding the passage of this law. I would  
10 like it produced, not through Mr. Goldberg but if it's  
11 on consent, if there is no objection, I would like to  
12 produce it. I just want to use it in argument.

13 MR. FOTHERGILL: No, objection based  
14 on its authenticity.

15 THE CHAIRPERSON: It doesn't go to  
16 the truth of whatever was written here, certainly.

17 MS. KULASZKA: Mr. Goldberg, let's go  
18 back to tab 4. Mr. Christie was asking you a series of  
19 questions about that. These are e-mails and you did  
20 produce those e-mails for disclosure?

21 MR. GOLDBERG: On what page are we  
22 referring to?

23 THE CHAIRPERSON: I lost the tab.  
24 Which tab?

25 MS. KULASZKA: Maybe first we'll just

1 go to tab -- sir, we'll go to tab 5 first.

2 THE CHAIRPERSON: Of?

3 MS. KULASZKA: Of R-17.

4 Mr. Goldberg, if you go take a look  
5 at this, these are some transcripts of some speeches.  
6 First one is Opening Remarks of the Third International  
7 Symposium of Hate on the Internet, September 11, 2006.  
8 Were you present there?

9 MR. GOLDBERG: Yes, I was. This is  
10 not a transcript of a speech. It's a draft a speech.

11 MS. KULASZKA: Do you recognize this  
12 document?

13 MR. GOLDBERG: Yes, I do.

14 MS. KULASZKA: Did you write this  
15 speech?

16 MR. GOLDBERG: I participated in  
17 writing the speech, yes.

18 MS. KULASZKA: If I could produce the  
19 document, pages 1 to 5.

20 THE CHAIRPERSON: Okay. Did you  
21 participate in this draft?

22 MR. GOLDBERG: Yes, I did.

23 MS. BLIGHT: Mr. Chairman, I'm  
24 content to be cooperative in terms of marking the  
25 relevant documentation the Commission has produced. And

1 we did produce this document. But it would be useful  
2 to have some indication from Ms. Kulaszka as to what  
3 the relevance of the document is or to what purpose it  
4 will be put.

5 THE CHAIRPERSON: I haven't seen it.  
6 I don't know it says, if anything.

7 MS. BLIGHT: You have required that  
8 that be stated on record earlier.

9 THE CHAIRPERSON: What's the  
10 relevance, Ms. Kulaszka?

11 MS. KULASZKA: It's a speech given by  
12 David Landry. What's his position?

13 MR. GOLDBERG: He's a full-time  
14 member of the Canadian Human Rights Commission.

15 MS. KULASZKA: Discussing hate on the  
16 Internet, he talks about the work of the Commission.  
17 And I just want to ask Mr. Goldberg a series of  
18 questions on it. Always goes to the effect of Section  
19 13 on freedom of speech.

20 THE CHAIRPERSON: Go ahead.

21 MS. KULASZKA: If you could turn to  
22 page 3 of the speech, Mr. Goldberg. This is a list of  
23 a Commission-wide strategy which is used under Section  
24 13. The third one is "Ongoing discussions with  
25 Internet service providers on ways to cooperate to

1           combat hate."

2                                 What are those ways to cooperate?

3                                 MR. GOLDBERG:   The ways to cooperate  
4           is to inform and discuss with Internet service  
5           providers the provisions of Canadian Human Rights Act,  
6           specifically Section 13, and discuss with them how, in  
7           accordance with their operating procedures acceptable  
8           use policies, they might help to ensure that the laws  
9           of Canada are respected and enforced.

10                                MS. KULASZKA:   Now, the next page  
11           states,

12                                "The work of the Commission is  
13                                only a small part of a much  
14                                broader strategy," -- and it  
15                                goes on about how:

16                                "If there's to be any hope of  
17                                success it also requires  
18                                international cooperation."

19                                Would you agree that there's a real  
20           feeling that the Commission -- that the law's  
21           ineffective in controlling hate?

22                                MR. GOLDBERG:   No, there's no such  
23           opinion at the Commission.

24                                MS. KULASZKA:   Well, what's the  
25           opinion?



1                   MR. GOLDBERG: The opinion of the  
2 Commission is that Parliament has passed the Canadian  
3 Human Rights Act. The Canadian Human Rights Act  
4 mandates the Commission to -- the Commission is  
5 mandated under the Act to administer the Canadian Human  
6 Rights Act. That is what we're doing.

7                   It's not up to us to determine  
8 whether its effective or not effective. That's a  
9 determination to be made by Parliament if they wish to  
10 amend the Canadian Human Rights Act.

11                  MS. KULASZKA: Okay. If you turn to  
12 page 6, they are speaking out by Michelle  
13 Falardeau-Ramsay, deputy Chief Commissioner of the  
14 Commission. This is a speech she gave in March 1996.  
15 Were you familiar with that speech?

16                  MR. GOLDBERG: I don't have any  
17 recollection of it. I may have seen it at the time it  
18 was produced. I don't think that I wrote it, but I  
19 might have. I'm not sure. Or I should say, I might  
20 have been involved in the drafting.

21                  MS. KULASZKA: Can you turn to page  
22 7, that's the first page of the speech. States,  
23 "Let me start by saying that the  
24 legal and societal questions  
25 arising from the issue of hate

1                   propaganda have no easy answers.  
2                   While legislators at the courts  
3                   have attempted to define and  
4                   interpret what exactly is meant  
5                   by hate speech this has not been  
6                   a simple process."

7                   Would you agree that that's an  
8                   accurate statement?

9                   MR. GOLDBERG: Yes, I would.

10                  MS. KULASZKA: Turning to page 9,  
11                  last paragraph,

12                               "Hate propaganda is something  
13                               altogether different and should  
14                               not be confused with the types  
15                               of discrimination I have  
16                               mentioned."

17                  And she's gone on for several  
18                  paragraphs previous to this talking about other types  
19                  of discrimination. But she says hate propaganda is  
20                  something altogether different.

21                  THE CHAIRPERSON: What page are you  
22                  at? I didn't follow you.

23                  MS. KULASZKA: On page 9, it's the  
24                  last paragraph. Previously she's been talking about  
25                  other types of discrimination. But she says,

1 "Hate propaganda is something  
2 altogether different and should  
3 not be confused with the types  
4 of discrimination I have  
5 mentioned. When we talk about  
6 hate propaganda, we are talking  
7 about a deliberate attempt to  
8 incite hatred against a  
9 particular group on the basis of  
10 prohibited group on the basis of  
11 a prohibited ground of  
12 discrimination, such as race,  
13 religion, ethnic origin or, as  
14 more recently Human Rights  
15 jurisprudence has indicated,  
16 sexual orientation."

17 Is that an accurate statement of how  
18 the Commission approaches Section 13 cases?

19 MR. GOLDBERG: I'm not sure that it  
20 would be an accurate -- that the Commission would make  
21 exactly this statement today. Because this statement,  
22 I think, implies something about intent, and intent is  
23 not a consideration under the Canadian Human Rights  
24 Act.

25 MS. KULASZKA: But Michelle

1 Falardeau-Ramsay saw that in 1996, right?

2 MR. GOLDBERG: As I said, I don't  
3 have a recollection of this speech. I don't know if it  
4 was in fact delivered but --

5 THE CHAIRPERSON: I have his answer,  
6 Ms. Kulaszka. Go on, please.

7 MS. KULASZKA: Turning to page 15,  
8 middle paragraph. Middle of that paragraph it states,  
9 "Several other hate line  
10 operators have been jailed in  
11 the past for failing to obey  
12 Tribunal orders, including John  
13 Ross Taylor and Wolfgang Droege,  
14 who heads the Ontario-based  
15 Heritage Front."

16 Do you know how many people have  
17 ultimately spent time in jail as a result of Section 13  
18 complaints?

19 MR. GOLDBERG: I believe it's four or  
20 five. I may be wrong.

21 MS. KULASZKA: Do you know who those  
22 people are?

23 MR. GOLDBERG: I believe Mr. Taylor,  
24 Mr. Droege, Mr. Winnicki. I believe there was another  
25 case in British Columbia, the name I can't remember,

1 and I don't know if there are any others.

2 MS. KULASZKA: Gary Schipper?

3 MR. GOLDBERG: That name doesn't ring  
4 any bells with me.

5 MS. KULASZKA: To your knowledge, how  
6 many other people, apart from Section 13, have been  
7 jailed for contempt orders?

8 THE CHAIRPERSON: Contempt orders  
9 under --

10 MS. KULASZKA: By Tribunals.

11 THE CHAIRPERSON: Under any aspect of  
12 the Canadian Human Rights Act?

13 MS. KULASZKA: Yeah. Do you know?

14 MR. GOLDBERG: To the best of my  
15 knowledge, none have been.

16 MS. KULASZKA: Can you turn to page  
17 17. First full paragraph,

18 "Moreover, there is a great deal  
19 of controversy among Internet  
20 users, including those who  
21 oppose hate messages, as to  
22 whether there should be any  
23 regulation of the Internet's  
24 content."

25 Is that true?

1                   MR. GOLDBERG: From the e-mails we  
2 discussed earlier today, that responds to my message on  
3 the use net, yes. That was true at this period. And as  
4 you can see, I'm reflecting what I learned -- excuse  
5 me. I don't know that I wrote this speech, but the  
6 Commission is reflecting what we learned from that kind  
7 of experience in this speech.

8                   MS. KULASZKA: If you turn to page  
9 19, there's a discussion of the fact that Internet  
10 users post messages anonymously to make themselves  
11 difficult to trace.

12                   Is that still true today?

13                   MR. GOLDBERG: Yes.

14                   MS. KULASZKA: In the next paragraph,  
15                    "And even if these technological  
16                    complications did not exist,  
17                    litigation would still be a last  
18                    resort, as it is with other  
19                    types of Human Rights  
20                    complaints. Instead, we would  
21                    prefer that the companies and  
22                    organizations which provide  
23                    Internet access create their own  
24                    mechanisms for restricting hate  
25                    messages. Already some

1 community-based Internet access  
2 providers, known as Freenet,  
3 have established internal  
4 complaints, procedures, to deal  
5 with objectional material,  
6 including hate messages and  
7 racial slurs. The Blue Sky  
8 Freenet in Winnipeg, for  
9 example, has a policy of  
10 suspending of ultimately denying  
11 Freenet access to individuals  
12 who post these kind of  
13 messages."

14 Correct?

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

16 MS. KULASZKA: That would be a  
17 primary focus of your work under Section 13 with  
18 meeting with ISPs?

19 MR. GOLDBERG: Could you repeat the  
20 question.

21 MS. KULASZKA: That would be a  
22 primary focus of your work in meeting ISPs, getting  
23 them to police themselves, getting them to control the  
24 messages, control the websites?

25 MR. GOLDBERG: No, I wouldn't put it

1 that way. I would put it that we meet with them to ask  
2 them to be aware of the Canadian Human Rights Act and  
3 provisions of Section 13 and to act accordingly.

4 MS. KULASZKA: Would there be any  
5 objection to the production of that speech? It would  
6 be from pages 6 to 21.

7 MS. BLIGHT: No, Mr. Chairman.  
8 Insofar as the witness has advised you that he does not  
9 know the speech was ever given, similarly it's produced  
10 on that basis.

11 THE CHAIRPERSON: It's merely  
12 speaking notes.

13 MS. KULASZKA: Speaking notes, yes.

14 THE CHAIRPERSON: Produced. Have we  
15 already produced the first series of pages?

16 MS. KULASZKA: Yes.

17 The next page, page 22. These are  
18 speaking notes, again, by the deputy chief Commissioner  
19 1995, subject is Combatting Hate Propaganda. If you  
20 could have a look at that. Are you familiar with that  
21 speech?

22 MR. GOLDBERG: Page 22?

23 MS. KULASZKA: Yes. Bottom date  
24 November 30, 1995. Do you have that?

25 MR. GOLDBERG: Yes, I do. I don't



1 have any personal recollection of the speech.

2 MS. KULASZKA: If you look at the  
3 last page, look at page 27, start at page 27. The last  
4 sentence,

5 "But no matter what happens on  
6 the legal front, I believe the  
7 real key to combatting hate  
8 propaganda is education. People  
9 are not inherently racist.  
10 Racism is learned behaviour and  
11 it can be unlearned."

12 Would you agree that's still the  
13 policy of the Commission?

14 MR. GOLDBERG: I don't believe that's  
15 a statement of policy. That's a statement about the  
16 nature of hate.

17 MS. KULASZKA: But part of the  
18 Commission's function is education, is it not?

19 MR. GOLDBERG: Yes, it is.

20 MS. KULASZKA: So the Commission sees  
21 this as a major part of its mandate under Section 13?

22 MR. GOLDBERG: Sees education as a  
23 part of its mandate? Yes, we see education as part of  
24 our mandate under Section 13.

25 MS. KULASZKA: It states, "It is the

1 real key to combatting hate propaganda".

2 MR. GOLDBERG: As I've already  
3 testified, I don't have any recollection of the speech.  
4 It was made by deputy Chief Commissioner 12 years ago.  
5 Not all speeches and every word in a speech necessarily  
6 reflects the policy of the Canadian Human Rights  
7 Commission, so I can't say whether that's the policy  
8 today or if it was the policy then.

9 MS. KULASZKA: You're a head policy  
10 person. Would you agree, does that reflect the policy  
11 of the Commission?

12 MR. GOLDBERG: As I've already  
13 testified, policy is a somewhat of an amorphus thing.  
14 There are written policies, there are consensuses on  
15 issues within the Commission, there are decisions the  
16 Commission makes with regard to complaints. These all  
17 constitute policy.

18 Michelle Falardeau-Ramsay was  
19 certainly a key player of the policy-making process of  
20 the Commission at that time. So in the broad sense of  
21 the word policy, I guess this was, in a sense, part of  
22 the policy of the Canadian Human Rights Commission at  
23 the time.

24 MS. KULASZKA: To your knowledge,  
25 that was the policy?

1 MR. GOLDBERG: To my knowledge, those  
2 were the views that Michelle Falardeau-Ramsay was  
3 speaking of on behalf of the Commission.

4 MS. KULASZKA: And she was the Deputy  
5 Chief Commissioner?

6 MR. GOLDBERG: She was the Deputy  
7 Chief Commissioner.

8 MS. KULASZKA: If I could produce  
9 that speech, it goes from 22 to 28.

10 THE CHAIRPERSON: The same comments  
11 from the other side?

12 MS. BLIGHT: Yes, Mr. Chairman.

13 MS. KULASZKA: Mr. Goldberg, if you  
14 could go to the next, and I believe the last speech  
15 contained in this tab, it's speaking notes by John  
16 Hucker, secretary general. It was given in 1995. On  
17 page 29?

18 MR. GOLDBERG: Yes.

19 MS. KULASZKA: Given to the Urban  
20 Alliance Race Relations. Are you familiar with that  
21 speech?

22 MR. GOLDBERG: I have no personal  
23 recollection of this speech, no.

24 MS. KULASZKA: If you turn to page 33  
25 of that speech?

1 MR. GOLDBERG: Yes.

2 MS. KULASZKA: Deals with propaganda?

3 MR. GOLDBERG: Yes.

4 MS. KULASZKA: One form of racism  
5 that is blatant and overt is hate propaganda which is  
6 of growing concern to the Commission. Section 13 of  
7 the Canadian Human Rights Act makes it an offence to  
8 use the telephone to disseminate repeated messages that  
9 expose minorities to hatred or contempt. Do you see  
10 that?

11 MR. GOLDBERG: Yes, I do.

12 MS. KULASZKA: Do you know why he  
13 would use the word "offence"?

14 MR. GOLDBERG: No, I do not.

15 MS. KULASZKA: If you could turn the  
16 page. Second paragraph states,

17 "Wolfgang Droege, Gary Schipper  
18 and Kenneth Barker each received  
19 jail sentences."

20 Do you know is that true? Can you  
21 recall that?

22 MR. GOLDBERG: No, I cannot.

23 MS. KULASZKA: Two paragraphs down,  
24 where it starts,

25 "While we have not yet had a

1 formal complaint involving the  
2 Internet, we're looking into  
3 what can be done to curb its use  
4 for racist purposes. We  
5 recognize the Internet itself  
6 cannot be controlled. It covers  
7 too vast an area that technology  
8 makes impossible to monitor all  
9 the messages that are posted on  
10 it and there is little a Human  
11 Rights Commission can do about  
12 messages which originate made  
13 outside Canada."

14 Does that still accurately reflect the  
15 situation?

16 MR. GOLDBERG: We've obviously had  
17 formal complaints. Yes, it reflects the current  
18 situation.

19 MS. KULASZKA: If you look at the  
20 last paragraph on page 35,

21 "The real key to ending  
22 discrimination is changing  
23 attitudes. Here community  
24 groups like the Urban Alliance  
25 play an important role, but they

1 cannot do it alone either."

2 It goes on,

3 "We try to achieve consensus."

4 You'll agree Mr. Hucker is using the  
5 same terminology as Ms. Falardeau-Ramsay was?

6 MR. GOLDBERG: Yes.

7 MS. KULASZKA: To your knowledge, at  
8 that time would that be an accurate reflection of what  
9 the senior people at the Commission were saying?

10 MR. GOLDBERG: I would point out that  
11 both Michelle Falardeau-Ramsay and Mr. Hucker, in  
12 making those statements, were simply reflecting  
13 Parliament's mandate under 27(H) of the Canadian Human  
14 Rights Act which mandates the Commission to use "its  
15 powers of persuasion or any other means it considers  
16 necessary to reduce discriminatory practices."

17 As well as our power -- there's  
18 actually another section at 27 which I haven't quoted  
19 yet, which is,

20 "The Commission shall develop  
21 and conduct information programs  
22 to foster public understanding  
23 of this Act and of the role and  
24 activities of the Commission  
25 thereunder and to foster public

1 recognition of the principles  
2 described in Section 2. Section  
3 2 is the purpose section of the  
4 Act which provides --"

5 THE CHAIRPERSON: I'm familiar with  
6 it, sir. It's 1:30. Maybe it would be an appropriate  
7 time for the witness to depart, so we'll take our lunch  
8 break at this point.

9 MS. KULASZKA: Can I just produce  
10 that last speech?

11 THE CHAIRPERSON: Yes. Under the  
12 same conditions as the previous ones, right?

13 MS. BLIGHT: Same provisos.

14 THE CHAIRPERSON: So that means the  
15 whole tab is produced. We'll rise at this point.

16 --- Recess taken at 1:30 p.m.

17 --- Upon resuming at 3:00 p.m.

18 THE CHAIRPERSON: What are the issues  
19 that we have to discuss this afternoon? There are a  
20 number of preliminary issues. There's a motion. Let me  
21 write them all down.

22 MS. BLIGHT: One thing, Mr. Chairman,  
23 I would like to ask leave to re-tender the medical  
24 certificates and to present some brief submissions to  
25 you as I do so.

1 THE CHAIRPERSON: You want to  
2 re-tender those medical certificates with -- and make  
3 submissions. So you have them with you?

4 MS. BLIGHT: Brief submissions, yes.

5 MR. FROMM: I have some on that issue  
6 as well.

7 THE CHAIRPERSON: Next? Anything  
8 else? You had said something, Ms. Kulaszka, about a  
9 motion?

10 MS. KULASZKA: Yes, I want to bring a  
11 motion for an adjournment sine die pending the  
12 resolution of the Section 37 judicial review, and maybe  
13 a further one. And I've got case law that I would like  
14 to argue, if I could make that motion this afternoon  
15 and if there would be any objection by my friends. I  
16 haven't written anything out, I didn't have time.

17 THE CHAIRPERSON: After the close of  
18 tomorrow's evidence, right?

19 MS. KULASZKA: Yes.

20 MR. FOTHERGILL: Mr. Chair, we've had  
21 no notice of that motion and to the extent the  
22 jurisprudence is to be relied upon, I think we would  
23 like the opportunity to consider that and give you our  
24 position once we had an opportunity to consider it. I  
25 wouldn't mind addressing it in writing, if that's your



1 preference.

2 THE CHAIRPERSON: You know what, Ms.  
3 Kulaszka? We have addressed it in writing. Usually  
4 these motions are brought in writing, they are not  
5 brought viva voce, unless you are doing it for some  
6 other reason.

7 MS. KULASZKA: I was just being super  
8 efficient, staying up till all the hours of the night  
9 getting this case law.

10 THE CHAIRPERSON: What we could do  
11 is, we can still be efficient that way. If you want to  
12 present it, put it out there, we can have a discussion  
13 on it even to some event. We are less formal here in  
14 this type of an environment. Then follow up something  
15 in writing that they can respond to, and you'll get  
16 something in writing from the Tribunal. That's an  
17 option.

18 MS. KULASZKA: No, I'm just as  
19 agreeable, quite frankly, to put it writing. I'm just  
20 as agreeable to put it writing. If my friends had been  
21 agreeable simply to make submissions this afternoon,  
22 it's different, but it would preferable just to put it  
23 writing.

24 THE CHAIRPERSON: Maybe it's better.

25 MS. KULASZKA: You want to --

1 THE CHAIRPERSON: I would feel more  
2 comfortable as well. I don't want to issue a ruling  
3 off-the-cuff like that. Or it could have come later.  
4 The ruling can come any point afterwards. There's no  
5 rush on the ruling. If there's no rush on the ruling,  
6 there's no rush on getting the submissions.

7 MS. KULASZKA: I would file by the  
8 end of next week.

9 THE CHAIRPERSON: Yes, that's fine.  
10 You have to understand you are falling into a period  
11 where many of us, including myself, will be away from  
12 work, so there won't be any ruling coming immediately.

13 MS. KULASZKA: This is a holiday  
14 period.

15 THE CHAIRPERSON: July is pretty much  
16 a write-off.

17 MS. BLIGHT: Mr. Chairman, I have the  
18 matter of the briefing note that I'm now prepared to  
19 address as well.

20 THE CHAIRPERSON: The briefing note?

21 MS. BLIGHT: Brief note referred to  
22 yesterday in which I was to make inquiries.

23 THE CHAIRPERSON: You will have to  
24 remind me.

25 MS. KULASZKA: It was an expurgated

1 or a document that was heavily edited without any  
2 indication of the reason for the edits.

3 I have the unedited briefing notes  
4 and I have instructions that I may produce it, of  
5 course, without prejudice to our arguments that some of  
6 it may be out of scope with respect to this document,  
7 and this document only the Commission is prepared to  
8 waive any Section 37 objections it may earlier have  
9 asserted.

10 THE CHAIRPERSON: We'll put that as  
11 item 3 then. Is anything else? Wasn't there some  
12 letter that you had sent, Ms. Kulaszka?

13 MS. KULASZKA: I'm asking -- Mr.  
14 Steacy gave testimony that they had never produced any  
15 of the documents subsequent to Tribunal decisions.

16 Now, they did get the Zundel letter  
17 which had been written, they got that over the noon  
18 hour, but they didn't produce any of the other ones.  
19 And I'm asking them to do a search and to produce the  
20 rest of them, if any.

21 THE CHAIRPERSON: I'm sorry, I didn't  
22 follow what you mean -- documents subsequent to  
23 decisions?

24 MS. KULASZKA: This was the August  
25 16th, 2006 ruling, and they were to produce all the

1 documents where they correspond with ISPs.

2 THE CHAIRPERSON: Yes.

3 MS. KULASZKA: And Mr. Steacy  
4 testified that he did not do a search or produce any  
5 documents directed to an ISP back or forth after  
6 Tribunal's hearing. And, of course, Zundel letter was  
7 one because they sent a letter to an ISP trying to  
8 enforce the order of the United States.

9 THE CHAIRPERSON: With regard to a  
10 specific case, because when you say after a Tribunal  
11 hearing. Tribunal hearings are constantly going on.

12 MS. KULASZKA: With respect to  
13 Section 13.

14 THE CHAIRPERSON: Yeah, but they're  
15 always going on. You are talking about specific cases  
16 like Zundel. As opposed to communicating with -- if  
17 they communicated with an ISP in 2006 it would be after  
18 the decision in Kulbashian in early 2006 or --

19 MS. KULASZKA: That's right. In  
20 respect of Section 13 --

21 THE CHAIRPERSON: He testified to  
22 that effect?

23 MS. KULASZKA: Yeah. And we gave the  
24 example of the Zundel case. There was a newspaper  
25 article which showed they had written to an ISP.

1 THE CHAIRPERSON: You have reason to  
2 suspect, based on Mr. Steacy's words, that some  
3 documents may have been overlooked because he limited  
4 the scope of his --

5 MS. KULASZKA: He limited the scope  
6 of the inquiry because of disclosure.

7 THE CHAIRPERSON: It was a broad  
8 order, so why would they have omitted that?

9 MS. KULASZKA: You said that to him.

10 THE CHAIRPERSON: You point out the  
11 point in the transcript where I said that. It would be  
12 helpful. Anything else?

13 MS. KULASZKA: And I think about the  
14 matters I brought up this morning with Mr. Goldberg  
15 about the e-mails. Do you want to set a date, deadline  
16 for that?

17 MR. FOTHERGILL: I was hoping to  
18 schedule closing arguments.

19 THE CHAIRPERSON: That was my hope. I  
20 thought we could do it tomorrow, but we might run out  
21 of time. It might be a good idea to try to examine  
22 date availability at this point. I have the Tribunal  
23 schedule on my computer here. Just get some ideas.  
24 Subject to any decision on the adjournment sine die, of  
25 course.

1                   MS. KULASZKA: And the last thing is  
2 the motion I filed about expert fees and expenses paid  
3 to Dr. Mock and Professor Tsesis.

4                   THE CHAIRPERSON: That's the one I  
5 was thinking about.

6                   MR. FOTHERGILL: I can advise you  
7 from the attorney general's we're prepare to consent to  
8 the motion.

9                   THE CHAIRPERSON: You're prepared to  
10 consent to disclosure of the fees. The expert was Dr.  
11 Tsesis.

12                   MR. FOTHERGILL: Dr. Tsesis, in our  
13 case, and the only concern we have, and we still have,  
14 is we didn't want to disclose his hourly rate for  
15 reasons of privacy and his own commercial interests,  
16 but there's no objection to disclosing his contract for  
17 services and no objection to disclosing the total  
18 amount paid in fees and extensions, which I understand  
19 is what is sought in this motion.

20                   MS. KULASZKA: We're content with the  
21 total amount.

22                   MR. FOTHERGILL: We can do that  
23 within the next week.

24                   THE CHAIRPERSON: So part 1 is  
25 resolved. So Dr. Mock -- what's the Commission's

1 position on Dr. Mock?

2 MS. BLIGHT: The Commission will take  
3 a similar position. We'll produce the contract  
4 documents expunged to the extent of removing personal  
5 information of the contractor, removing the per diem  
6 rate but maintaining the total contract pricing and  
7 also expunging the statement of work on the basis of a  
8 litigation privilege.

9 THE CHAIRPERSON: The statement of  
10 work. So statement of work requested or statement of  
11 work -- the actual statement he provided as an invoice.

12 MS. BLIGHT: Statement of work in the  
13 contract.

14 THE CHAIRPERSON: All right.

15 MS. BLIGHT: Which is subject to a  
16 litigation privilege.

17 With respect to the total fees and  
18 expenses, yes, we will be producing that as well.

19 THE CHAIRPERSON: Ms. Kulaszka?

20 MS. BLIGHT: I use a different  
21 terminology.

22 MR. FROMM: I ask the question just  
23 slightly differently. Will the information being  
24 provided give us the bottom line of the total fee plus  
25 extensions?

1 THE CHAIRPERSON: I think so. And  
2 Commission counsel nodded her head, so I'm assuming  
3 yes.

4 MS. BLIGHT: It will include the  
5 total amounts paid by way of fees and by way of  
6 expenses.

7 MS. KULASZKA: For both reports.

8 THE CHAIRPERSON: Yes. You mean both  
9 individuals or both --

10 MS. KULASZKA: I don't know how they  
11 billed, I know she did one report and then a second  
12 report and I assume there will be two different amounts  
13 for both.

14 THE CHAIRPERSON: I don't remember.

15 MS. BLIGHT: There's only one  
16 contract which was subject to certain amendments. There  
17 weren't separate contracts.

18 THE CHAIRPERSON: So the bottom line  
19 is for everything?

20 MS. BLIGHT: That's correct.

21 THE CHAIRPERSON: Okay. By when can  
22 you provide those photocopies? Today?

23 MS. BLIGHT: I can provide the  
24 contract documents tomorrow and with respect to the  
25 total amounts, possibly tomorrow. Those will be



1 accessed --

2 THE CHAIRPERSON: So if I say  
3 deadline by Friday, would that be possible?

4 MS. BLIGHT: That ought to be  
5 possible. If it's not, we'll request an extension.

6 THE CHAIRPERSON: Okay. By Friday,  
7 Ms. Kulaszka, you'll have those, all the parties will  
8 have disclosure in the normal course of those  
9 documents. All right. So item 7 is off the agenda.

10 I don't know when you can provide it,  
11 Mr. Fothergill, but I'll put the same time frame for  
12 you as well.

13 MR. FOTHERGILL: We'll aim for  
14 Friday. I don't think it's going to be difficult.

15 THE CHAIRPERSON: So let's go back to  
16 item 1, this medical certificate thing. You say you  
17 have some representations to make?

18 MS. BLIGHT: Mr. Chairman, I've  
19 reviewed the transcript and I would just like to note  
20 for the record that the comments made on record on May  
21 11th at page 4883 you indicated that you thought --

22 THE CHAIRPERSON: I may have the  
23 transcript part here. At page 48 --

24 MS. BLIGHT: 4883.

25 THE CHAIRPERSON: I've opened the

1 digital copy as it appears on my screen.

2 MS. BLIGHT: That was the first  
3 comment. You said -- and I've just summarized it here,  
4 you thought it might be necessary that we produce for  
5 the Tribunal.

6 THE CHAIRPERSON: "I think it might  
7 be necessary you produce it with the Tribunal."

8 MS. BLIGHT: Page 4892, I'm expecting  
9 medical certificates, I have that undertaking. Mr.  
10 Vigna nodded before when I asked him to provide when he  
11 will. I think that it will complete the record.

12 THE CHAIRPERSON: Yes.

13 MS. BLIGHT: Page 4898,

14 "All I'm asking is Mr. Vigna,  
15 the Commission provide medical  
16 certificates to the Tribunal.  
17 That is all I'm asking. You  
18 should be satisfied that the  
19 Tribunal will be satisfied and  
20 leave it at that."

21 THE CHAIRPERSON: 4898.

22 MS. BLIGHT: 4898. Then after some  
23 further comments.

24 THE CHAIRPERSON: What I said there  
25 that is,

1 "All I'm asking -- sorry, Mr.  
2 Christie, I won't be addressing  
3 the order that you are  
4 addressing."

5 I said that, too.

6 MS. BLIGHT: Thank you. And then  
7 later over the page, 4899,

8 "I'm not saying it would be a  
9 mysterious document, but it will  
10 be addressed to me. I'm going  
11 to get the document and we will  
12 address it at that point."

13 THE CHAIRPERSON: Yes.

14 MS. BLIGHT: Now, based on your  
15 comments of yesterday, I understood that there was some  
16 exception taken to the form in which the Commission  
17 presented those to you by letter. And I would like to  
18 clarify and apologize for any misunderstanding.

19 I had spoken with Mr. Dufresne about  
20 this, and he has indicated to me that his intention  
21 was, and was always limited to, providing the  
22 certificates to you in accordance with the ruling you  
23 had made. And, more specifically, that the  
24 certificates at this point were to be provided to you  
25 and, in my words, for your eyes only.

1                   Mr. Dufresne did not mean to go any  
2 further than that or to seek to impose any additional  
3 conditions than those that were stipulated by you, Mr.  
4 Chairman, on the record. And to the extent that that  
5 may not have about been reflected in the way the letter  
6 was constructed, the Commission wishes to apologize.

7                   Now, having said that, I would seek  
8 leave to remit these certificates to you on the  
9 conditions that you set out yourself in the record and  
10 that is that they are being provided to you in order to  
11 satisfy you with respect to the documentation of  
12 medical conditions referred to by counsel on May 11th.

13                   THE CHAIRPERSON: So you do not --  
14 you are opposed to their being disclosed to the other  
15 side? Because I can say to complete the record, we are  
16 an administrative Tribunal, everything we do -- and  
17 that's stated in the letter that was sent back to you.  
18 Everything that comes into the hands of the Tribunal is  
19 a matter of public record.

20                   I cannot receive things ex parte. If  
21 one is to make a motion under article -- Section 52 of  
22 our Act, the proceedings be sealed so that they are not  
23 available to the public, that's one thing. And that  
24 wasn't done here.

25                   But any documents that I receive are

1 a matter of public record. My e-mails to my colleagues  
2 are a matter of public record, to staff. So you cannot  
3 hand up something me and say, "Only you can see it."

4 MS. BLIGHT: That, with respect, Mr.  
5 Chairman, is what the Commission understood by your  
6 comment on page 4898 saying that the Commission would  
7 be providing medical certificates to the Tribunal.

8 And I would submit to you that it is  
9 customary, as in the case where a party seeks to remove  
10 or exclude irrelevant documentation that the Tribunal  
11 may take the view, in order to satisfy itself that  
12 documentation is indeed irrelevant.

13 And I'm suggesting by analogy that  
14 you might look at these medical certificates. I'm not  
15 asking that you retain them, but the Commission -- and  
16 I know the individuals, in particular Mr. Vigna, take a  
17 very strong position with respect to the privacy  
18 interests of the individuals in these medical  
19 certificates.

20 THE CHAIRPERSON: I have taken a view  
21 of the documents. They were enclosed in the letter  
22 that was sent to the Tribunal. So I have taken a view.  
23 They're medical certificates. I don't know how much  
24 more I can say. I've taken a view.

25 MS. BLIGHT: In that case --

1 THE CHAIRPERSON: There's a signature  
2 at the bottom, presumably from a physician. I don't  
3 remember exactly what it said. We didn't keep  
4 photocopies. The Tribunal sent the originals back to  
5 you.

6 MS. BLIGHT: In that case, Mr.  
7 Chairman, may I ask the Commission be relieved of its  
8 undertaking?

9 THE CHAIRPERSON: Undertaking. And  
10 that's key, because now I'm going to re-direct my  
11 discussion to the other side who have raised all these  
12 objections.

13 First of all, I think it quite  
14 forward on the part of counsel to bring up cases on  
15 which they are not involved and make allegations  
16 thereon, one of whom is not here. Comparing other  
17 cases with this case.

18 The scenario was entirely different,  
19 and while I don't agree with everything Mr. Warman  
20 wrote in that e-mail, portions of it were correct. And  
21 the issues were not the same. So it's not the  
22 question. There was no order or ruling issued by the  
23 Tribunal that those documents be handed up.

24 There was an explicit rejection of  
25 the attempt by Mr. Christie to try to elevate that

1 discussion to a different plane. The fact is that my  
2 decision, it's on the transcript, was made to adjourn  
3 that hearing before the matter of certificates came up  
4 on the word of Mr. Vigna and Mr. Dufresne.

5 And, yes, there is a distinction to  
6 be drawn between lawyers and non-lawyers. Because when  
7 a lawyer says -- I specifically asked him that in my  
8 presence, "On your oath of office as an officer of the  
9 court, are you telling me you cannot proceed?" And his  
10 answer was, "Yes," something to that effect. Mr. Vigna  
11 and Mr. Dufresne. And at that point I consented to the  
12 adjournment. And it's over with. The adjournment took  
13 place.

14 I don't know why we're trying to  
15 revisit time. We don't have a time machine we can go  
16 backwards with. The fact is the adjournment took  
17 place.

18 And I asked him in order to satisfy  
19 my own concerns that they provide me with  
20 documentation. They put some conditions on it in the  
21 way it was drafted. Indeed, it was not the way I asked  
22 the documents. But I hear your apology.

23 Now, I don't know what more you want  
24 me to make of it, Ms. Kulaszka and Mr. Fromm. We  
25 adjourned. What would you like me to do, go back in

1 time? There's no order from us. I want you to clear  
2 on that. I saw the word "contempt" made somewhere. I  
3 will not be entertaining any contempt motions.

4 MS. KULASZKA: I, myself, am  
5 surprised this has become such a big issue, because  
6 medical certificates usually don't have a whole song  
7 and dance about what's wrong with the person. It's  
8 simply a certification. This is why I cannot  
9 understand why you're refusing to file them.

10 THE CHAIRPERSON: Without my saying  
11 anything --

12 MS. KULASZKA: I'm surprised this is  
13 blown up into a big issue.

14 THE CHAIRPERSON: Can I bring things  
15 back just a second, please? I've counsel on this side  
16 and I have Mr. Fromm, who not legal counsel but who is  
17 a gentleman who has appeared in numerous cases and  
18 knows how things work.

19 Would the Commission be apposed to  
20 showing those documents to counsel on the explicit  
21 undertaking, not the implied undertaking, amongst  
22 counsel, that it would not go any further than to their  
23 eyes so that their curiosity is resolved? If that's  
24 what all you're interested in.

25 Because I know they're concerned on



1 the other side, Ms. Kulaszka. I know it because it's a  
2 fact. There's nothing wrong with it, but it's a fact  
3 that just about all our proceedings here managed to get  
4 on the Internet, either through Mr. Fromm or other  
5 people, and that's fine. But that's a concern.

6 If it was your -- the distinction to  
7 be drawn with other proceedings when we're doing a  
8 regular civil case, a slip-and-fall case in civil  
9 court, nobody is going -- and you file a medical  
10 certificate seeking an adjournment. No one is going to  
11 go put it on the Internet. It's a case that's not on  
12 any radar.

13 This one is. So suddenly the  
14 person's illness will be on the Internet. I suppose  
15 that's their concern.

16 MS. KULASZKA: Certainly I've been in  
17 criminal cases and if the accused couldn't show up they  
18 had a medical certificate and it was an exhibit.

19 THE CHAIRPERSON: Accused. Counsel  
20 is here in front of me, and I took his word before I  
21 asked for the medical certificate afterwards. It  
22 wasn't a condition.

23 MS. KULASZKA: I just want you to  
24 know what my position is of what usually a medical  
25 certificate says. It doesn't go on about personal

1 information. It's a certificate.

2 THE CHAIRPERSON: And you probably  
3 are not far off the mark in this case. I'll go that  
4 far.

5 MS. KULASZKA: Certainly it shouldn't  
6 contain too much information. "I had the flu, I  
7 couldn't come."

8 THE CHAIRPERSON: So I don't know how  
9 you would like me to resolve this. Mr. Fromm, you've  
10 been wanting to get up twice. Approach the microphone,  
11 please.

12 I don't know if this is all worth our  
13 spending all our breath on.

14 MR. FROMM: Maybe what you suggest  
15 might be a solution. It's not out of any sense of  
16 ghoulishness, but it really is a matter of fairness  
17 here, and you may not accept it but --

18 THE CHAIRPERSON: I draw the  
19 distinction, sir, on that file. I draw the  
20 distinction -- at the time you, yourself admit, sir,  
21 you are not a lawyer acting on behalf of Mr. Donnelly  
22 or any other people that you've helped. You are acting  
23 as an agent, and you always put that proviso, and  
24 rightly so, I don't disagree with that.

25 And in that context of that case, I

1 don't want to get into details, you, you told the  
2 Tribunal in certain general terms why Mr. Donnelly  
3 wasn't available for the case to be adjourned sine die.

4 And I was not satisfied with that  
5 part of it. And what we did is we insisted that Mr.  
6 Donnelly -- because you're not his lawyer, tell me,  
7 that was the important thing. He finally got on the  
8 phone call, stated what his illness was. It wasn't  
9 ghoulish. I heard it from him. That was key. He told  
10 me he could not proceed. And when that happened, the  
11 case was adjourned against him.

12 So that's the key difference here.  
13 All right? That's why I was upset that file was being  
14 invoked by other counsel, not yourself, because they  
15 couldn't be familiar with those facts.

16 MR. FROMM: I don't want to revisit  
17 that. I'm not -- my concern is of a slightly different  
18 nature.

19 I know you are not going to revisit  
20 your decision, the adjournment was granted. But it was  
21 a very serious thing. Back at the end of our second  
22 session of hearings, I guess it would be in the last  
23 day of February, we canvassed when the Commission  
24 employees would be heard, and at that point a date was  
25 suggested in early April.

1                   And I think at that point Mr. Lemire  
2                   made it very clear to you he was under very serious  
3                   personal pressure. He had taken a month off of his job  
4                   without pay. Very few of us could afford to do this.  
5                   I don't know how he did it.

6                   This is a very serious matter, and  
7                   his concern was he wanted a date later than early April  
8                   and it was pretty much -- that did not seem to be a  
9                   very large fact.

10                  Here he's had to go on regardless for  
11                  other reasons, largely the Commission's doing, that  
12                  those April days fell through and they became the days  
13                  on the 9th, 10th and 11th of May.

14                  Mr. Lemire, again, made serious  
15                  sacrifices to be there. We were there. All parties,  
16                  except the Jewish groups, were duly there and made all  
17                  the necessary travel arrangements, arrangements and  
18                  calendars, and were there.

19                  THE CHAIRPERSON: And Mr. Warman?

20                  MR. FROMM: And Mr. Warman wasn't  
21                  there, but that's -- that is to be expected.

22                  And then at the very last minute you  
23                  were faced with what Mr. Christie said, with his 37  
24                  years' legal experience, the most extraordinary series  
25                  of illness in his 37 years of practice in six

1 provinces. I know you had good reasons and you were  
2 given undertakings, as these two gentlemen as officers  
3 of the court. But you did throw in -- you want two  
4 undertakings; one was for the expenses to be covered, I  
5 did mention that on --

6 THE CHAIRPERSON: And that is key. I  
7 stated as such. It was key to my decision to adjourn  
8 was the undertaking that I obtained from Mr. Fine that  
9 he would look into taking care of that situation.  
10 Seeking an adjournment without accommodating the  
11 expenses or inconvenience of the other side, that's an  
12 important factor. And that was to be addressed. I  
13 know to date you've not in receipt.

14 MR. FROMM: Reimbursements and  
15 Christmas are both coming.

16 Then second matter, you did ask for,  
17 and the words in the transcript, say "For the Tribunal  
18 record" which --

19 THE CHAIRPERSON: "For the record."  
20 "For the record."

21 MR. FROMM: Consideration -- those  
22 are the conditions that you required because there  
23 really was a serious unfairness to Mr. Lemire. He was  
24 here. The rest of us probably can re-arrange our  
25 schedules. But he was there in Ottawa, and it was a

1           wasted day. Instead of traveling at night he may have  
2           travelled back during the daytime, but that was a day  
3           he sacrificed, he set aside, fulfilling the schedule  
4           that you had said, and I think you'll agree that Mr.  
5           Lemire and Ms. Kulaszka had kept on schedule that had  
6           been agreed upon. In fact, even finished the second of  
7           the two first rounds of hearing one day early. And  
8           there's been no attempt by this side to try to obstruct  
9           the hearing or rag the puck or do anything like that.

10                         THE CHAIRPERSON: The April dates you  
11           were talking about, I was pushing. As I say, Tribunal  
12           scheduling is not just a matter of the Warman versus  
13           Lemire case. We have a number of cases.

14                         So my Tribunal schedule was a factor  
15           as well in trying to set those April dates we were  
16           trying to face. That didn't work out for a number of  
17           reasons. The Tribunal's schedule also freed up in a  
18           way that enabled us to do those May dates.

19                         MR. FROMM: I guess what I'm  
20           submitting, it seems to me, really, just a matter of  
21           fairness. And privacy is important. As I say, I have  
22           no particular reason to -- and I'm sure Mr. Lemire, Ms.  
23           Kulaszka don't either -- to get into all the gory  
24           details.

25                         But we've all -- certainly Mr. Lemire

1 has sacrificed privacy, public hearing, they're on the  
2 transcript. He's taking a risk with his work. He's had  
3 to take time off work. We know his family situation.  
4 That's all on the record.

5 I guess one of the results of any of  
6 these hearings is, we all sacrifice a certain degree of  
7 privacy, but more so if you are a party like Mr.  
8 Lemire.

9 As the two Commission counsel were  
10 asking for a fairly extraordinary --

11 THE CHAIRPERSON: Last minute  
12 requests.

13 MR. FROMM: -- extraordinary favor  
14 from you. It doesn't seem too much to ask that certain  
15 degree of privacy be sacrificed. Those are my  
16 submissions.

17 THE CHAIRPERSON: I don't think I  
18 would use the word "favor". Ask for an adjournment,  
19 which is granted from time to time by the Tribunal.

20 But what do you think about the  
21 suggestion I put forth? Would the Commission be  
22 amendable to showing it to Ms. Kulaszka to satisfy her  
23 concerns?

24 MS. BLIGHT: I would need  
25 instructions.

1 THE CHAIRPERSON: Would you be  
2 satisfied with that, Ms. Kulaszka?

3 MS. KULASZKA: Quite frankly, I'm not  
4 happy with that solution. I don't like something being  
5 shown to me. Is it being shown to Mr. Lemire, is it  
6 being shown to Mr. Fromm, is Mr. Christie going to see  
7 it? I'm the only one.

8 THE CHAIRPERSON: On the implied  
9 undertaking -- would there be copies?

10 MS. KULASZKA: Is this not to be  
11 disclosed?

12 THE CHAIRPERSON: Let's get something  
13 clear about how the Tribunal functions on how public  
14 things are here.

15 We don't have a public docket at the  
16 Canadian Human Rights Tribunal. It's an administrative  
17 tribunal. We function like any other administrative  
18 body, which means that anything obviously disclosed  
19 between the parties has been viewed by parties.

20 The public, anyone out there, doesn't  
21 have the right to walk into our office and see a  
22 document. They have to make an access to information  
23 request. You are familiar with that because you've  
24 done it, I believe, with respect to other complaints.  
25 They are not part of the public record.



1                   So with that in mind, I mean,  
2                   anything that is exchanged by the parties here, they  
3                   can look at it, but it's not a public document as such.  
4                   If it forms part of the Tribunal's record, then someone  
5                   may make a request to see it and they may be able to  
6                   see it subject to whatever exceptions are available  
7                   under the Access to Information Act.

8                   It's getting all so complicated for  
9                   something so straightforward. Ms. Kulaszka, you are  
10                  not so far off the mark in terms of guessing what the  
11                  document has.

12                  MS. KULASZKA: I was just going to  
13                  say to you, Mr. Vigna made it very clear on the record  
14                  in the transcript that he was anxious, he couldn't go  
15                  on. He had no serenity of mind. I can't think the  
16                  medical certificate says anything more than that. And  
17                  so I don't know why the Commission is --

18                  THE CHAIRPERSON: Okay, but the flip  
19                  side is, why do you want to see it so badly? They  
20                  did -- it's not they didn't produce it. I can affirm  
21                  to you they did produce the document. And your years  
22                  of experience demonstrate exactly what it may entail.

23                  So I don't know how to resolve this.  
24                  It's over, it's a month ago. We're moving on. The  
25                  adjournment you should be concerned with are the ones

1           you are asking me to deal with on the hearing itself,  
2           or that you may end up having to ask the Federal Court  
3           to do.

4                         It's not -- this is sort of -- it's  
5           over. Any issue about my decision relates to that  
6           decision that day. It's not so much on the  
7           certificate. The fact is I adjourned the hearing.  
8           That's what was important. Go on.

9                         MS. BLIGHT: Well, I mean, I had  
10          requested that the Commission be and the individuals be  
11          relieved of their undertaking.

12                        THE CHAIRPERSON: Relieved of their  
13          undertaking?

14                        MS. BLIGHT: The undertaking was  
15          given to the Tribunal, and the Tribunal --

16                        THE CHAIRPERSON: Tribunal viewed to  
17          documents, I've seen them. Before I relieve them, can  
18          you go back to them and find out if they would consent  
19          to the documents being viewed by Ms. Kulaszka and Mr.  
20          Fromm and Mr. Christie and any other counsel who may  
21          wish to share them with -- on the understanding that  
22          they would not re-distribute those certificates?

23                        MS. BLIGHT: I heard Ms. Kulaszka say  
24          that that would not be acceptable.

25                        THE CHAIRPERSON: All right. Ms.

1 Kulaszka, it's really unacceptable to you?

2 MS. KULASZKA: That's my problem with  
3 it. If they are shown to various people and is  
4 disclosed, then they can come back on me or my client,  
5 and I don't find that acceptable.

6 My problem is that they asked for an  
7 adjournment. You asked them to give a medical  
8 certificate. They both agreed and undertook to give a  
9 medical certificate. At the time they seemed they  
10 would simply file the medical certificate saying they  
11 didn't seem to want to put any conditions on them. They  
12 are both experienced counsel. This is why I'm just  
13 surprised.

14 THE CHAIRPERSON: I don't know if we  
15 turned our minds to this specific issue. Because what  
16 Mr. Christie raised was the possibility of starting  
17 almost a voir dire on the whole point, submitting to  
18 cross-examination, and I explicitly rejected that.

19 MS. KULASZKA: That's why they  
20 undertook just to file the certificates with the  
21 Tribunal, and they know what that means. And those are  
22 my submissions.

23 THE CHAIRPERSON: That was my ruling.  
24 They can do whatever they want. The key thing here is  
25 that I have not issued -- I did not issue a ruling, did

1 not issue an order. I asked, I requested. That's  
2 exactly what it says. My request still stands. That's  
3 it. Leave it at that.

4 I want all the parties to move on.  
5 I'm not going to relieve -- because her point is well  
6 taken on the part Ms. Kulaszka so -- I'm not relieving  
7 them, but they just choose to not provide them to me,  
8 it's their choice.

9 They have provided me -- for the  
10 record I received copies. I read them. Ms. Kulaszka,  
11 you are not far off the mark in terms of what guess is.  
12 I want to parties to move on. I think it's a total  
13 waste of our on this agenda. We've got five other items  
14 here on this agenda.

15 And if anyone surmises from that any  
16 reasonable or unreasonable apprehension of bias on my  
17 part, you know where to go to about that. So let's  
18 move on.

19 Whatever I said on May 11th stays,  
20 that's it. Ajournment sine die, we'll deal with that  
21 in writing.

22 MS. KULASZKA: I wonder if we could  
23 set dates for that. I would file by the end of next  
24 week. If we could just set dates for a reply.

25 THE CHAIRPERSON: It won't make a

1           huge difference in terms of my availability because I  
2           will not be able to deal with them, I don't think  
3           easily, in the course of the month of July. But I  
4           would like them all in by the end of July so I can deal  
5           with them by early August. Is that okay?

6                       MR. FOTHERGILL: Yes. If we could  
7           have two weeks from any deadline set for the  
8           respondent, that would be satisfactory.

9                       THE CHAIRPERSON: So the other Friday  
10          for you? Not this Friday but the or Friday?

11                      MS. KULASZKA: That's right.

12                      I wonder if I could just get my  
13          friend's position on this. Could they consent to an  
14          adjournment until this matter is dealt with?

15                      MR. FOTHERGILL: I do want to give  
16          this some consideration, but my initial reaction is  
17          that the information that is in dispute is -- well, in  
18          fact the Tribunal knows the Attorney General's position  
19          is wholly relevant. But at best, it's of tangential  
20          relevance, so I don't think we would be inclined to  
21          consent to the adjournment. We would like to see these  
22          proceedings concluded.

23                      THE CHAIRPERSON: Okay. And the  
24          Commission?

25                      MS. BLIGHT: I don't have

1 instructions because this matter had not been raised  
2 previously.

3 THE CHAIRPERSON: So the other July  
4 6th I think is Friday. You can make your motion, Ms.  
5 Kulaszka by July 6th. July 20th by the other side,  
6 everybody else. If anybody else wants to pitch in on  
7 this, they can all do it by July 6th. Then Ms.  
8 Kulaszka, I'll give you July 27th to reply. I'll have  
9 a nice welcome back package when I come back.  
10 Gentlemen?

11 Edited version available. Okay.  
12 Anything wrong?

13 MS. BLIGHT: Mr. Chairman, I would  
14 just request your leave to review the transcript of  
15 today with Mr. Vigna and Mr. Dufresne and possibly to  
16 address additional representations to you. I'm just a  
17 little troubled that --

18 THE CHAIRPERSON: I'm not holding  
19 them in contempt.

20 MS. BLIGHT: The matter seems to  
21 remain unresolved and that there is no clear manner in  
22 which they can satisfy the undertaking that -- they  
23 believed that they had made, which was to present these  
24 documents to you and to you alone. So I'm a little  
25 concerned.

1 THE CHAIRPERSON: So in their view  
2 the undertaking was limited in scope?

3 MS. BLIGHT: Yes, it was.

4 THE CHAIRPERSON: And what happens if  
5 my view is different? Then what happens?

6 MS. BLIGHT: Well, you see that's the  
7 difficulty because you know, I have a great reluctance  
8 to leave a matter of counsel's talking unresolved,  
9 that's all. So I would just ask that you leave it with  
10 me for a moment.

11 THE CHAIRPERSON: I didn't say  
12 anything further. I just said whatever is there, is  
13 there. I just left it. Go ahead. You can talk to me  
14 any time.

15 As far as I'm concerned, I've said  
16 nothing in effect about this issue, other than to  
17 advise the parties I think it's important we move on.  
18 I've said nothing else other than what is already on  
19 the record.

20 MS. KULASZKA: Is this about the  
21 briefing note?

22 THE CHAIRPERSON: No, it's going  
23 back.

24 Now, briefing notes, can you produce  
25 us a copy?

1 MS. BLIGHT: Yes. This document, of  
2 which I had copies a moment ago, is being produced  
3 without prejudice to our position that much of its  
4 content is out of scope and some of its content may  
5 otherwise have been subject to a Canada Evidence Act  
6 objection, which is waived, in the case of this and  
7 only this document. So I'll produce it to my friends  
8 and shall I produce it to the Tribunal?

9 THE CHAIRPERSON: Can you just remind  
10 me where -- in which binder you would find that  
11 document.

12 MR. LEMIRE: Tab 3, page 4.

13 THE CHAIRPERSON: Of which?

14 MS. BLIGHT: I have to apologize for  
15 my terminology. I think I used the word "produced" to  
16 mean what you mean by "disclose", and I have also -- I  
17 have also a habit for using "receive" for what you call  
18 "produce". So it was my intention to disclose it.

19 THE CHAIRPERSON: Maybe it's a Quebec  
20 influence? I think maybe a little bit of French  
21 sneaking in there.

22 MS. KULASZKA: Should we file this as  
23 page 5-A and B?

24 THE CHAIRPERSON: I want to be that  
25 you are we have the right document. Tab 3 of R-17



1 correct? And page 4 and 5.

2 THE CHAIRPERSON: Right.

3 So why don't we do that? We'll file  
4 them as pages 5-A and B. So the briefing note covers  
5 the first page, which will be 5-A, and the second page  
6 will be 5-B, and we'll all insert this in our binders  
7 at tab 3 of R-17.

8 Now, item 4, Post-Decision documents.  
9 Ms. Kulaszka, does it relate to some point in the  
10 transcript you want to call to my attention? You said  
11 something about Mr. Stacy's evidence on May 10th, I  
12 guess.

13 MS. KULASZKA: If you could just give  
14 us a minute, Mr. Lemire is going to look through the  
15 transcript.

16 It's page -- let's start at page  
17 4663. It probably starts before then but this is the  
18 meat of it. 4663 of May 10th. We're discussing a  
19 decision in the Zundel case and you ask -- put a  
20 question to the witness,

21 "When did this search after the  
22 conference call that you  
23 participated in, Mr. Steacy --"

24 THE CHAIRPERSON: Where are you  
25 reading from?

1 MS. KULASZKA: Starting at page 4663  
2 at the bottom.

3 THE CHAIRPERSON: Let me put a  
4 question to the witness, then we'll go to the top of  
5 4664.

6 MS. KULASZKA: You asked Mr. Steacy,  
7 "To what extent did you search  
8 for those types of letters? Did  
9 you limit yourself to what you  
10 described earlier as  
11 noncompliant complaints, if I  
12 could use that term."

13 THE CHAIRPERSON: "Non-complaint."

14 MS. KULASZKA:  
15 "-- or did you expand your  
16 search to the point of even  
17 looking for letters that were  
18 sent to ISPs after decisions had  
19 been issued regarding websites?  
20 MR. STEACY: I didn't include in  
21 the search letters to  
22 organizations after a Tribunal  
23 decision has been rendered. My  
24 search was specific in the sense  
25 I was looking for, as you say,

1 complaint complainants.  
2 Individuals that complained  
3 about specific websites in that  
4 sense."

5 And then we looked at the order. I  
6 stated it was a very general order. I think discussion  
7 just goes on about that.

8 The August 16th, 2006 ruling was  
9 examined. And on page 4666 at the top, the  
10 chairperson,

11 "It would have encompassed what  
12 Mr. Vigna just described."

13 At that point Mr. Vigna, I think,  
14 agreed to look for the Zundel letter and it was  
15 produced. It's in -- it was entered as an exhibit. And  
16 I think I asked a further search be done, because a  
17 search was not done for those letters.

18 THE CHAIRPERSON: There's some sort  
19 of undertaking by Mr. Vigna here at the bottom of page  
20 4666, said we could undertake to try to locate it. The  
21 problem is, I don't know if I will be successful.

22 MS. KULASZKA: Yes. Mr. Steacy, "I  
23 guess I could go back to the system."

24 THE CHAIRPERSON: He said that right  
25 before that. As long as everyone knows what we are

1 talking about. I think we have to go backwards to see  
2 how this all came about.

3 There was sort of undertaking on the  
4 part of Mr. Vigna which has not been followed up upon,  
5 perhaps with everything transpired, it got overlooked.  
6 Could you look into that?

7 MS. BLIGHT: I will follow-up on  
8 that?

9 THE CHAIRPERSON: Is it referred to  
10 anywhere else in the transcript or just that?

11 MS. KULASZKA: That was the point.

12 MS. BLIGHT: I understand it to be a  
13 request to disclose communication with ISPs resulting  
14 from Tribunal decisions.

15 THE CHAIRPERSON: I was trying to  
16 figure out what it all said. I just want to confirm --  
17 I think it means --

18 MS. BLIGHT: What we're looking at is  
19 the Commission's communication with ISPs after Tribunal  
20 decisions and an attempt to enforce those.

21 THE CHAIRPERSON: Any communication  
22 with ISPs is what my original order said. So the  
23 period that this witness limited the scope to the  
24 period until a decision was issued by a Tribunal.

25 MS. BLIGHT: Post Tribunal in any

1 particular matter.

2 THE CHAIRPERSON: Or any other  
3 communication relating to ISPs that falls into what  
4 I've described as under item -- I think J, August 2006  
5 order. But implicit in that is post-Tribunal  
6 correspondence. Maybe you'll have a sense from the  
7 Commission how they might be able to deal with this  
8 before we close.

9 MS. BLIGHT: I will follow up on it  
10 this afternoon.

11 THE CHAIRPERSON: I'm not saying to  
12 actually provide the documents necessarily. Difficult.  
13 But at least whether they can undertake to do this,  
14 give us a time frame.

15 MS. BLIGHT: I will report back  
16 tomorrow.

17 MS. KULASZKA: And the last matter is  
18 the matter the e-mail search a that Mr. Goldberg did.  
19 He used that phrase, and I think we were going to talk  
20 about key words that he could search for, and certainly  
21 the word hate in a Commission database is e-mails must  
22 refer to Section 13. I can't imagine what else it would  
23 refer to.

24 THE CHAIRPERSON: I have to say,  
25 although he did respond that way, I'll engage in a bit

1 of a conversation here with all of you.

2 Hate does not necessarily yield every  
3 topic under the statute. The word "hate" actually I  
4 think only emerges in Section 13. I think you have a  
5 point.

6 So had he done the search under  
7 "hate", I don't think it's going to bring up 13,000  
8 e-mails out of 13,000 e-mails. "Discrimination" might,  
9 or if it was "race" or "sex" it might yield a lot of  
10 e-mails because that -- those are grounds that pervade  
11 throughout the entire statute. But the term "hate" --

12 MS. KULASZKA: "Hate" or "hatred".

13 THE CHAIRPERSON: I can pull up the  
14 statute and do a search and see how many times the word  
15 "hate" comes up. "Hate" or "e-mail" or "Internet".  
16 Just "e-mail".

17 MS. KULASZKA: Probably just the  
18 words "hate" alone or "hatred" alone would generate all  
19 that was needed.

20 THE CHAIRPERSON: And "Internet".

21 MS. KULASZKA: Of the word  
22 "Internet". "Hate", "hatred" or "Internet". You think  
23 word "Internet" is going to come up a lot if he does a  
24 search?

25 MS. BLIGHT: I believe it would.

1 THE CHAIRPERSON: Why?

2 MS. BLIGHT: You can look things up  
3 on the Internet. You can find information on the  
4 Internet. The Internet is used in many, many, many,  
5 many discussions that have nothing to do with hate.

6 THE CHAIRPERSON: Let's be clear. I'm  
7 not talking here about your disclosing or producing all  
8 of the documents. It's that --

9 MS. BLIGHT: Reasonableness of his  
10 inquiry.

11 May I just -- it was pointed out to  
12 me by Mr. Fothergill during the break there are  
13 guidelines in Ontario for e-discovery, which is  
14 essentially what the domain in which we are now  
15 discussing mand there are guidelines here that I think  
16 are, to some extent, intended to deal with this problem  
17 of exhaustively searching this kind of documentation.

18 And the e-discovery guidelines for  
19 Ontario state -- and this is principle number 2,

20 "The obligations of the parties  
21 with respect to e-discovery are  
22 subject to balancing and may  
23 vary with, first, the cost  
24 burden and delay that may be  
25 imposed upon parties; secondly,

1 nature and scope of the  
2 litigation, the importance of  
3 the issues, the amounts at  
4 stake, and third --" and this is  
5 what I would point you to, Mr.  
6 Chairman,  
7 "-- the relevance of the  
8 available electronic documents  
9 and their importance to the  
10 court's adjudication in a given  
11 case."

12 And it would be my submission that --  
13 you know, at this point we had -- there's no suggestion  
14 that we don't have the evidence disclosed that relates  
15 to the building blocks of my friend's arguments.

16 The importance to the court's  
17 adjudication of a given case requires that documents,  
18 e-documents if you will, that kind of make up the  
19 general categories of inquiry, are -- and I think it's  
20 clear that they have been disclosed.

21 What we're looking at here is a  
22 document here or there that may exist along the  
23 fringes.

24 So I would like to submit to you that  
25 the cost burden and delay, the days that Harvey



1 Goldberg will be put to in reviewing every last e-mail  
2 that may contain the word "Internet" should be balanced  
3 with the likelihood of finding any additional  
4 electronic document that may have importance to the  
5 court or the Tribunal's adjudication of the matter.

6 Now --

7 THE CHAIRPERSON: You said it only  
8 took a couple of days to do the work here. That's what  
9 he said. A couple of days.

10 MS. BLIGHT: Greater part of two  
11 days.

12 THE CHAIRPERSON: Honestly, the part  
13 that took up the biggest time was having to go through  
14 all those text files and read them all. That's what he  
15 said he had to do. That wasn't an automated search.  
16 He went through all of his text files.

17 MS. BLIGHT: What he would be  
18 required to do is one, or perhaps more automated  
19 searches and look through documents once again if he  
20 has already take a looked through once.

21 Now, I haven't seen the word "hatred"  
22 used as often in kind of the general parlance as the  
23 word "hate". It's more hate.

24 Now, I know you're inclined to make  
25 an order, but I think we have to envision the

1 possibility that if Mr. Goldberg plugs in the word  
2 "hate", he may find himself under a huge burden, as he  
3 expects it generates a great deal of documentation.

4 THE CHAIRPERSON: I'm not sure I  
5 heard him say that yet, so what I'm prepared to do, to  
6 be reasonable about this, is that I issue a directive  
7 here that he conduct an additional search, and if truly  
8 in good faith it is exorbitant, it yields thousands and  
9 thousands, estimating it that will be days for him to  
10 go through it all, then maybe just send us a message  
11 and we'll revisit it. Maybe we'll have to focus it  
12 with a combination of words.

13 Ms. Kulaszka, on this point, I've  
14 already pointed out to you it does seem we've got a lot  
15 of the material that you need to advance the arguments  
16 that you've said. Of course, there may be the famous  
17 smoking gun, yes, but it has to be balanced. And until  
18 now you've got a lot of the material. All the  
19 arguments that Mr. Christie so eloquently put yesterday  
20 for the reasons why he thinks it is important for him  
21 to have. You have a lot of that material.

22 Whether those arguments are valid,  
23 that will be left for another day. But a lot of it  
24 there. That being said, I'm not satisfied that the  
25 search was sufficient. Doing an ebullient search of

1 four words in sequence will not yield -- I'm surprised  
2 it even yielded 2,000. It's surprising to me.

3 MS. BLIGHT: May I suggest the word  
4 "hate" and the word "Internet"?

5 THE CHAIRPERSON: And --

6 MS. BLIGHT: Researched in  
7 combination.

8 THE CHAIRPERSON: Let's do both and  
9 tell me what happens. "Hate" or "Internet", "hate" and  
10 "Internet", and see what happens, and see how many come  
11 out. If it really is an exorbitant amount that you  
12 estimate will take days and days, I will revisit it.  
13 That's all I can say. I'm not convinced it will create  
14 such a burden.

15 MS. KULASZKA: No.

16 THE CHAIRPERSON: At this point. I'm  
17 open to hearing clear information from the Commission,  
18 or their witness, about how difficult it is.

19 But at this stage, with my  
20 understanding of the domain, I don't think that it will  
21 be that problematic. And maybe there would be some way  
22 for him to in omit some automatic fashion, I don't  
23 know, the 2,000 e-mails he's already included.

24 MS. BLIGHT: But not "hate on the  
25 Internet".

1 THE CHAIRPERSON: Yeah, that might  
2 help. Would that not work? If his statement is true  
3 here that every e-mail had the words quote, "hate on  
4 the Internet" unquote, was produced -- he's reviewed it  
5 all, seen it all, it's been vetted, they have done  
6 their good faith at disclosure.

7 What we don't know is in the  
8 remaining 8,000 documents, whether there was a  
9 combination of just "hate" and "Internet" but not "hate  
10 on the Internet" as a sequence of words. If in the  
11 balance he does that research, you'll have the rest.

12 MS. KULASZKA: I don't know their  
13 system works or if it's capable of doing that. Some  
14 systems can do that, some can't. It depends.

15 THE CHAIRPERSON: I'm perfectly  
16 willing to allow him to do that to quicken the progress  
17 up, thereby ensuring the disclosure is complete.

18 MS. BLIGHT: Mr. Chairman, may I just  
19 summarize what I understand I'm required to do and what  
20 the outcome will be?

21 THE CHAIRPERSON: Please.

22 MS. BLIGHT: I will be asking Mr.  
23 Goldberg to perform a search, if he can, of his e-mail  
24 files for the words "hate" or "Internet" and, if  
25 possible, excluding the term in quotes, "hate on the

1 Internet", close quotes.

2 THE CHAIRPERSON: Working on the  
3 assumption his recollection was correct, that he has  
4 indeed used that combination, produced a series of  
5 e-mails and vetted it.

6 MS. BLIGHT: That was what his  
7 affidavit stated.

8 I understand that we are  
9 acknowledging this will not be done before he resumes  
10 his testimony tomorrow morning, and that any resulting  
11 documents which are disclosed to my friend would be  
12 subject to simply being filed in evidence, produced,  
13 received as further evidence -- further documents  
14 produced by the witness -- disclosed by the witness.

15 THE CHAIRPERSON: That's my plan of  
16 action because, Ms. Kulaszka I've noticed a pattern  
17 with a lot of this documents until this point. You  
18 start putting it to the witness and you are getting  
19 into evidence, but he's not really contributing. He's  
20 tending to repeat himself in the last round.

21 So if the documents are along the  
22 same lines, why don't you just produce them or file  
23 them, whatever, enter them into the record and then use  
24 them afterwards in your final submissions.

25 MS. KULASZKA: Could I make it just

1 subject to any motion I might make depending on what's  
2 disclosed?

3 THE CHAIRPERSON: Depending on what's  
4 disclosed. I'm counting on the exercise of your  
5 discretion on that point. Because for one or two  
6 documents to have to bring the proceedings back, would  
7 not make sense to me, if it wasn't necessary.

8 MS. BLIGHT: And I take it the same  
9 would apply to any additional documents that the  
10 Commission is able to locate with respect to  
11 communications with ISPs post Tribunal?

12 THE CHAIRPERSON: Yes. It may be  
13 more tenuous there because those documents may not  
14 pertain to this witness. But I'm counting on you, Ms.  
15 Kulaszka, to use that discretion, but keeping your  
16 options open.

17 MS. KULASZKA: I just would like to  
18 put on the record that when this matter came up and you  
19 were setting dates for when this was to be produced,  
20 they were given a very long time, as much as they asked  
21 for actually, to produce them. And in fact they didn't  
22 produce them even in that time. I was given material  
23 literally the first day of the hearing.

24 THE CHAIRPERSON: I know.

25 MS. KULASZKA: And now Mr. Goldberg

1 gives testimony. It took him just two days just to  
2 find this stuff. It was nothing. He got, he did a  
3 search.

4 THE CHAIRPERSON: I think a good part  
5 of the delay, as I understand it, was in the vetting.  
6 They had to go through the material to see what was  
7 confidential, what was not relevant, so on.

8 MS. KULASZKA: And I would like to  
9 put on the record I have asked Mr. Goldberg repeatedly  
10 what it is he wants from these ISPs, and he has never  
11 answered me. And he can't remember what undertakings  
12 he wanted from ISPs, and this material could very well  
13 be in the e-mails that have not been disclosed. He's  
14 not meeting with them for nothing.

15 THE CHAIRPERSON: Much of that is  
16 argument.

17 If you want to put it to him again,  
18 we'll see. Let's see how things work out. Okay.  
19 Dates?

20 MS. KULASZKA: If I could just say,  
21 Mr. Lemire has just suggested what might be a good  
22 search as well is "hate" and "Internet" but not as  
23 phrase of course, just the two words appearing in the  
24 same e-mail.

25 THE CHAIRPERSON: That would even

1 shorten it down. I don't want to overly restrict it,  
2 that's why I asked --

3 MS. KULASZKA: I personally think  
4 just the word "hate".

5 MS. BLIGHT: Mr. Chairman, that is  
6 what I had suggested a few minutes ago.

7 THE CHAIRPERSON: He can try both,  
8 see what happens. See what happens and tell me. That's  
9 all I'm asking.

10 MS. KULASZKA: I could think of all  
11 sorts of searches.

12 THE CHAIRPERSON: The key words and  
13 "hate" and "Internet".

14 MS. KULASZKA: The key word is  
15 "hate", absolutely.

16 THE CHAIRPERSON: On dates, I don't  
17 know what we can do. There is so much still out there.  
18 We're also missing half a dozen parties here to be able  
19 to do this. There's three -- they are represented by  
20 one counsel typically, and we have Mr. Christie missing  
21 and Mr. Warman. Well, Mr. Warman had told us at one  
22 point he would make his submissions in writing. What  
23 can we do here?

24 Do you know what Mr. Christie's  
25 availability is by any chance?



1 MS. KULASZKA: No, I don't.

2 THE CHAIRPERSON: Does anyone know  
3 what would be Mr. Kurz -- who will be speaking on --

4 MR. FOTHERGILL: I don't know.

5 THE CHAIRPERSON: Here's an idea. How  
6 about I give you my dates of availability through the  
7 course of the fall, and somebody on this side of the  
8 room -- last week when we had that conversation in B.C.  
9 with Mr. Fromm, I referred to his group being on the  
10 left side of the room and the other group being on the  
11 right. And the Commission counsel said, "Shouldn't  
12 that be the other way around."

13 So the people who are on my right, if  
14 they could communicate with the other counsel, once I  
15 give these dates, and if someone could communicate with  
16 Mr. Christie on the other side, and let's see by  
17 tomorrow, if we've had a chance to speak to them at  
18 some point tomorrow, maybe by the afternoon we can look  
19 at this in greater detail, or perhaps do it by mail  
20 communication afterwards.

21 I'm free after September -- the week  
22 of September 24th at this time; the week of October  
23 1st. Very tight. Perhaps the week of September 10th,  
24 although I doubt it. Let's leave September 10th out. I  
25 think it's not possible.

1                   Then commencing the week of October  
2                   29th onwards at this point I'm available, towards the  
3                   end of the year at this point. Do we still think we'll  
4                   need about three days for final argument? I think so.

5                   MS. KULASZKA: Depends who shows up,  
6                   because so many of the parties just aren't here very  
7                   often.

8                   THE CHAIRPERSON: As I said before,  
9                   my focus is on the people in the front table. I want  
10                  you to get your submissions in and the others can take  
11                  up the rest of the time, make their submissions.

12                  Maybe I'll even set aside a fourth  
13                  day just in case. So those are the dates I'm  
14                  available, so if you could look at those and come back  
15                  to us tomorrow?

16                  MR. FROMM: I was wondering if  
17                  perhaps we could have your thoughts on maybe slightly  
18                  less contentious matter. Would it be possible to have  
19                  the final submissions in this area?

20                  THE CHAIRPERSON: I wasn't planning  
21                  to go anywhere else. We're here now. Does anyone  
22                  object to us doing it here? In fact, I think the  
23                  correspondence from Mr. Warman was -- he was the one  
24                  who originally opposed -- he didn't seem to be  
25                  opposing. In fact he said, given that it's taking

1 place here he would not be showing up, something to  
2 that effect. So it will probably be in this area.

3 We're finding it easier, in any  
4 event, in terms of parking and so on.

5 All right, I think that's all we need  
6 to say at this point. You can go and make your  
7 respective phone calls and talk about it again  
8 tomorrow.

9 Tomorrow we'll begin 9:30, hopefully.  
10 If I'm done earlier from my conference call, which I  
11 doubt, we can try to start maybe five or 10 minutes  
12 earlier if that helps. I don't see myself beginning  
13 before 9:30 tomorrow.

14 --- Whereupon the hearing was adjourned

15 I hereby certify the foregoing  
16 taken before me and transcribed  
17 to the best of my skill and  
18 ability this 26th day of June,  
19 2007

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Sandra Brereton

Certified Shorthand Reporter

Registered Professional Reporter

**StenoTran**